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Death Penalty between Divine Law and Secular Law: Egyptian Criminal Justice System and Counter-Terrorism Law, Quo Vadis?

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Muslims, Christians, and Jews advocates of reconciliation's theological concept, and in contemporary legal perspectives and politics, it encompasses acknowledgment (truth commissions, memorials . . .), compensations, apology, occasionally retribution (punishment), via a unique restorative logic, to rectify wounds and alter hatred. Understanding that Islam plays a crucial role in law and politics in the Middle East, as it includes Islamic legal basis for the application of criminal punishment, especially death penalty, as the Prophet Mohammad said: "[I]f a relative of anyone is killed, or if he suffers khabl (wound), he may choose one of three things: he may retaliate, or forgive, or receive compensation." Justice plays a dominant theme in the Qur'an as represents one of the Islam's main purposes. In terms of retributive justice, Muslim fiqh (scholars) splits crimes and punishments into three categories: Hudud are prescribed offences cover specific acts (e.g., theft, adultery, slander...), Qisas means retaliation for murder, wounding, and mutilation and for community's improvement, and ta'zir includes minor misbehaviors, crimes for which retribution is improper (or impossible), and offences not cited in the Qur'an and don't have any fixed penalties as hudud and qisas, which administered at the qadi (judge)'s discretion. Under the Egyptian criminal justice system, and according to Egyptian Criminal Code, the country's attorney general along with the defendants have the option to spontaneously appeals death penalties to the Supreme Court, which can order a retrial and if the retrial results in the same ruling, the defense attorney may again ask the court to grant a retrial procedure. According to Article 2 of the Egyptian Constitution 2014, "Islam is the State's religion...and the principles of the Sharie'a is the principal source of legislation." In light of this provision's interpretation, the law of God requires that intentional and serious criminals be put to death which means the lex talionis (equality principle) through satisfying the victims' feelings and then social peace will maintain. Classical Islamic scholars argued that Islamic norms are immutable, based on the Supreme Constitutional Courts' decision on the interpretation of the Sharie'a values. However, the court believes that the Sharie'a law include "relative" philosophies and "updated or modern" doctrines which are capable of being

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adjusted within the social future development through ijthad (individual reasoning) and Qiyyass (analogy) and without any paradox to the main maqasid (objectives/bulk) of the Islamic jurisprudence. In this domain, the most conventional religious jurists go as far as to claim the renovation of the death penalty for all crimes specified in the Qur'an and others moderate Islamic intellectuals argued for the restoration of the diyyah whereby criminals can be (forgiven) whereby criminals can be pardoned by their victim's family by giving them compensation. Egypt's Constitution stipulates that all those accused of a criminal offense are "presumed innocent until proven guilty in a fair legal trial in which the right to defend oneself is guaranteed." The Constitution does not refer to the corporal punishment but confirmed a certain number of guarantees concerning the respect of individual public rights and freedoms. The Penal Code sets this punishment for various crimes. Crimes of this punishment are tried by the criminal circuits of the Appellate courts in which the criminal rules does not offer a fair system of reasonable administration of justice which constitutes a breach of the UN Safeguards ensuring defense of the rights of those facing the death sentence. The Penal law obliged the court to pass the case file to the Mufti (religious leader) for his opinion, before pronouncing this sentence decision to make sure if it is compatible with Islamic law rules or not. In Egyptian law, execution can be postponed by retrial's request, as the right to demand a retrial belongs to the prosecution or the defendant. As a question on the Sharie'a on the death penalty eradication, and based on the constitutional's moderate interpretation of Islamic norms, as Islam should familiarize to the fluctuations which have come about since the Prophet's period, addressing Talion Law is an outdated practice which should be swapped by the legislature and the judiciary to end up the debate on death penalty not only in Egypt but also in the Islamic World. For decades, reprisal no longer institutes the basis for punishment, as any development appears to aggregate law's secularization, the purpose of which is to isolate the Prince's law from God's law. Regrettably, the rise in various forms of fundamentalism is not favorable to this expansion.