



A Level

Religious Studies

Islam: Theme 4C | Ethical debate about crime and punishment

wjec
cbac

Naima Asif

Naima Asif studied law at the universities of Leicester and Birmingham and is currently an experienced barrister working at Pump Court Chambers in London. She specialises in international law and family/children law and has worked on many high-profile cases both within the UK and overseas, in particular Pakistan. She is committed to the fight against the death penalty as a form of punishment and has collaborated with Justice Project Pakistan to produce a training manual for the judiciary of Pakistan on the rights of mentally ill defendants in capital cases under domestic and international law.



Asif's approach to the death penalty

'Naima is a staunch opponent of the death penalty. She successfully acted as sole counsel in an appeal in the Lahore High Court in the case of State v Farman in which a sentence of death was commuted to one of life imprisonment.' (from Pump Court Chambers website)

Asif challenges the use of the death penalty specifically in an article published by Oxford University's Death Penalty Research Unit in January 2021.

Asif does not reject the death penalty per se; what Asif rejects is the practical possibility of conditions that would permit this in line with strict Quranic, shari'a and legal prescriptions. Indeed, shari'a law allows the death penalty only under strict conditions while emphasising Quranic teachings about justice, mercy and repentance. The conditions prescribed by shari'a are so strict and precise that, in practice, it makes the application of the death penalty extremely difficult, if not impossible.

This also means that Asif does not reject, nor challenge, Quranic or shari'a teachings about the death penalty. This is non-negotiable. Like in many societies – religious and non-religious – and in many other world religions, the death penalty is there to serve as a deterrent. Asif clearly acknowledges and accepts the importance, existence and purpose of the death penalty in society. However, it is with regard to its purpose that Asif focuses her work on and, as a result, has become a 'staunch opponent' (Pump Court Chambers) of the application of the death penalty in contemporary society.

Asif proposes that true and accurate application of these teachings can only be achieved through correct and very precise observations of various stipulations that collectively render the death penalty in Islam as essentially unworkable in practice.

'While the use of the death penalty is permitted under shari'a law, its application is only allowed in limited circumstances, ensuring the highest requirements of due process and having regard to the 'overriding objective' of Islam: justice, mercy and repentance.'



She refers to qisas crimes, punishable by retaliation and specifically murders that are punishable with the death penalty; however, she quotes Qur'an 5:45 that states 'whoever gives [up his right as] charity, it is an expiation for him' and argues that this is an example whereby the Qur'an 'provides for other, more favourable, recourses to justice, which include restitution and forgiveness'. She supports this with Qur'an 16:126: 'If you punish, then punish with an equivalent of that which you were harmed. But if you are patient – it is better for the patient', which specifically promotes leniency.

Hudud crimes are the most serious in Islam. The Qur'an specifies punishments but at the same time Asif comments that 'evidentiary requirements are so stringent that they can be almost impossible to meet'. For example, for adultery (sometimes given the death penalty) there must be four 'righteous' eyewitnesses who have seen the act of intercourse and whose testimonies are consistent, and no circumstantial evidence can be considered. Asif suggest that unless adultery was committed in public then 'it is difficult to imagine a situation in which such stringent evidentiary requirements could be met'.

In terms of confession for crimes the requirements are equally stringent: 'the confession must be wilful, freely repeated four times (it is recommended that the judge ignores the first three confessions) and that it must be a detailed confession' (Asif).

Asif argues that repentance acts as a bar to punishment according to shari'a and that if there is any doubt whatsoever, consensus among scholars is to avoid punishment as Muhammad (pbuh) said: 'Do your best to avoid mandatory punishments. If you can find a way out for the accused, let him go. It is better for the ruler to err in granting a pardon than to err in enforcing a punishment.'

A focus of her argument is that simplistic readings of Quran and shari'a evidence are blind to the fundamental and underlying principles of Islam that contextualise and form the very fabric of any Muslim community. She writes:

'It is notable that there is no homogenous application of shari'a law and the way in which Muslim states deploy the use of the death penalty can vary quite significantly. Arguably, it is better described as manifestations of the will of Muslim states rooted in each country's idiosyncratic policies and traditional beliefs.'

For example, she points out that Pakistan has 33 offences that demand the death penalty, whereas in Saudi Arabia sorcery and witchcraft are included and in Iran publishing pornography, economic crimes and espionage are also considered for the death penalty.

It is really important to be clear and accurate about what Asif is challenging:

1. Asif's arguments raise questions about how Islamic teachings about the death penalty are interpreted and argues that they are often misunderstood, taken out of context and misrepresented, but, more importantly, misapplied.
2. Not adhering to strict Quranic, shari'a and legal principles often leads to a violation of human rights in practice. For example, Asif argues that coerced confessions violate both international and shari'a law.
3. This also means that, unfortunately, as is currently practised, this also disproportionately affects religious minorities in some Muslim countries. Imprecise application of Islamic teachings about the death penalty often creates an opportunity that is open to, and invites, abuse that can be exploited and misused for political purpose.

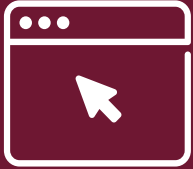


Asif offers many examples of how violation of Islamic principles and human rights have occurred.

- I. Sudan 2012 – Intisar Sharif Abdalla, a mother of three, was sentenced to death by stoning for adultery but: she had no lawyer; her co-accused denied the allegation; she was beaten into making a forced confession; and, offered no interpreter while her case was conducted in Arabic.
- II. Saudi Arabia 2019 – 14 protestors against the government were executed for peaceful demonstrations; all of whom were from the Shi’a minority.
- III. Iran 2016 – 25 men from a Sunni minority were executed for ‘enmity against God’.
- IV. Pakistan 2017 – three men from an Ahmadi minority were sentenced to death for tearing down anti-Ahmadi posters based on the argument this was tantamount to insulting Muhammad (pbuh).
- V. Amnesty International have reported many cases of human rights violation with regard to the death penalty.

Asif maintains that all the evidence points to the death penalty being used in the main inappropriately to target individuals and minorities in order to further political agendas.

4. The focus on the punishment of the death penalty can be taken out of context and often ignores what is arguably a higher ideal defined in Quranic teaching.
 - Asif does not simply offer cases of how the death penalty has been misused. Her argument is stronger than a simple attack on current misapplications. She is at pains to point out that Islamic teaching is much more emphatic on mercy and forgiveness, repentance and rehabilitation. She refers to the ‘cardinal principles’ of shari’a law as being fairness and equal justice as supported by the Qur’an 4:135: ‘Stand out firmly for justice, as witnesses to God... for God must be given preference over them. Follow not the lusts [of your hearts], lest you swerve, and if you distort [justice] or decline to do justice, verily God is well acquainted with all that ye do.’
 - Beyond shari’a law, the source of shari’a is the Qur’an itself as the word of God and this too emphasises mercy and forgiveness much more than punishment. As it states: ‘The recompense for an injury is an injury equal thereto [in degree]; but if a person forgives and makes reconciliation, his reward is due from God; for [God] loves not those who do wrong.’ (Qur’an 42:40)
5. Her understanding of Quranic passages is that the Qur’an clearly promotes mercy and forgiveness as higher ideals than that of basic retribution. Mercy and forgiveness can be seen as rehabilitation through imprisonment.



Website

[An introduction to shari'a law and the death penalty | Oxford Law Blogs](#)



Summary

Nasif is against the application of the death penalty on the principle that certainty of evidence is virtually impossible to establish and that it does not represent the fuller picture of Islamic teachings. As she writes clearly in her article:

'Whether one agrees with whether the death penalty should ever be used or not, it is hard to see how its widespread application today could be considered compatible with shari'a law.'

(Oxford university Death Penalty research Unit article, January 2021)

In summary, one could argue that Asif's position is one of pointing out the distinctions between 'principle and practice'.

In principle, there is no doubt that the Qur'an permits the death penalty as a viable punishment.

In practice, the teachings surrounding the death penalty have been taken abstractly and the essential ideals of mercy and forgiveness have been ignored and neglected. This has led to the strict criteria from both Qur'an and shari'a being taken out of context through weak and dubious interpretations and, in some countries, the subsequent applications are at the expense of human rights, minorities and specific individual cases of injustice.

While there is no doubt the death penalty can be a deterrent in principle, the impact of deterrence should be an effective tool in practice leading to its redundancy.