



A Comparative Study of the Death Penalty in Islamic Countries' Laws

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Abstract

Examining the death penalty as a violation of the right to life has always been a significant concern for human rights, and on this basis, examining it in the constitutions and criminal laws of Islamic countries, both in itself and with regard to the type and degree of influence of these countries from the customary approaches of human rights or Islamic standards, is one of the requirements of human rights studies. The level of concern for guaranteeing rights and freedoms and the general way of dealing with them can be reflected in the fact that Islamic countries are divided into two groups of secular and non-secular countries regarding the relationship between religion and government. In the second group, the convergence of religion and government in countries is not subject to the same patterns and it has intensity and weakness depending on the level of commitment of governments to religious teachings. In most Islamic countries, since Islam is accepted as the official religion, at least the convergence of religion with areas of government such as legislation has been taken into consideration. Among the Islamic countries, four countries, Iran, Algeria, Saudi Arabia, and Pakistan, have reflected the relationship between religion and the state in their constitutions in a distinctive way. On the contrary, the countries of Azerbaijan, Albania, Uzbekistan, Turkey, Lebanon, and Nigeria emphasize the separation of religion and government. For example, according to paragraph 1 of Article 7 of the Constitution of Azerbaijan, "the government of Azerbaijan is a unified, non-religious, legal and democratic republic".

This article seeks to answer the key question that Islamic countries have taken into consideration regarding the "death penalty". This research is based on the descriptive-analytical method and based on library and documentary studies. At first, all the basic laws of the research topic were analyzed. Next, based on the qualitative research method, the desired sources were examined, in which MAXQDA qualitative analysis software was used to encode open codes and extract categories and main themes. Finally, based on the meta-analysis, the current results were extracted.

The findings of the article show that the level of concern for rights and freedoms and the type of encounter with them among Islamic countries has a direct relationship with the relationship between religion and the state; However, the duality of custom and Sharia in the category of right to life in the basic laws and the penal code of Islamic countries has had different reflections. Regarding the death penalty, extreme approaches

(maximum permitting) on the one hand, and excessive approaches (maximum prohibiting) on the other hand, have lined up against each other; The dominant model accepted in Islamic countries, in this regard, is in line with the system of customary and secular human rights and is influenced by the approach of the divergence of religion and the state. However, with the strengthening of the convergence of religion and government in some Islamic countries, serious resistance regarding adherence to religious texts can be predicted. The results of the research are mentioned below:

The discourse of human rights in Islamic countries and the type of positive or negative attitude towards it has had a direct impact on the fundamental rights of these countries in all categories, including the category of the right to life and its accessories such as the "death penalty".

The connection between the concepts of customary human rights and Shari'a standards and the type of confrontation with them by Islamic countries has a direct relationship with the relationship between religion and the state. The duality of custom and Sharia in the category of the right to life has had different reflections in the basic laws and the penal code of Islamic countries. Iran, Saudi Arabia, Pakistan, Sudan, Algeria, and in the most recent case of Tunisia, with the model of the convergence of religion and government, have reflected the consequences of it in their constitution.

Modeling and effectiveness of Islamic countries regarding the cases of denying the right to life and especially execution, although it has been influenced to a large extent by the policy of convergence or divergence of religion and the state, this influence is not absolute and the imposition or non-imposition of the death penalty in this Countries have no complete dependence on it; The recognition of the death penalty in some secular Islamic countries such as Azerbaijan, Nigeria, and Malaysia is clear evidence of this claim.

It seems that regarding the death penalty, while expansive and extreme approaches (maximum prohibition) on the one hand and narrow and excessive approaches (maximum prohibition) on the other hand, have lined up against each other, in general, the role models of secular Islamic countries are based on customary approaches to rights. Humanity is more and in other words higher than the role models of non-secular Islamic countries.

The three stages of formulation, development, and evolution of human rights are evident in Islamic countries as well as in other countries, although the realization of these processes was not uniform and was usually associated with Islamic concerns. Compared to the influence of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights on Islamic countries, the influence and modeling of the Islamic Declaration of Human Rights has been less, and according to the new approach of the Organization of Islamic Cooperation and changing the name of the Islamic Declaration of Human Rights to The declaration of human rights of the Organization of Islamic Cooperation and the change in the provisions of some of its articles, most likely, change the position of Islamic countries with the aim of greater coordination with international documents.

Keywords: human rights, constitutional laws, right to life, death penalty, Islamic countries.



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