



“A Comparative analysis of “Death Penalty” in Modern Criminal Law and Islamic Law

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ABSTRACT

This article contrasts how the death penalty is treated in contemporary criminal law. It examines the justifications for or objections to the use of the death penalty, its implementation, and the ethical considerations involved. Changes in social attitudes and international human rights principles have a significant impact on contemporary criminal law. Due to the fact that wrongful executions cannot be reversed, many nations view the death penalty as excessively harsh or risky. As a consequence of this, a number of nations have either completely outlawed it or only allow it for the most serious offenses, subject to stringent procedures and numerous legal safeguards. The death penalty is allowed for some serious crimes under Islamic law, which is based on the Quran, Hadith, and traditional legal theories. Murder, abandoning one's faith, and disparaging one's religion are among these. But Islamic law also places a lot of emphasis on fairness, justice, and protecting innocent lives. Sentences can only be given with solid evidence and reliable witness, and in some cases, the victim's family can choose to forgive the offender in return for compensation. This article explains how the two systems determine which crimes are eligible for execution, how sentences are handed down by courts, and the safeguards in place to prevent wrongful punishment. It also examines the moral debate. Whether or not the death penalty actually achieves justice and upholds human dignity. This article compares these two approaches to demonstrate how society, religion, and the law influence opinions regarding the death penalty.

Keywords: Death Penalty, Capital Punishment, Modern Criminal Law, Islamic Law, Human Rights, Justice, Ethics, Forgiveness, Comparative Analysis.



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Introduction

The death penalty, known as capital punishment, remains a divisive issue in both modern criminal law and Islamic law, with some countries still allowing its use for severe crimes such as murder, terrorism, and treason. In modern criminal law, the practice of the death penalty is justified by reasons such as seeking justice, deterring future crimes, and attempting to rehabilitate the offender, although many nations are increasingly moving



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away from it due to concerns regarding human rights violations, legal system errors, and moral dilemmas associated with taking a life. (Saqib, 2023)

Islamic law, known as Sharia, permits the death penalty for specific offenses as outlined in the Qur'an and Hadith. Crimes that may result in the death penalty under Islamic law encompass murder, apostasy (leaving the religion), adultery, and various other transgressions.

This article examines how the death penalty is justified, limited, and implemented in two broad legal frameworks.

Modern criminal law systems rooted in secular constitutions, legislative codes and human-rights instruments; and Islamic law as drawn from the Qur'an, Sun-nah (Prophetic tradition), classical jurists, and modern scholarly interpretations. The goal is to provide a nuanced comparative picture useful for policymakers, scholars, lawyers, and students (Hoyle, 2008).

For offenses like treason, murder, and theft, the death penalty was applied in ancient societies like Rome, Greece, China, and Persia. Executions were frequently made public to strengthen deterrence, although methods and procedures varied greatly. In the seventh century CE, Islamic law established a systematic and ethical method of punishment. The teachings of the Prophet Muhammad (peace be upon him) and the Qur'an recognized the rights of victims' families, established distinct categories of crimes, and demanded high

standards of proof. Enlightenment principles shaped modern criminal law, and many states gradually abolished or limited the death penalty, particularly following the human rights movement of the 20th century. (Saqib, 2023)

Core legal base; sources and Legitimacy

Sources and Legitimacy of the Core Legal Bases Criminal Law Today Constitutional texts, statutory enactments, jurisprudence, and increasingly international human-rights law give modern criminal law its legitimacy. Where it is used, the death penalty is typically mandated by law and governed by criminal codes. Due process, the right to life, and the prohibition of cruel and unusual punishment are just a few of the constitutional safeguards that direct or influence the use of capital punishment. Internationally, the ICCPR (international covenant on civil and political rights) (1966) recognizes the right to life and permits the death penalty only for the most serious crimes, with stringent procedural protections. The Second Optional Protocol to the ICCPR (international covenant on civil and political rights) (1989) seeks abolition of death Penalty. A growing number of UN (United Nation) bodies and special procedures have called for its abolition or severe restriction. Islamic Law (Sharia) (Qalandy, 2019)

Islamic criminal law finds its normative base primarily in the Qur'an and Sunnah, interpreted by jurists. Within classical sharia, capital punishment arises in three categories: (Schabas, 2018)



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Hudud:

Fixed, Quranically- or hadith-prescribed punishments for offences like apostasy (contested), adultery (in certain strict evidentiary conditions), and highway robbery (hirabah), some of which can carry the death penalty in classical formulations.

Qisas:

Retributive justice for intentional killing “an eye for an eye” principle (Kamali, 2019). The death penalty is legal in Qisas, but it is sometimes replaced by Diyat, or financial compensation, or forgiveness from the victim's heirs.

Ta‘zir:

Discretionary punishments imposed by a judge or ruler for offences not covered by hudud or qisas; ta‘zir punishments may include death in theory but are generally not considered fixed by scripture (Mohsensaedi, 2024)

Schools have a lot of disagreement about these categories' scope and application; many modern Muslim-majority nations use sharia as a basis for criminal law while adapting procedures and penalties to meet current requirements. (Schabas, 2018)

The Theory Underpinning the Death Penalty

Modern Criminal Law

Retribution, deterrence, incapacitation, and rehabilitation are the four main theoretical justifications for the death penalty in contemporary criminal law. **Retribution** is grounded in the notion of "just deserts," where those who commit heinous crimes, such as murder, deserve a punishment proportional to the offense—viewing capital punishment as a morally appropriate response that reaffirms societal values and the sanctity of life. The theory of **deterrence**, which is both general and specific, holds that the use or threat of the death

penalty discourages criminal behavior either by warning society as a whole or by guaranteeing that the person who is executed will never commit another crime. (Saleh, 2018) Similar to **incapacitation**, it focuses on permanently removing dangerous offenders from society to prevent future harm. In contrast, **rehabilitation**, which places an emphasis on reforming offenders and reintegrating them into society, opposes the death penalty because it eliminates any chance for change or redemption. As a result, the death penalty is under more scrutiny in criminal justice systems that place an emphasis on rehabilitation. Despite the combination of these theories to justify capital punishment, growing concerns about its deterrent effect, ethical implications, and alignment with international human rights standards have fueled global debates and led many jurisdictions to move away from its use in favor of alternatives like life imprisonment. (Gul, 2023)



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Islamic law

Islamic law, also known as Sharia, is a set of rules and principles that guide the legal system in Islam. When it comes to the death penalty, Islamic law has specific reasons and guidelines for when it can be applied. These reasons are based on religious teachings, ethical values, and the idea of promoting justice within a moral framework set by God. **Death Penalty and Human Rights Humans in Islam.** (Berberi, 2023)

Divine Justice The belief that Allah is the source of all laws and punishments makes Islamic law view the death penalty as a form of divine justice. In order to maintain the moral and social order established by God, the Quran and Hadith specify specific instances in which the death penalty is permitted, such as in cases of murder or apostasy (Saleh, 2018). **Retribution** It is also justified by the retribution principle, which stipulates that the punishment

must be proportional to the seriousness of the offense. In cases of murder, for instance, the victim's family has the right to demand the death penalty, accept blood money, or apologize, thereby ensuring justice and permitting mercy (Saqib, 2023). **Deterrence** is also important because harsh punishments for serious crimes like theft, murder, or adultery deter others from doing the same. Islamic teachings emphasize the necessity of swift and precise punishment to preserve public order and prevent social corruption.

Rehabilitation However, despite the emphasis on justice and deterrence, Islamic law also acknowledges the importance of rehabilitation. Offenders are encouraged to repent and seek forgiveness, either from Allah or the victim's family, highlighting the high value Islam places on mercy and sincere remorse (Qalandy, 2019).

Safeguards and strict conditionality the use of the death penalty is also governed by strict conditionality. It can only be applied to crimes that are specifically defined by Sharia, and its application necessitates a high standard of proof, such as the presence of multiple trustworthy witnesses or a voluntary confession. Additionally, mechanisms exist that permit mercy through judicial discretion or the victim's loved ones. The overall purpose of the death penalty in Islamic law is to uphold ethical and spiritual values while also delivering justice and preventing crime (Hallaq, 2005).

Selected Jurisdictional practice (Representative Example)

Some Practices by Jurisdiction (Representative Examples) **Pakistan** as an illustration of mixed practice Since the 1970s, Pakistan's criminal law has been Islamism by including qisas and diyya provisions in the Pakistan Penal Code and the Qisas and Diyat Ordinance (1990s). For murder, qisas allows the victim's heirs to demand execution or accept diyya or forgiveness. With

periodic moratoria and high-profile executions, Pakistan maintains the death penalty for certain offenses (murder, terrorism, and blasphemy-related statutes in practice). Trial and appeals are procedural safeguards, but human rights groups have expressed concerns regarding fair trial standards and prolonged detention on death row. (Schabas, 2018)

Classical hudud and qisas influence in **Saudi Arabia** An interpretive approach to sharia has a significant impact on Saudi practice; qisas and hudud are prominent in capital cases like murder and serious sexual offenses (where proven by classical standards). The state



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also prosecutes terrorism and drug offenses with severe penalties. The victims' families can accept diyat if the King grants clemency. (Mohsensaeedi, 2024)

United States (secular, federalist diversity) although many states have abolished the death penalty, the federal and several state levels of the United States still use the death penalty. Aggravated murder is typically a capital offense, and the Supreme Court prohibited juvenile executions (Simmons, 2005) Procedural protections involve multi-tiered appeals and habeas corpus review, but debates continue over racial disparities, wrongful convictions, and lethal injection protocols.

States in **Europe** that oppose slavery According to the Council of Europe's instruments and Protocols to the European Convention on Human Rights, the majority of European nations regard the end of the death penalty as a human rights standard. Globally, death penalty retention is becoming increasingly isolated.

Key Similarities between Death Penalty in Modern Criminal Law and Islamic Law Focus on Serious Crimes

The death penalty is seen as a last resort punishment rather than a routine tool of justice in Islamic and modern criminal law, which restricts its application to the most serious offenses. The most heinous and deliberate crimes, such as first-degree murder, terrorism, genocide, treason, or espionage, typically receive the death penalty under contemporary criminal law. A "narrowing doctrine" is also used by many jurisdictions to make sure that only the worst crimes and offenders are eligible. Under the doctrine of qisas, or retributive justice, and specific hudud crimes like adultery by a married person (zina), armed robbery (hirabah), and apostasy in some interpretations, capital punishment is used in Islamic law (Sharia). These crimes include intentional murder. In addition, in rare instances in which they cause widespread harm to society, certain ta'zir crimes, which are discretionary punishments, may result in the death penalty. This exemplifies a fundamental idea that everyone agrees on: the death penalty should only be used for serious threats to life, order, and morality. It should not be used haphazardly or frequently. (Horder, 2022)

Due Process and Legal Process Requirement

Both systems require thorough legal proceedings and safeguards to guarantee fairness and prevent injustice, but neither permits extrajudicial killings. Procedural justice is emphasized in modern legal systems. The right to appeal, a fair trial, access to legal representation, and the presumption of innocence must be granted to defendants. In order to avoid wrongful execution, capital trials typically have higher evidentiary standards and multiple levels of judicial review. Islamic law requires that any criminal sentence, particularly capital punishment, be issued only after rigorous legal procedures. Judges (qadis) must ensure evidence is credible this includes the requirement of two trustworthy eyewitnesses or a voluntary, repeated confession. Any ambiguity in the evidence cancels the punishment, according to the Islamic legal maxim "hudud are dropped by doubt" (al-hudud tudrau bil-shubuhah). A deep concern for justice and error prevention is reflected



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in this principle. These legal safeguards highlight a mutual commitment to uphold human dignity and avoid miscarriages of justice. (Peters, 2005)

Retribution and deterrence are emphasized

The death penalty is justified in both systems by the dual goals of retribution for previous offenses and the prevention of future crimes. In modern criminal law, capital punishment is often defended on utilitarian grounds it serves as a deterrent to potential offenders by illustrating the consequences of grave crimes. It also fulfills a retributive function: punishing those who have committed the most egregious harms to society.

In Islamic law, the death penalty serves both as a deterrent and a form of retributive justice grounded in divine law. It is intended to uphold public safety, preserve moral order, and restore balance when a life has been taken. This shared justification reflects an ethical belief that punishment must be proportionate and serve both justice and societal protection. (Qalandy, 2019) **Justice for Victims and Recognition of Their Rights**

Both systems acknowledge the central role of victims and seek to restore their dignity and rights. Modern legal systems often allow the victim's family to participate in the judicial process through impact statements and may consider their views during sentencing or parole decisions. However, the state retains the ultimate authority to prosecute and punish. In cases of murder, the heirs of the victim are directly and decisively involved under Islamic law. They can demand execution (qisas), accept diyah (blood money), or offer forgiveness, leading to the release of the offender. This approach empowers victims' families while promoting reconciliation and mercy when appropriate. Even though the mechanisms are different, they still point to a common goal: both systems strive to provide justice to those most affected by crime in addition to the state. (Berberi, 2023)

Safeguards against Wrongful Conviction

Preventing the execution of innocent people is a vital concern in both legal traditions. In modern criminal law, multiple layers of appeal, evidentiary review, forensic advancements, and clemency petitions aim to prevent wrongful executions. DNA exonerations have highlighted the fallibility of the system, prompting reforms to further protect due process.

The evidentiary threshold for capital punishment is deliberately high in Islamic law. Two adult, sane, and pious Muslim eyewitnesses are typically required for hudud offenses, and any doubt or inconsistency can end the case. Coerced confessions are invalid, and judges are advised to seek reasons to avoid applying capital punishment when possible. This reflects a common moral conclusion: it's better to be cautious than to kill someone unjustly. (Hoyle, 2008)

Possibility of Mercy or Leniency

Both systems provide opportunities for mercy and forgiveness despite their severity. In modern legal systems, clemency powers are held by the executive (e.g., president or governor), allowing for pardons or commutations. New evidence, humanitarian concerns,



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or shifts in public opinion could be used to grant these. In accordance with Islamic law, the victim's heirs may choose to forgive the offender completely or in exchange for diyah. Forgiveness is considered a moral virtue and is praised in the Qur'an as a path to divine reward. The possibility of avoiding execution through compassion serves both a legal and spiritual function. This demonstrates that both legal systems recognize the human capacity for change and the value of reconciliation in certain cases. (Horder, 2022)

Contemporary Debates

Contemporary Discussion, in contemporary times, the death penalty has become one of the most intensely debated issues in law, ethics, and human rights. In **modern criminal law**, the debate revolves around the tension between deterrence and human rights. Proponents contend that the use of the death penalty deters heinous crimes, provides victims with justice, and keeps society safe from dangerous criminals. Critics, however, highlight the risk of executing innocent people, systemic discrimination, and the violation of the fundamental right to life guaranteed in international human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. As a result, there has been a strong global trend toward abolition or a moratorium, with many nations substituting life in prison or restorative justice for the execution method. (Delphine lourtau, 2018)

In **Islamic law**, the contemporary debate centers not on whether the death penalty exists since it is textually prescribed but on its scope, evidentiary requirements, and implementation in modern states. Many scholars argue for strict adherence to Qur'anic standards and Prophetic traditions, which set extremely high evidentiary thresholds and encourage forgiveness over retribution. Others call for reinterpreting Hudud laws in order to keep the essence of Sharia. (Gul, 2023)

In practice, Muslim-majority countries vary widely: some apply the death penalty frequently under both civil and Islamic provisions, while others impose strict procedural checks or limit its use. This ongoing debate reflects the broader struggle to balance justice, mercy, public security, and human dignity in a rapidly changing global legal environment.

Important Differences between Islamic Law and Modern Criminal Law Regarding the Death Penalty

Source and nature of law

The legitimacy of **modern criminal law** comes from written constitutions, legislative bodies, and evolving international human rights standards. Modern criminal law is fundamentally secular. Human reasoning, societal consensus, and democratic processes are the sources of these laws, which are meant to reflect the shifting morals and values of society. Because these laws are created by humans, they are inherently flexible and subject to amendment or repeal through legislative or judicial means. Over time, such



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laws have evolved significantly to respond to societal changes, such as expanding human rights protections or abolishing the death penalty in many countries. (Saleh, 2018)

Law in Islam:

The Qur'an the literal word of God and the Sunnah the practices and traditions of Prophet Muhammad are the foundations of Islamic law (Sharia), which is regarded as divine in origin. These sources are regarded as immutable and eternal, making Islamic law fundamentally rigid on core principles. While Islamic scholars can interpret and apply these laws to specific circumstances (ijtihad), they cannot abolish or fundamentally alter the divine rulings. This lends Islamic law a permanence and sanctity that contrasts with the adaptability of modern secular law. However, depending on the region and school of thought, interpretations and applications may differ (Delphine lourtau, 2018).

Key Difference:

Modern criminal law is human-made, flexible, and evolves with society, while Islamic law is divinely mandated and largely immutable, with limited room for change in core principles.

Scope of crimes leading to death penalty

In most **modern legal systems**, capital punishment is restricted to a narrow set of the most serious crimes such as premeditated murder, terrorism, espionage, and treason. Due to ethical considerations, the possibility of wrongful convictions, and advocacy for human rights, many nations have moved toward abolishing or suspending the death penalty. The trend globally favors limiting or completely doing away with capital punishment.

Law in Islam The death penalty is required for a wider range of offenses under Islamic law. These include apostasy (ridda), armed robbery (hirabah), spreading corruption (fasad fil-ardh), and intentional murder (qisas), and hudud crimes like adultery (zina) by a married person. The application and enforcement of these penalties vary widely between Muslim-majority countries depending on local legal frameworks, political considerations, and levels of conservatism. (Kamali, 2019)

Key Difference:

In contrast to Islamic law, which tends to restrict the use of the death penalty to a select few serious offenses, Islamic law has a more extensive list of capital offenses, reflecting its religious and moral foundations.

State versus private sector \ families of victims

Crimes are regarded as offenses against society and the state. The state prosecutes offenders on behalf of the public interest, maintaining social order and justice. Victims' families may participate through victim impact statements or advisory roles but have no



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legal authority to influence sentencing or pardoning decisions. Institutionalized justice is centralized.

Islamic Law Families of victims have significant legal rights under Islamic law. They can ask for the offender's death (qisas), accept financial compensation (diyah), or grant them complete pardon in cases of intentional murder. This system decentralizes legal power, making justice a personal and community matter, with the intent of encouraging forgiveness, reconciliation, and social harmony. (Schabas, 2018)

Key main difference:

Modern law, on the other hand, places power in the hands of the state and the judicial system, whereas Islamic law gives victims' heirs greater authority over the law.

Purpose and Philosophy

Contemporary Criminal Law Modern law is based on utilitarianism and aims to punish criminals, incapacitate dangerous offenders, and deter crime. Increasingly, rehabilitative goals and respect for human rights have been integrated, reflecting a pragmatic and social welfare-oriented approach to justice. (Hoyle, 2008)

Islamic Law The philosophy of Islamic law is moral and religious. It seeks to implement divine justice, uphold societal moral order, and protect the five essentials of life (Maqasid al-Shariah): life, religion, intellect, lineage, and property. Punishments serve both as deterrents and as fulfillment of divine commands, blending spiritual, moral, and social objectives.

Key Difference:

Modern law emphasizes secular, social welfare goals, while Islamic law incorporates religious and moral imperatives alongside social objectives.

Procedural Standards and Evidence

Modern systems rely heavily on procedural fairness, due process, legal representation, forensic and scientific evidence, and appeal mechanisms to ensure accurate and just outcomes. The burden of proof is “beyond a reasonable doubt,” aiming to minimize wrongful convictions. (Gul, 2023)

Islamic law sets extremely high standards for evidence, especially for hudud crimes. A voluntary, unforced confession or the testimony of two or more credible eyewitnesses are required for conviction. Any doubt (shubha) leads to acquittal or lesser punishment, reflecting a strong presumption against wrongful punishment and emphasizing mercy. (Peters, 2005)



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Key main difference: While both systems aim to safeguard justice, Islamic law demands stricter evidentiary standards for certain crimes, whereas modern law relies more on forensic science and judicial review. (Schabas, 2018)

3.Human Rights Influence

Modern criminal law has been significantly influenced by international human rights campaigns advocating for the abolition or moratorium on the death penalty, particularly in Europe, the Americas, and a portion of Asia and Africa. The sanctity of life and the prevention of unusual and cruel punishment are emphasized in these efforts.

Islamic Law

Since capital punishment is viewed as divinely ordained in Islamic law, global human rights movements have limited influence on its application. However, some Muslim-majority countries attempt to reconcile Islamic law with international human rights by restricting capital punishment's scope or enhancing procedural safeguards, reflecting ongoing debates within Islamic jurisprudence. (Ashworth, 2021)

Key Difference:

Modern law trends strongly toward abolition, whereas Islamic law retains the death penalty as a core component of its legal-moral system.

Possibility of Forgiveness and Mercy:

Executive authorities, such as presidents or governors, typically grant mercy or clemency on the basis of humanitarian reasons, miscarriages of justice, or political considerations. This top-down mercy functions as a safety valve within the criminal justice system. (Berberi, 2023)

In Islamic law, mercy in murder cases is exercised by the victim's family, who hold the legal right to forgive or accept financial compensation (diyyah) instead of execution. This system empowers the relatives of victims and fosters forgiveness and reconciliation.

Key Difference:

Mercy in modern systems is centralized in government authorities, while in Islamic law it is decentralized and lies with the victim's heirs.

Methods of Execution and Publicity

Modern Criminal Law Execution methods are designed to be as humane and discreet as possible, often using lethal injection, electrocution, or firing squads. Public executions are extremely rare and widely condemned by human rights groups and international observers, reflecting a preference to minimize public trauma and maintain dignity. (Horder, 2022)

Law in Islam Historically, public executions were common in classical Islamic law to serve as both moral lessons and deterrents. Countries' execution practices today are highly influenced by both tradition and contemporary international criticism, with some



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countries continuing public executions and others carrying them out in private or less public settings.

Key Difference:

Modern systems tend to conceal executions from public view to avoid controversy, while Islamic law has historically permitted public executions to reinforce moral order and deterrence.

Ethical and Theological Reflections

Islamic point emphasizes mercy and justice theologically. The Qur'an upholds proportionate justice (e.g., qisas) but repeatedly praises forgiveness as superior. This tension allows modern jurists to favor alternatives when social objectives (prevention of wrongful execution, protection of life) recommend restraint. In secular moral philosophy, debates about the state's moral right to take life hinge on dignity, sovereignty, utilitarian outcomes, and the finality of death penalty errors.

Both systems must grapple with whether the death penalty serves a morally defensible public purpose and whether the risk of irrevocable error renders it unacceptable. (Mohsensaedi, 2024)

Comparative Study of the Death Penalty in Islamic and Contemporary Criminal Law

The death penalty in Islamic law and modern criminal law is a reflection of two distinct legal traditions—one divine and rooted in religious revelation, the other secular and in the process of evolving. Modern criminal law derives its authority from constitutions, legislative acts, penal codes, and international treaties such as the International Covenant on Civil and Political Rights (ICCPR). Since these are man-made systems, the rules governing capital punishment are flexible and can change in response to social, political, and human rights considerations. Islamic law, on the other hand, is based on the Qur'an and the Sunnah of the Prophet Muhammad, with additional guidance from jurisprudence (ijma) and analogy (qiyas). The basic rules of the death penalty cannot be abolished by human authority because they are based on divine revelation. However, scholars and contexts may interpret and apply these rules differently. The scope of crimes also shows key distinctions. (Gul, 2023)

The death penalty is only used for the most serious crimes in modern criminal law, like murder, terrorism, treason, espionage, and drug trafficking in some states. A global trend has emerged toward narrowing or even abolishing its use, with life imprisonment increasingly preferred. Islamic law, however, prescribes capital punishment for a wider range of offenses. These include murder under qisas (where execution may be demanded or replaced with compensation or forgiveness), hudud crimes such as adultery by married persons, armed robbery, and spreading corruption (fasad fil-ard), as well as apostasy in certain classical interpretations. This broader application shows that Islamic law links capital punishment not only to crimes against life but also to acts that threaten moral and social order. (Hoyle, 2008)



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The role of victims is yet another significant distinction. In modern criminal law, crimes are prosecuted by the state in the name of society, and the victim's family has limited involvement, usually confined to providing victim impact statements, while the final sentencing power rests with the court. By contrast, Islamic law gives the victim's family significant authority, especially in cases of murder. They may demand retribution (qisas), accept blood money (diyah), or choose complete forgiveness. This demonstrates the strong emphasis on mercy and reconciliation that Islam places, making it possible to balance compassion and justice. The influence of human rights further highlights differences. In modern criminal law, capital punishment is under constant scrutiny by human rights organizations, with global campaigns led by the United Nations seeking abolition or moratoriums, based on arguments that it violates the right to life and risks wrongful executions. Consequently, many states have either abolished or severely limited the death penalty. However, because it is divinely ordained, the punishment itself cannot be abolished under Islamic law. Instead, emphasis is placed on strict evidentiary requirements and the option of forgiveness, while some Muslim-majority countries attempt to balance Sharia with international obligations by restricting executions or enhancing procedural safeguards. (Ashworth, 2021)

The underlying purpose of the death penalty also differs between the two systems. Although evidence suggests a limited deterrent effect and the possibility of miscarriages of justice, modern criminal law generally justifies it as a means of deterrence, retribution, and societal protection. Rehabilitative and restorative justice are favored over execution in current debates. In Islamic law, however, the objectives are tied to the Maqasid Al-Sharia (higher purposes of law), which include protecting life, religion, intellect, lineage, and property. The death penalty is therefore seen as both deterrence and retribution, but also as a way to uphold divine order and safeguard the moral fabric of society. Importantly, Islam simultaneously emphasizes forgiveness and mercy, encouraging alternatives to execution wherever possible. (Horder, 2022)

Finally, both systems include procedural safeguards, but in different ways. Modern criminal law ensures protections such as fair trial, right to legal defense, presumption of innocence, appeals to higher courts, and executive clemency. Execution methods are designed to be "humane," though their morality remains debated. Islamic law, on the other hand, enforces extremely strict evidentiary standards. For instance, adultery necessitates the testimony of four dependable eyewitnesses, whereas murder necessitates the voluntary confession of two upright witnesses. If any doubt (shubha) exists, the punishment is set aside, as judges are encouraged to avoid applying capital punishment where uncertainty remains. This emphasis on certainty and mercy ensures that wrongful executions are minimized.

Conclusion

In conclusion, the comparison of Islamic law and modern criminal law's use of the death penalty reveals both similarities and differences. Modern criminal law approaches capital punishment as a secular, evolving concept shaped by human rights concerns and



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international treaties, frequently moving toward restriction or abolition, despite the fact that both systems recognize it as a means of justice and deterrence. Islamic law, on the other hand, upholds strict evidentiary standards and offers victims' families the option of forgiveness or compensation because it views the death penalty as divinely sanctioned. It also applies it to crimes that threaten social and moral order. Thus, modern criminal law emphasizes state authority and global human rights trends, whereas Islamic law combines divine command with mercy and justice, reflecting a balance between retribution and compassion.

Recommendations

Restrict the Death Penalty to the Most Serious Crimes

Limit its use to offenses involving intentional killing or mass harm, reflecting both systems' focus on proportionality and severity.

Strengthen Legal Safeguards and Fair Trial Standards

To avoid wrongful convictions, ensure that all capital cases include full due process, access to defense, and the chance to appeal.

Establish a High Proof Standard

Require clear and credible evidence—such as reliable witnesses or voluntary confessions to minimize the risk of executing innocent individuals.

Include the Families of Victims in the Justice System

Create legal avenues for victims' families to participate in sentencing or offer forgiveness, inspired by Islamic law's victim-centered approach.

Incorporate Mercy Mechanisms

Maintain options like clemency, pardon, or compensation as alternatives to execution, promoting justice with compassion.

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