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POSITION PAPER # 8

## THE DEATH PENALTY IN ISLAM

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## **ABOUT THE MAJLIS UL ULAMAA (MAJLISTT)**

The Majlis ul Ulamaa is a forum to facilitate the collaboration of Islamic Scholars resident and active within Trinidad and Tobago. It seeks to define the authentic Islamic position as it relates to Islam and the Muslim community of the country, considering the various scholastic positions and schools of law. To this end, it deliberates on issues of importance, and defines the Islamic position. The due process is meticulous, spanning the issuing of a draft position paper, inviting stakeholders and public comment and consultations before a final position is issued.

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***Bismillaahir Rahmaanir Raheem***  
*Allahumma salli alaa sayyidinaa Muhammadin wa baarik wa sallim*

## **THE DEATH PENALTY IN ISLAM**

Praises are for Allah the Creator and Sustainer of the Universe; the Most Compassionate and Most Merciful; the One Who appointed man as His Vicegerent here on earth.

And peace and salutations on our Beloved Messenger, the Last of the divinely appointed Messengers; the physical manifestation of Compassion; and the Chief Intercessor on the Day of Judgment.

Allah perfected the way of life for man with Islam. He says:

*This day I have perfected for you your Religion and completed My Favours on you and chosen for you Islam as your Religion (5:3)*

There are many reasons why Islam is the best way of life for mankind. Some of these are:

- The removal of all forms of the projection of superiority of one person, race or people above the others; all are equal in the sight of Allah. He says:

*O mankind; verily, We created you from a single (pair) of a male and a female; and made you into tribes and nations; that you may know each other; not that you despise each other. Verily, the most honoured of you in the sight of Allah is from among the most righteous. (49:13)*

- All human beings are joined to one another through love. Allah says:

*Remember with gratitude Allah's favour on you; for you were enemies and He joined your hearts in love; so that by His Grace you became brethren. (3:103)*

- The creation of a single common focus in the minds of every believer. In this connection Allah tells believers:

*To your Lord is your final destination (53:42)*

- Justice and equity in dealing with everyone. Allah says:

*O you who believe; be maintainers of your pact with Allah as witnesses to fair dealings; and let not hatred of others to you make you swerve to wrong and depart from justice. Be just, that is nearest to righteousness. (5:8)*

- Redress when one is unfairly treated. Allah says:

*The recompense for an injury is an injury equal thereto (in degrees); but if a person forgives and makes reconciliation; his reward is due from Allah; for (Allah) loves not those who do wrong. But indeed if any do help and defend themselves after a wrong (done) to them; against such there is no blame. (42:40-41)*

Islam upholds that in the community, every individual is expected to be supportive to others. The Qur'an directs, on one hand, help and support; and on the other, justice and fair dealings.

At times there can be mishaps in society; some can be accidental and others can be pre-meditated e.g. Cain killed his brother Abel. Also the injustice done to Joseph by his brothers was pre-meditated; while the death of the Egyptian at the hands of Moses was accidental. Whatever the cause may be Islam gives guidance to every situation; and upon close examination, one finds wisdom in the Islamic laws.

One area in which the Islamic law is definitely more beneficial to all concerned is the Law pertaining to the prescription of the death penalty. Allah says:

*O you who believe! Retaliation is prescribed for you in the matter of the murdered; the freeman for the freeman, and the slave for the slave, and the female for the female. And for him who is forgiven somewhat by the (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and a mercy from your Lord. He who transgresses after this will have a painful doom. (2:178)*

In the sight of Allah all human beings are equal, and deserve to be treated honourably. It is not right for one person to be outrageous against another, hence the reason why Allah says, that if a person should take the life of another, without a just cause, it is as though he has taken the lives of the whole of humanity. Such a person will have to be punished.

Allah says:

*If anyone kills a person; unless it be for murder or for spreading mischief in the land; it would be as if he killed all people. And if anyone saves a life; it would be as if he saved the life of all people. (5:32)*

Islam differs from other religions regarding its directives on the death penalty. This is because its laws are revealed by Allah and are not subjected to change.

In Buddhism there are differences as to whether or not the death penalty should be carried out. Those who oppose it cite the verse of the Dhammapada in Chapter 10. It says:

*Everyone fears punishment; everyone fears death, just as you do. Therefore do not kill or cause to kill. Everyone fears punishment; everyone loves life, as you do. Therefore do not kill or cause to kill.*

However, in spite of this we find that in most of the countries where Buddhism is the official religion, the authorities have imposed the death penalty.

Judaism approves the death penalty; however the standard of proof required for its application is extremely stringent. It is however not carried out as the judicial body effectively abolished it under the understanding that it is only God alone who can prescribe death to an individual. This is as a result of the teachings of scholars like Maimonides, who wrote in the 12<sup>th</sup> century the following:

*It is better and more satisfactory to acquit a thousand guilty than to put a single innocent one to death.*

In Christianity there are the sects that do not oppose such a form of punishment, while in others, e.g. the Anglican Lutheran Churches consider it to be: *revenge... and that true healing can only take place through repentance and forgiveness.*

According to Shariah ruling in Islam, capital punishment can be prescribed for intentional murder. It can also be prescribed for rape and adultery.

The authorities, after due deliberation can also prescribe the death penalty for the following:

- Treason (when one leaves the faith and joins the enemy to fight the Muslims).
- Terrorism.
- Land, sea and air piracy
- Homosexual behaviour
- Drug: in some countries.

In every case, before the punishment is actually carried out, one must be properly convicted in an Islamic court of law. And if there is the slightest bit of doubt the person will not be punished.

Islam views life as sacred; and as such, application of the law is the taking of the life of criminals after all the evidences are taken and the matter is established beyond a reason of doubt. Perhaps this is one reason why Allah says:

*Take not life, which Allah has made sacred, except by way of justice and law. Thus does He command you, so that you may learn wisdom. (6:151)*

Here we see that Islam upholds the laws prescribed by Allah, and this is based on being just to everyone.

When the prescribed punishment is executed in accordance with Islamic Theology, it will definitely serve as a deterrent on one hand and serve as being just to the aggrieved on the other.

The purpose of the law is not to seek retaliation, but to promote justice, and to prevent others from committing the same act in the future. Sometimes, justice demands that the Capital punishment be ordered by the authority.

According to Islamic Theology murder belongs to 5 categories. These are:

- intentional murder
- what appears to be similar to intentional
- mistake
- similar to mistake
- as a result of a cause

The intentional murder is that which takes place with a weapon or whatever stands for a weapon. It leads to sin and similar punishment, except if the close relatives of the victim should pardon the murderer, or accept blood money.

If a group of people together kills a man intentionally, they will all be given the capital punishment. If one single man kills many, and the relatives of the victim claim their right to punish the offender, he alone will be killed for all of his victims.

When the capital punishment has to be inflicted on a convicted person it is usually done in a public place for every one to see. So that it will prevent others from thinking of committing such a heinous crime in the future.

As for adultery, when it is established that the person is guilty of such a crime, both the guilty will be punished. This will be carried out after every effort is made to establish that the person committed this act wilfully.

The other acts for which the death penalty is prescribed is crimes committed against the humanity or against the state. Allah says:

*The punishment of those who wage war against Allah and His Messenger; and strive with might and main for mischief through the land is: execution, or crucifixion; or the cutting off of hands and feet from opposite sides or exile from the land (5:33)*

Crime is often regarded as an individual aggression against the community. Perhaps this is one reason why Allah says in the Holy Qur'an: *Do not take the life which Allah made sacred, except by way of justice and the law. (6:151)*

Islam never prescribes punishments haphazardly nor does it administer the law without due consideration. The main question is this: before deciding whether or not a criminal should be punished, we must determine the extent of his responsibility for the offence committed.

On studying a crime Islam takes into account two considerations at the same time; the viewpoint of the criminal and that of the community against which aggression took place. In the light of such considerations Islam prescribes the fair punishment which is in accordance with the dictates of sound logic and wise reasoning.

Before prescribing punishment, Islam tries in the first place, to wipe out all circumstances and motives that may lead to crime. And even after a crime is committed it tries to waive the execution of punishment if there is any doubt about it.

Islam also upholds the speedy process of carrying out justice, as it is unimaginable that the criminals are kept for years and years before they are being tried, and then many more years before justice is served.

Islam also makes provision in the law where the aggrieved person can have a say in deciding the fate of the murderer, if the death penalty has to be carried out; and it allows for compensation (blood money) to the victims family; something which can be beneficial, especially if the murdered person was the breadwinner of the family and also forgiveness if he so desires.

One thing remains certain, and that is, anyone who wilfully violate the revealed laws of Allah will be responsible for the consequences, and if it necessitates the taking of the life of such a person the law must be upheld and punishment will have to be prescribed.

There are those who may advocate the abolishing of the death penalty; but this is not possible in Islam as the laws were divinely ordained; and according to the principle of the application of Islamic Law—*to forbid what is not forbidden is forbidden*. As a result it is impossible to make a case for the abolition of the death penalty, which is explicitly endorsed in Islam.

**Allah knows best.**