

Death Penalty in Islamic Countries and effect of International law

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Introduction

Human beings are capable of extreme vices. With the birth of society, competition for the limited natural resources has become a daily routine where the strongest survive while the weakest perish. In a bid to ensure that a person acquires the best out of the natural resources, human beings go to the extreme to make sure that they protect what they have acquired or in other cases fight for what is left of the natural resources. This kind of struggle is not an easy one. Where a person does anything to protect their assets it is expected that disorder or chaos to be the order of the day. This has manifested itself through the various crimes committed in the society. While other people utilize the law to enhance their protection, other take the law into their own hands and execute their own form of justice.

With rising forms of complicated crimes, many governments have set out criminal offences punishable through various methods. For the most heinous crimes, capital punishment or the death penalty was always preferred as a means of deterrence. This form of punishment was utilized till its objection by some jurisdiction during the late 20th century (Hood & Hoyle, 2008).

What exactly is capital punishment? It can be termed as a legal way or process of executing a person by the state, which in essence is a form of punishment for a particular type of crime. A death sentence is the judicial decree setting out the punishment while the process involved in killing the perpetrator is referred to as an execution. In addition, all those crimes that attract the death penalty are referred to as capital offences or capital crimes.

It is evident that this form of punishment is gruesome and most jurisdictions are distancing their mode of punishment from it. Therefore, it is safe to state that the debate around the death penalty is one filled with controversy. The perception of the punishment varies with the ideologies of a society. These ideologies include political, social and cultural ideologies.

Aim of the Paper

The aim of this paper is to look into the current trend of the death penalty in Islamic countries and comprehend the relationship with the various human rights principles. This is deemed fundamental if the future of death penalty in the Islamic country is to be correctly speculated.

Special attention will be given to three Islamic countries namely: Tunisia, Turkey and Jordan with the aim of understanding the trend being followed by Islamic countries on the controversial topic. It is understood that with the current trend of balkanization either for economic or political reasons, some Islamic countries will be required to adhere to certain International laws that are trying to shape the form of punishment of heinous crimes to exclude death penalty. This is the main point of focus given the fact that most of the

Islamic states adhere to Sharia law which has got its own rules regarding executions.

Structure

To achieve the aim of this paper, the following format will be followed. A brief history of the death penalty will be given to orient the reader on what set the trend historically on this topic. A brief religious overview on what Islamic law relies for the death penalty will be stated and briefly discussed before embarking on a detailed discussion on instances where Islam warrants the death penalty.

The death penalty in Jordan, Tunisia and Turkey will also be discussed before looking at the role of human rights in shaping the death penalty in Islamic countries. This will also act as a pointer on what the future of the death penalty in Islamic country is expected to be. At the end of the paper, it is expected that a definite answer will be given regarding the future of the death penalty in Islamic countries.

Brief History of Death Penalty

Before embarking on discussing the future of death penalty in the Islamic world, it is fundamental to understand the basis or the history of the death penalty in order to understand the rationale behind the punishment in the Islamic world.

Nearly [if not all] every society has carried out execution of rogue elements in the society. This form of punishment was used to act as a suppressant of political dissent or to punish heinous crimes. In other societies, capital punishment was used as part of military justice or punishment for treason, espionage and murder [all which are political in nature]. Additionally, some jurisdictions handed the death penalty for sexual sins such as sodomy, rape, incest and adultery (Hood & Hoyle, 2008). Most prevalent amongst the Islamic nations was the crime of apostasy [renouncing state religion] which carried the death penalty. In recent times, certain jurisdictions have imposed the death penalty on crimes like drug trafficking, human trafficking and other cases involving heinous corruption allegations (Gallahue & Lines, 2000). Militaries have also used courts-martial to hand death sentences to military officers/soldiers for crimes such as mutiny, cowardice, insubordination and desertion (Hood & Hoyle, 2008).

Amongst the first mode of justice delivery in early society, death sentence was rampant. It was used as a form of communal punishment. During these times, death sentence was carried out in different horrifying manners. For instance, it took the forms of slow slicing, decapitation, stoning, disembowelment, crucifixion, crushing, being boiled to death etc.

Capital Punishment from a Religious Perspective

Before the onset of proper legal mechanisms, societies were guided by religious rules and codes. The Christians relied on the teachings found in the Old Testament of the Bible, while the Muslims relied on the Holy Quran. The

basis of the death penalty in these religious institutions was found in the scriptures of the respective Holy books, where stories of criminals being sentenced to death and eventually being executed were extensively narrated.

Amongst Islamic scholars, they agree that the Quran spells out that everyone has got the basic right to live. However, they state that this right has got an exception where the law demands that the right has to be waived. Under Islamic law it is a common percept that a person should not kill a person [i.e. a soul that has been made sacred by Allah] except when the law specifies that the contrary should be done. This means that capital punishment has been authorized in instances where Islamic law specifies so. This has been the common practice in most countries where Islam is the state religion.

Leniency for death sentences is also permitted under Islamic law because the family offended can choose to pardon the perpetrator. This makes the family the judge of crimes committed. The family under the supervision of a jurist knowledgeable on the Quran will spell out the punishment they deem fit for the crime committed.

In verse 5:32, the Quran has spelt out the acceptability of the death penalty. This has been supported by other verses like Verse 2:178 which exemplify the punishment in murder cases. According to the Quran, capital punishment is viewed as to be a rule that ensures equality, however, on a lenient perspective; the victim's family is also presented with the option of receiving payment in order to extend mercy to the murderer. The reasoning behind this rationale is that a family which has had their bread winner killed is better off receiving monetary compensation rather than the actual murder of the perpetrator as a form of justice. Sharia/Islamic law however require that transgressors be executed according to well set up laws in various instances or crimes. These instances will be looked at in detail later on.

Sources and the Basic Principles of Islamic Law Regarding the Death Penalty

As stated earlier on, the Quran is the basic foundation of execution laws in Islamic countries. Although it is not considered a legal document, the Quran is a guide that stipulates how human beings are to relate with their creator. Some of the underlying principles in the Quran are those that favor and front for the fair administration of justice and compassion (Steiner, 2002). These principles are not legally enforceable norms; rather they form the most desirable form of behavior for human beings. From the Quran, penal law is contained in nearly thirty verses out of the total of 6342 verses (Lippman, 1964).

As stated earlier on in the paper, the Quran guarantees everyone the right to life except in instances where the law specifies that a person has to face execution. It may be false to imply that *Sharia* law strongly advocates for the death penalty. Even though the Quran supports the death penalty, the procedure involved in handing down the sentence is guided by stringent requirements of evidence as well as other methods and means that are useful in avoiding the punishment (Peiffer, 2004).

Under Islamic law, three categories of crimes are recognized. These are:

- a) *Ta'zir*
- b) *Hudud*

c) *Qisas* (Postawko, 2002).

These crimes form part of Islamic jurisprudence useful in legal rulings that have been made by Islamic scholars [the *Fiqh* is the name given to these Islamic jurisprudence].

A. Hudud Crimes

The *Sunnah* and the Quran describe the *Hudud* as crimes which threaten the existence of Islam. As a result, punishment for these crimes is severe. This is supported by the reasoning that such punishment is to deter future offenders who might be tempted to commit crimes that pose a danger to the Islamic society. These crimes have a fixed punishment. Consequently, judges do not have a choice but to hand down the punishment if a person is found guilty. It is normally argued that enforcing of punishment for *hudud* crimes is considered a right belonging to Allah. Out of the seven *hudud* crimes, four are punishable by death. The crime of apostasy [*riddah*]; adultery [*zina*]; rebellion [*baghy*] and robbery [*hirabah*] (Peiffer, 2004).

i. Adultery [zina]

Because of the serious effect of causing community instability, this crime is considered very serious in Islam. It is argued that *zina* eventually leads to illegitimate children, jealousy and spread of diseases. The Quran however, did not set the punishment of death rather it advocated for flogging of the culprits. The death punishment was handed by Caliphs (David, 1999). The Prophet's *Hadith* has more detail on the punishment given to those found guilty of *zina*. Therefore, there is a difference between the punishment given by the Quran and that given by the Prophet through the *hadith*. This difference has given rise to different school of thoughts when it comes to application of the punishment. The *Kharjis* follow a literal interpretation of the Quran and they don't stone adulterers (Peiffer, 2004). Other schools of thought like the *Maliki*, *Hanafi* and the *Shafi'i* advocate purely for stoning while *Zaydi*, *Zahiri* and *Hanbali* advocate for flogging and stoning (El-Awa, 1981).

ii. Apostasy (Riddah)

A Muslim is not permitted to change his religion. *Riddah* is amongst the greatest crimes a Muslim can commit, and the Quran imposes upon such persons a punishment of eternal damnation. However, later on, the *Sunnah* stipulated that a person found guilty of *Riddah* should be sentenced to death. The evidential threshold is diverse and circumstantial evidence can be relied upon to prove an allegation (El-Awa, 1981).

iii. Armed Robbery (Hirabah)

Interpretations by Islamic jurists consider *Hirabah* as causing trouble, or causing insecurity in roads with the aim of acquiring property forcefully (Peiffer, 2004). According to the definition of the crime, different punishments are handed out. However, the various schools of thoughts have their own way of deciding what punishment to give to a person found guilty (El-Awa, 1981). While some schools of thought have punishments that do not involve the death penalty, the *Zahiris* and *Maliki* allow the sovereign leader to choose from execution, crucifixion and amputation as methods of punishment for a guilty person (El-Awa, 1981). However, there are evidentiary safeguards in place during adjudication of this crime.

iv. Rebellion [Baghy]

This is defined as an attempted, or forceful and intentional overthrow of an Islamic state leader. Once again, the different schools of thoughts differ on what constitutes *Baghy*, while most schools of thought consider it to mean religious rebellion, the other schools of thought ascribe to the thinking that *baghy* can be influenced both by religion and politics (Peiffer, 2004). However, what remains clear is the fact that the punishment handed for this crime by the different schools of thought is death. However, an exception is made to those rebels who surrender, are wounded or those who are captured. The ones who die during the struggle are the ones who are deemed punished (El-Awa, 1981).

B. Qisas Crimes

The *Sunnah* and the Quran have both proscribed the *Qisas* offenses. However, claims that are personal in nature and are not offenses against Islam. Some of the offenses are bodily harm or murder. The Quran provides that such crimes are best punished through retaliation against the persons found guilty of the crime. The Quran also gives room for leniency or forgiveness (Coulson, 1957).

Under *Qisas* crimes, all schools of thought of Islam are in agreement that the death penalty should be available in instances where the murder or killing was deemed unjust or where it was intentional. However, the family members of the murdered person can agree to monetary compensation as stated earlier on in the paper. However, the compensation choice has brought out debate in instances where the murder was intentional. The *Maliki* and *Hanfi* prohibit compensation (Peiffer, 2004). However, the aggrieved family is given the option of pardoning the offender (Coulson, 1957). The *Hanbalis* and *Shafi'is* grant the option of compensation even when the murder was an intentional one. The Quran strengthens the notion of preferring *diya* and shunning *qisas* by explaining that the Muslims who prefer the previous to the latter will receive great reward in heaven.

C. Ta'zir Crimes

All other crimes that have not been covered under *qisas* and *hudud* are punished under *Ta'zir* [these are punishments imposed by a judge at his own discretion]. The punishment handed largely depends on what a human being discerns to be just according to the circumstances. Their main purpose however is to act as deterrence from future crimes by other members of the public. Most Islamic schools of thought do not advocate for the death penalty under this category as a mode of punishment unless the circumstances involved are those of an extraordinary nature. The *Maliki* and *Hanafi* schools of thought explain that in cases of recidivism then an offender can be handed the death sentence (Coulson, 1957).

Death Penalty in Specific Islamic Countries

Having looked at the religious perspective of the death penalty, an investigation of how it has shaped handing of punishment in some chosen countries will be discussed. This will help in determining to what extent these countries [if any] practice the death penalty and what is the rationale behind such executions [if any]. For the purposes of understanding the topic better, Turkey, Jordan and Tunisia have been chosen because of their current relaxed stand on the issue of the death penalty. This will be done in a view to understand what has led to the relaxing of their stand and whether other Islamic countries can successfully relax their stand. This section will also provide a transition to the next section of the paper on the

part played by human rights groups and International human rights law on the debate of the death penalty.

i. The Death Penalty in Turkey

Before the eighties, it was the norm in Turkey to carry out executions especially after military interventions. For instance, in 1961, Adnan Menderes [the then Prime Minister] was executed by hanging after a *coupe d'état*.

However, after 1984 the country has not carried out any execution, and as of 2004, the country completely abolished capital punishment. The main driving force behind this abolition was the need to adhere with European Union Harmonization 3rd Package. By law 4771 of August 2002 abolished the death penalty for offences related to peace times. Death penalty for all times was abolished by law 5218 of 14th July 2004. Additionally, in February 2006, Protocol No. 13 to the European Convention on Human Rights was ratified by Turkey. This Convention abolishes the death penalty and by Turkey ratifying it, the death penalty was consequently abolished. In place of the death penalty, Execution of Sentences Article 9 of Law 5275 establishes aggravated life imprisonment. Under this sentence, the prisoners are placed under high security in individual cells. Moreover, these prisoners are only allowed one hour exercise period per day and are kept in individual cells under solitary confinement.

The situation before the enactment of this legislation was severe. Turkey initially had 24 Articles under Law 765 [the 1926 Turkish Penal Code] which set out mandatory death sentences. Out of the 24 Articles 19 of the Articles dealt with crimes that went against the military, the government, the state and the Constitution. The remainder of the Articles covered offences like rape, murder and other specified criminal offences. Article 12 of the law gave the procedure on how executions were to be approved and how they were to be carried out. For instance it specified that executions were to be carried out by hanging and that the execution had to be approved by the TBMM [Turkey's Grand National Assembly]. Afterwards, the Judicial Committee had to review the decision before parliament voted on the issue. If voted for, the President had to ratify it, the President however had the power to suspend the sentence on grounds such as ill-health or the age of the victim.

It can be concluded that Turkey abolished the death penalty due to its need to join the European Union. Protocol No.13 to the European Convention on Human Rights abolishes the death penalty. This acted as the driving force behind Turkey's decision in order to conform to the requirements of the European Union. Advancement of Human Rights within the region has made it possible for some Islamic states to relax their stand on the controversial debate.

ii. Death Penalty in Jordan

Since 2006, no executions have been carried out in Jordan. This has been facilitated by amendments done to the country's Penal Code which has effectively reduced capital offenses. For instance, previous crimes like inciting armed riots, death emanating from arson, smuggling and threatening state security are no longer treated like capital offenses. In addition, rape cases may also cease to be capital offenses, and it is speculated that the death penalty will only be limited to murder cases.

While the position of Jordan does not exemplify complete abolition, as was the case with Turkey, it does demonstrate a huge relaxation or departure from the punishments previously seen as capital offenses under Islam law. Amnesty International explains that this move was triggered by isolationism that the country felt after decades of development on Human Rights and specifically the death penalty debate. In a bid to conform to International Law and laws regulating Human Rights, the traditional tenets of Islamic law on execution of offenders has been overlooked to pave way for a humane way of punishing offenders in Jordan. Even though the country still imposes the death sentence, the propensity at which it is done is significantly reduced. According to Amnesty International, by the end of the year 2010 the country had 46 people under the sentence. Moreover, in that specific year, six new death row inmates were reported. Amnesty International also reports that subsequent years have seen nine fresh death sentences issued. However, no executions have been carried out.

iii. The Death Penalty in Tunisia

Prior to 2011, Tunisia imposed the death penalty on capital crimes like murder, attacking the state's external security, attacking the states internal security and aggression coupled with violence. However, after the Jasmine Revolution, the country in 2011 ratified the International Covenant on Civil and Political Rights. This also included the Second Optional Protocol that is concerned with the death sentence abolition.

In addition, the country ratified the Rome Statute which establishes the ICC [International Criminal Court]; it also ratified the International Convention against Forced Disappearances. Moreover, the country ratified the International Convention on Civil and Political rights (Neumayer, 2008 a). The steps being taken by the country exemplify a jurisdiction that is slowly moving closer to embrace the highest norms concerned with Human Rights while at the same time drifting from the strict Islamic law.

The Role of Human Rights in Reduction of Death Penalty in Islamic Nations

While the debate on the death penalty has lasted for many years if not centuries, major steps towards a unanimous view on it have been made in the 21st century onwards. This has been made possible by the introduction of International law of human rights (Schabas, 2002). This is a factor that can be attributed to the increasing globalization, balkanization and need for national cooperation through diplomacy. The right to life coupled with the shunning of punishments considered cruel, inhuman and degrading has contributed a lot towards the changing view jurisdictions have towards the death penalty (Schabas, 1997). This has further been facilitated by the 1948 Universal Declaration of Human Rights [UDHR] and specifically Articles 3 and 5 of the Declaration. The Declaration has been influential over the past decades, in fact by the end of the 21st Century; an estimated 60 countries had signed and ratified treaties that sought to discard capital punishment (Badinter, 2004).

Change towards the death penalty has not been swift especially within the Islamic nations due to their strict adherence to Sharia law. It is evident that Sharia law is not congruent with the provisions of the UDHR especially on the issue of punishment of capital offenses.

What can be appreciated is the fact that the developments in the International arena reflect the developments sought by countries towards the handling of human rights (Schabas, 1997). By the year 2000, a report from the United Nations Secretary-General revealed that 38 states were de facto abolitionist, 74 states were total abolitionist while 11 states were abolitionist but in regard to ordinary crimes. Over the years the number has increased, and as pointed out earlier on, Islamic countries have also joined the group of countries that ascribe to abolitionist.

The main focus of this section however is how International law and human rights have fared in changing the perception of the Islamic world towards the death penalty. The arguments presented in this section will help at arriving with inferences on the future of the death penalty in Islamic countries.

Effects of International Law on Islamic Countries view on the Death Penalty

The effect of Islamic states was not felt till after the 1980's, this was after the International Covenant on Civil and Political Rights protocol was drafted by the UN. The Covenant initially did not abolish the death penalty satisfactorily. The right to life is recognized under Article 6 of the covenant, but it limited application of the death penalty to countries that had abolished the death penalty (Neumayer, 2008 b). Additionally, it allowed for the death penalty to apply to crimes that were considered serious. The only absolute restriction towards the penalty was when the offenders were either juvenile offenders or pregnant women.

When the UN's General Assembly Third Committee was drafting Article 6, the Islamic states played a discrete role. The Islamic states differed with the Latin American countries on the issue of the death penalty. The Latin American states fronted the idea of the right to life, and therefore advocated for a complete ban of capital punishment. The Islamic countries argued that it was not possible to abolish the death penalty because it was a very complex issue that was not to be dealt with by the Committee (Nanda, 1993). Eventually, the notion of abolishing capital punishment was thrown out after it was defeated in a vote. During the voting, all Islamic countries in the General Assembly voted against the resolution. This served to indicate that there was little International law could do at that particular time to abolish capital punishment in Islamic countries.

In fact, in recent times the main reason for refusal by Islamic states to allow abolition of capital punishment by International Instruments is the notion that the issue is a reserve of local jurisdiction and the UN cannot interfere with such matters. It can be argued that this position emanated from the Islamic principles as found in the Quran. From 1959 [that is after the refusal to abolish capital punishment] it took two decades before the debate took an interesting turn (Khan, 1999).

When the UN met in Caracas during its Sixth Congress to discuss the Prevention of Crime and the Treatment of Offenders, the Congress also discussed capital punishment. There was a call for a draft resolution which would help in abolishing death sentences so that there could be a meaningful addition to strengthen the right to life which is a human right (Schabas, 1997). However, Islamic states led by Egypt challenged the resolution that was drafted through an

amendment that sought to stress that it was important for penalties like capital punishment to be available (Bielefeldt, 1995). This they supported with the argument that it would serve to instill fear on the citizens. This tug of war led to the birth of the struggle to completely eliminate capital punishment.

Germany led the European countries into suggesting a protocol that would abolish capital punishment and forwarded it to the International Covenant on Civil and Political Rights. This they argued would allow those states that had already ratified the Covenant to give Article 6 a higher definition and interpretation which would allow them to completely abolish capital punishment (Neumayer, 2008 b).

A year later, in 1981, the General Assembly sought submissions from state members so that the issue could be discussed in subsequent sessions. Pakistan, an Islamic state, was one of the respondents to the submissions sought and it argued that abolishing capital punishment goes against Islamic law. This notably shows that Islamic countries by then considered their religious view to be more superior to those suggested by International law in respect for human rights. In fact this was manifested during the General Assembly in 1982 where most of the Islamic nations voted against the resolution (Khan, 1999). Their main reason as anticipated was the fact that Islamic law advocated for capital punishments. A country like Kuwait stressed that it could not vote in favor of abolishing the death penalty because it would go against Islamic law. Islamic countries continued fronting their support for capital punishment in subsequent debates and Islamic law was always given as the main reason for supporting it. They explained that the death penalty has worked as an effective deterrent mechanism for crimes in their jurisdictions and that is why they continue supporting it. Most of the Islamic countries were of the opinion that the protocol had the sole aim of exerting pressure or embarrassing the countries that advocated for the death penalty (Khan, 1999).

Regardless of the constant opposition by the Islamic countries, in 1989, the General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty. This protocol later came into force in 1991 after it was ratified the tenth time. By the year 2000, the protocol had been ratified forty times.

Even with the protocol adopted and some countries ratifying it, Islamic countries did not budge as was witnessed when Italy in 1994 drafted a resolution to be presented to the UN's General Assembly, with the death penalty being the main agenda under discussion. Most of the Islamic countries were opposed to it, with Sudan offering to explain their position as; capital punishment was provided for as a form of punishment and that it was considered a divine right under Islamic religion (Nanda, 1993).

Most states however found the methods of execution practiced by Islamic countries to be rather crude and degrading to human life. The idea that a human being could be stoned to death for a crime such as adultery for instance was considered cruel if not torturous. In fact it was argued that these types of punishments went against the International Covenant on Civil and Political Rights Article 7 (Wiechman et al, 1989).

In 1998 during the Rome Diplomatic Conference, Islamic countries teamed up with Commonwealth Caribbean to fight what they saw as the deliberate exclusion of capital offense from the suggested Rome Statute. Dissent from Islamic countries made the debate appear irrelevant because it seemed that there was nothing International human rights law could do to influence these states to change their stand on the topic (Khan, 1999). In fact Islamic countries saw the attempts to exclude capital punishment from international instruments not as a means to aid human rights but, as a means to torpedo their own criminal justice by the imposition of foreign doctrines into the centuries old tradition that was Islamic law.

The objection by Islamic states over the position of capital punishment in their respective jurisdiction over the years has produced one false notion. As discussed earlier Islamic states are guided by the Quran, however, there are different schools of thought amongst Muslims (Jordan, 2003). Therefore, it is not a very true to assume the fact that all Islamic states are of the position that capital punishment should be followed to the letter; i.e. strict interpretation by the extreme the extreme schools of thought should not be construed to be the blanket position of all Islamic countries. Those Islamic countries that interpret Islamic law from a less strict perspective associate themselves with the provisions of international law that favour respect for human rights. Indeed, even within the Islamic texts themselves, there is call for sympathy and clemency for the accused persons. Punishment according to the Quran should be done free from torture and vengeance (Hosni, 1987).

What has aided the Islamic countries to feel that their position on the debate is valid is the similarity of Islamic law to some of the International instruments and Constitution of various powerful countries. For example it is argued that the position of the Quran on the death penalty is the same as that contained in the Fifth Amendment in the United States Constitution. Moreover, it is the same position as that advocated by the European Convention on Human Rights.

Despite efforts by the International community, most Islamic countries have retained their stand on the debate. But, just as stated as earlier on, this is not a uniform situation across all Islamic countries. There are countries like Iraq and Iran which are strict followers and supporters of the death penalty. However, countries like Tunisia rarely execute offenders. Sudan has insisted that juvenile offenders have to be executed because it is provided for under Islamic law (Gravelle, 1998). However, Yemen does not agree with this analogy, in fact the country has instituted a ban on execution of juvenile offenders despite provisions made by Islamic law (Peterson, 2000). In fact, countries like Libya have expressed their commitment to abolishing the death penalty.

The pressure from International bodies to Islamic countries calling for respect of human rights by abolition of the death penalty cannot be said to be futile completely. Islamic countries have tried to harmonize their criminal justice systems to work in tandem with International instruments on human rights. The first step towards this harmonization was the adoption of the Universal Islamic Declaration of Rights by the Islamic Council in 1981. The Declaration provided that every effort was to be undertaken to ensure that human life was protected (Khan, 1999). This was pegged on the notion

that human life was inviolable and sacred. The Declaration stipulated that no person was to be subjected to death or injury except where the law provided otherwise.

This was followed by adoption of the Arab Charter of Human Rights in 1994. Even though most of the members League of Arab States have not ratified it, the document showed a trend that Islamic countries were softening on their stand on the death penalty(Khan, 1999). The most significant thing with the document was the proclamation that human life was sacred and should be treated in accordance with the provisions of international instruments on human rights. Article 10-12 have provisions regarding the death penalty. The death penalty has been recognized by these Articles; however, it is not a strict recognition thereof. The penalty has been abolished for juvenile offenders, for political crimes and for pregnant and nursing women.

From the above initiative it dawned amongst Islamic that in deed human rights had a major role to play in the current age of criminal justice administration. Some of the Islamic scholars advocated that the death penalty be lifted for political crimes. They explained that it was against Islamic law to execute people for political crimes (Steiner, 2002). In 1995, in Tunis, Arab human rights activists met to discuss the death penalty further. The European Community had extended its support to the Citizens and Parliamentarians' League for the Abolition of the Death Penalty and the Arab institute for human rights. The meeting was attended by philosophy, religion experts together with experts from the Arab states that dealt with the regions criminal law. During the meeting, the groups expressed their commitment to abolish capital punishment in the region. These experts made it very clear that even if Islamic states were purely religious states, it never meant that there was no place for secular legislation that would help in abolishing capital punishment. The experts strongly advocated that the Islamic states or the Arab states should sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights(Neumayer, 2008 a). This meant that they considered international law and human rights principles that advocated for a ban of the death penalty equally important in shaping the principles of their criminal justice administration systems(Khan, 1999).

Human rights have been able to succeed to change the view of Islamic countries towards the death penalty. This has been partly facilitated by the obvious different interpretations given to Islamic teachings on criminal justice. It can be said that those regions that favour a strict adherence to the traditional interpretation of punishments have it difficult understanding the position of human rights in their criminal justice systems. They consider international law, international bodies, and human rights principles to be incongruent to their own laws(Jordan, 2003). Therefore, they vehemently oppose any outside intrusion into their internal justice administration. As pointed earlier on, this intrusion is viewed as a ploy by the international community to undermine the criminal justice system in Islamic states. This may be construed as a call to maintain autonomy and to maintain sovereignty in deciding internal matters.

However, the success achieved by human rights in some of the Islamic countries cannot go unmentioned. Human rights and international law has demonstrated that the

perceived rigid Islamic law can actually change if the right arguments are fronted to the right nations. Tunisia, Turkey have completely abolished the death penalty from their jurisdiction through implementation of international instruments that favour application of human rights tenets into the criminal justice administration systems. Jordan has abolished the death penalty in most of the capital offences.

Therefore, human rights have played a big role in influencing the perception of some of the Islamic states on the subject. Additionally, since most of other countries are signing and ratifying most of the treaties meant to bolster application of human rights into their justice administration systems, Islamic countries as well as other countries have felt left out due to their rigidity in modifying their justice system to reflect their citizens' needs in the 21st century(Schmidt, 1996). Discerning whether Islamic states should change their notion on the subject is a complex issue. Interpretation of human rights and international law by these countries will have to be given a deeper thought. If the Islamic states come to the conclusion that actually human rights principles are not meant to undermine their justice system as well as their religious beliefs, then human rights will have achieved its main objective of ensuring that the right to life as envisaged in the numerous international law instruments is applicable universally(Schmidt, 1996).

Future of the Death Penalty under Islamic Law

The worst form of degrading the value of a human being is deliberately institutionalizing of human execution. Most developed nations and developing countries have seen the need to abandon capital punishment for capital crimes(Reichel, 2004). Throughout history, development of means by which offenders movements can be restricted has developed drastically of the 21st century. There has been creation of major prison industrial complex.

This development was envisaged in order to do away with archaic forms of punishment like hanging, shooting, crucifixion or other forms of barbaric methods of punishing offenders. Religious institutions teach its followers that human beings will be accountable to their creator for the actions committed while here on earth. This is the same teaching offered by Islam religion. It is expected therefore that such a religion should show a high interpretation of this fundamental principle and advocate for the abolishment of the death penalty. Prisons such as maximum security prisons, certain prison sentences i.e. being sentenced to life imprisonment without the possibility of parole, solitary confinement etcetera serve to reduce human contact between serious offenders and the society.

It does not make sense therefore why the death penalty should be embraced by modern society. Moreover, it beats knowledge why other primitive forms of punishment were abolished yet society still clings to the death penalty with so much determination. The present society is a conservative one which abhors excessive government power and has always been skeptical on the efficiency of the government as well as being very doubtful on the ability of the judiciary to make the decision on the life of a human being. Moreover, demanding that the death penalty be available for capital crimes means that the current decent society frequently engages itself with practices that it has placed limits on. In simple terms, capital crimes are not everyone's cup of tea.

When jurisdictions legislate that torture should not be used to extract information from suspects, it is implied that the same jurisdiction should be against cruel forms of punishment like the death penalty. Of course this is a general perception.

With the advent of modern society, will Islamic evolve so as to abolish the death penalty? Conservative Muslims are of the idea that there is a form of cultural and philosophical imperialism that is being imposed on them by other jurisdictions. This is why they have maintained their stand on the death penalty by invoking their religious beliefs. But, this form of justification is unwarranted. The Christians through the Bible also support the death penalty for certain crimes i.e. adultery, homosexuality, blasphemy and violation of the Sabbath. However, most Christian jurists have not relied on these provisions to challenge the abolishment of the death penalty.

Even if Islamic law does permit capital punishment, it does so for a limited set of crimes. This scope therefore is so limited to act as an impediment to international debates on human rights [in this regard to the abolishment of the death penalty].

If strict reading of Islamic law is relied on, then it will be obvious that some of the gravest crimes would not be punishable. For instance, crimes against humanity, genocide and war crimes have not been rendered punishable under the Quran because they have not been mentioned. Does this mean therefore that Islamic law tolerates these crimes? Moreover, does it mean that such crimes as adultery and apostasy are considered so serious compared to the aforementioned crimes(Sidahmed, 2001)? The answer is quite obvious.

Islamic law moreover, does not provide any jurisdiction for some of the serious crimes witnessed during the 20th and 21st centuries. Serious crimes according to Islamic law cannot be imposed under the International Covenant on Civil and Political Rights Article 6(2). This provision deals with crimes that lead to the loss of another life(Schabas, 2000). Therefore, imposing the death penalty on crimes such as adultery is quite absurd. Moreover, many of the Islamic countries that are very vocal in support of the death penalty have signed and ratified all the provisions of the convention. This includes Article 6(2) of the convention. This means that they have already agreed to abide with international norms that favor human rights, and whose application goes against the strict construction of Islamic law. Therefore, the religious argument fronted by these states in a bid to obstruct international law on human rights from evolving is quite inconsistent with their already agreed international human rights practice(Al-Thakeb & Scott, 1981).

The practice and theory of Islamic religion have never coincided throughout its development. Islamic societies social order is governed by Islamic law, however, Sharia law is always amended when need arises(Schabas, 2000). This has given birth to the doctrine of necessity or *darura*. This doctrine stipulates that Muslims can overlook their religious laws if the prevailing environment dictates that they do so(Lippman, 1989). This is evident in the way Islamic countries relate to the international communities. As a principle of the Islamic faith, Islamic countries are not supposed to recognize jurisdictions that are non-Islamic, this is based on one of the main objectives of Islam, that of spreading Islamic faith. This has had to be overlooked due to the

complex nature of modern governance. A country's sovereignty has prevented Islamic countries from adhering to this objective. Therefore, they have had to adopt a secular way of dealing with foreign relations with other non-Islamic states. This is the case for a country like Turkey which had to secularize its internal legal structure in order to join the European Union.

Islamic countries have also had to cooperate with foreign non-Islamic countries when it comes to acquisition of military equipments and knowledge. This secularization has made even the conservatives to realize that in deed foreign modern relations requires secularization of Islamic governments. Even the concept of *Jihad* cannot be practicable since it goes against the Charter of the United Nations Article 2(4). If Islamic states are so concerned with observing the death penalty, then Jihad would be fought for by Islamic states. It is interesting to note that Islamic countries were amongst the supporters of inclusion of crimes of aggression as an area under the jurisdiction of the ICC. If this is the case, then Islamic states should be calling for the legality of *Jihad*, however, this has not been the case(Lippman, 1989).

Change in Islamic family law also suggests that Islamic law is actually flexible. For instance, the habit of forcefully marrying children without their consent, organizing marriage of minors and the right of the husband to dismiss his wife arbitrarily have over the years been deemed impracticable and inappropriate(Lippman, 1989). Therefore, Islamic states should not remain rigid on the issue of abolishing the death penalty under the pretext that it is an inherent right provided for by the Quran and other Islamic teachings.

Conclusion

Islamic countries have over the years shown that in deed their teachings are not as rigid as they are perceived to be. Therefore, they should not use religion to justify inclusion of the death penalty which goes against the core of human rights. Criminal law has evolved and so has the methods of punishing offenders. Clinging to the death penalty only serves to retrogress the steps taken to ensure that the repressive period and attitude of criminal law's yester years are abandoned. Therefore, the other Islamic states should follow in the footsteps of Tunisia, Jordan and Turkey and abolish the death penalty in their respective criminal justice administration systems.

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