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Views: Egypt's Criminalisation of Minority Free Speech through Blasphemy Cases

Mohamed Mandour

Keywords: Blasphemy; Law; Islam; Religious Minorities; Freedom of Expression

The revolution of 25 January 2011 gave most religious minorities in Egypt a genuine opportunity to step into the public sphere, openly practice their religion, express their religious beliefs, and demand their right of citizenship, especially as the security apparatus temporarily retreated from the scene in the wake of the revolution. Nevertheless, their aspirations quickly ran up against a structural crisis in the Egyptian state's conception of freedom of religion and belief, arising from the state's adoption of a single version of Islam as a component of national identity and its blending of religious and political legitimacy. This crisis is manifested in the legacy of discriminatory state policies and discourses and in statutes criminalising blasphemy, which have been used to counter the aspirations of religious minorities, compensate for the reduced security presence, and reinforce state authority and hegemony over the religious sphere. This has been reflected in the increasing number of blasphemy trials, in which religious minorities of all stripes have been prosecuted; encompassing Egyptians ranging from Coptic Christians to Shia Muslims to atheists, as well as secular scholars and journalists, among others.

Egypt's reliance on blasphemy cases to suppress minorities is a significant issue for the modern state's regulation of freedom of expression. Whereas freedom of expression is a fundamental right and a core component of religious freedom, state authority can restrict and regulate this freedom on the grounds of preventing violations of public order or public security, or confronting hate speech or incitement to violence. While the modern secular state presents itself as adopting a neutral stance towards religions and claims that all its citizens are equal before the law, this is not the case in Egypt.

This article exposes how the modern Egyptian state uses (secular) legal language to criminalise minority speech and, in turn, restrict minorities' freedom of religion and belief. It explores the historical context of blasphemy statutes and analyses these statutes and court rulings to show how the law and courts have redefined limits on free expression to reinforce the state's monopoly on religion and the hegemony of its version of religion (moderate Islam) over alternatives, to privilege

the beliefs and attitudes of the religious majority, and to punish dissenters (religious minorities). The article also explores how power relations within and outside of the courts contributed to redefining the role of law and its enforcement institutions; examining how official religious institutions and religious conservatives, in concert with the judiciary, strove to articulate a common language aimed at tightening state control over religion and the religious sphere and criminalising religious minorities' right to free expression.

The Historical Context of Blasphemy Laws

In June 1981, one of the worst incidents of sectarian violence in modern Egyptian history took place in al-Zawiya al-Hamra. It was the fruition of a decade of President Anwar Sadat's concerted efforts to deploy Islam as a source of state legitimacy and ideology, in order to counter challenges to his legitimacy resulting from his adoption of economic liberalisation and the peace accord with Israel as well as the Nasserist legacy within and external to state institutions.

Sadat promulgated a new constitution in 1971, Article 2 of which made Islamic law (sharia) a main source of legislation; the article was amended in 1980 to make sharia *the* main source of legislation. As a counterweight to communists on university campuses and within labour unions, Sadat supported the Islamist movement while also effecting a historic rapprochement with Saudi Arabia, which invested heavily in promoting conservative Islamic discourse and subsidised numerous Salafi organisations across the Islamic world, including in Egypt.¹

These policies deepened the precarious situation of Coptic Christians and contributed to a surge in sectarian violence. Less than two months after the events in al-Zawiya al-Hamra, a bomb exploded in a church in Shubra, further exacerbating sectarian tensions. In response, in September 1981, Sadat called parliament to session and took steps to confront sectarian strife, among them banning the exploitation of religion for political ends and arresting some figures on evidence of posing a threat to national unity. Presidential Decree 2782/1971 appointing Anba Shenouda as the pope of Alexandria and the patriarch of the Coptic rite was rescinded and a committee was formed to carry out papal functions.²

The government subsequently submitted to parliament a number of amendments to the Penal Code that aimed, according to the law's explanatory memorandum, at 'protecting domestic security and stability and confronting the manipulators of religions', a clear reference to the rising pitch of anti-Coptic sectarian rhetoric that had slipped beyond the state's control. The amendments stiffened the penalties in Article 160 of the Penal Code, which protected various rites' religious practices free from violence, threat, or harm, and extended Article 201's ban on the abuse of religious rhetoric to all citizens, not just clerics. Article 98(f) was also introduced; criminalising displays of contempt for any of the revealed religions or their rites, or harm to national unity.

Ambiguity in the Statutory Language and Greater Ambiguity in Enforcement

A term of imprisonment of no less than six months and no more than five years or a fine of no less than LE500 and no more than LE1,000 shall be levied against any person who exploits religion to promote or advocate, verbally, in writing or by any other means, extremist ideas with intent to foment civil strife, show contempt or scorn for a revealed religion or a rite thereof, or harm national unity or social peace.

The above was the original text of Article 98(f). It was amended in 2006 to remove the ambiguous terms such as ‘advocate’ and ‘social peace’; however, this did not resolve the lack of clarity in the statute, which still does not meet the constitutional standards for penal statutes. In its rulings, the Supreme Constitutional Court has enumerated a set of criteria that must be met when writing penal laws, first and foremost the standard of legal certainty, which requires criminal statutes to be clear and specific, avoiding any kind of ambiguity or obscurity. Since penal laws use ‘criminal sanction as a tool to compel people to do or refrain from doing something’, the court has ruled that these statutes must therefore be governed by ‘strict criteria and stringent standards’, reasoning that such statutes should not function like ‘a net that the legislator casts to trawl anyone in the vicinity or ensnare those who fall into unawares’.³

Comparing the text of the law against these criteria, it is evident that particular phrases, such as ‘extremist ideas’, do not meet the court’s standards. What specifically are the extremist ideas that citizens are enjoined to avoid? The same is true of the phrases ‘foment civil strife’ and ‘harm national unity’, neither of which have a precise, established legal meaning that would enable a judge to determine with certainty that the actions of a person or group did indeed foment strife or harm national unity.

This linguistic ambiguity has resulted in contradictory court judgments, even in similar cases involving the same charges. For example, on 24 April 2012, the Pyramids Felony Court sentenced actor Adel Imam to three months in prison for defaming Islam in his artistic works⁴; on 26 April, the Agouza Court acquitted him in a case brought against him by the same person on the same charge.⁵

In addition to contradictory judgments, the ambiguity of the statute has resulted in an expansion of courts’ discretionary power, allowing them to interpret vague statutes in a way that violates freedom of religion and belief and freedom of expression. Explicitly recognising the murkiness of the phrase ‘extremist thoughts’, the Nasr City State Security Summary Court interpreted it in light of the precepts of sharia, pronouncing, ‘Extremism in religion means departing from truths necessarily known from religion’.

For its part, the South Cairo Misdemeanour Court interpreted the phrase to mean ‘the denial of what is necessarily known from religion and the denial of matters of consensus among the community’s scholars’.⁶

With these interpretations, the purpose of the statute—to protect religious rites—has been distorted into the protection of ‘what is necessarily known from religion’, according to the courts, which consistently rely on briefs from Al-Azhar to make their rulings. But who determines if

expression is a denial of things known necessarily from religion? And what about religious minorities' right to free speech? Religious minorities' exercise of their right to free expression will inevitably deviate from the axiomatic truths of Islam; otherwise, they would not be part of a religious minority. Atheists deny the truths of Islam and all religions, while Shiites practice a different version of Islam than Sunni Muslims, and Copts belong to a different faith altogether. Even some thinkers within the Sunni orthodox tradition advance interpretations that diverge from those of official religious institutions. Based on their conception of religion, the courts would categorise the expression of all these groups as 'extremist ideas' since these ideas are incompatible with the state's version of religion.

Just as the courts' definition of extremist thought favours the state or the majority's conception of religion, phrases like 'foment civil strife' and 'harm national unity' are typically interpreted to cater to the majority's religious sensibilities at the expense of the minority. The security apparatus and the courts turn a blind eye to incitement against religious minorities by state officials or religious radicals belonging to the majority, tending not to view such expression as instigating strife or harming national unity.

At the same time, however, such speech is taken as an indication of the rage and inflamed feelings of the majority, which may be appeased with the prosecution of a member of a minority religion. Religious minorities therefore fall victim to both inflammatory speech by the majority and a legal statute that punishes them for the majority's incitement against them. With this approach to the law, the courts have stripped it of its original purpose of protecting religious rites from targeted incitement. Instead, the statute has become a weapon used by religious extremists to punish adherents of minority religions, in effect restricting their expression of religious beliefs so as not to provoke the religious majority.

The Road to the Law Is Littered with Extremists

Blasphemy cases may unfold in one of two ways. A citizen may file a complaint with the Public Prosecution, which then investigates and decides whether to refer the case to court; the prosecution may also take action absent a complaint. The second course is a direct misdemeanour suit and civil litigation. A group of lawyers, whether political Islamists or social conservatives, may file a lawsuit against a writer or thinker under Articles 27 and 76 of the Code of Criminal Procedure, which allows them to sue someone for moral damages for expressing a religious opinion, claiming that such expression harmed their religious feelings and insulted their beliefs. This type of lawsuit is known as *hisba*.⁷

While the ambiguity of the statute works in favour of the majority, the Code of Criminal Procedure offers ample means for the religious majority to exercise its authority over the minority. Through actionable complaints or civil litigation, the majority cements its religious traditions and sensibilities, and impresses on various minorities that their expression or conception of religion must conform to that of the majority. But how exactly do the state and the majority conceive of religion? How did this conception originate and evolve, and how do the state and its religious

institutions defend it? And why and how do they act to suppress different conceptions of religion? This article attempts to answer these questions.

Islam, law, and the formation of Egyptian identity

Egyptian national identity—Benedict Anderson’s ‘imagined community’—took shape around the notion of uniformity, in order to create a unified political entity against colonialism at a time when the discourse of religious and cultural diversity was part of Britain’s strategy to justify its presence in Egypt. Nationalist discourse therefore extolled the value of unity and commonality, positing that a unique essential identity bound the population together and underscoring the need to reclaim it in order to confront colonialism.⁸

Partha Chatterjee explains that for nationalism to perform its function, it divides the world into two spheres, the material and the spiritual, accepting Western superiority in the material realm while making the spiritual the sole realm in which national subjects express themselves. This spiritual realm—heritage or tradition—plays a major role in the formation of national identity, and the nation state works to reshape ‘tradition’ to serve the hegemonic material order. Tradition is therefore more manufactured than authentically original.⁹ The creation of a shared past is crucial to the process of forging a patchwork of people into a cohesive nation.¹⁰

Historically, Islam has been a major component of Egyptian national identity. Jamal al-Din al-Afghani envisioned liberating the nation from colonialism by unifying it with Islam—the spiritual component—a first step towards the production of an all-encompassing Islam integrated into national identity.¹¹ Islam was also a source of political legitimacy for the nascent modern state, which assumed both a political and religious role. The state acted as a politico-religious imam, based on its patronage of Islam and its unilateral regulation of religious affairs through religious institutions. This dual role meant that any threat to its version of religion was necessarily a threat to its political legitimacy and vice-versa.¹²

Islam plays two main roles in the formation of the modern nation, the pedagogic and performative/instrumental in Homi Bhabha’s formulation. The nation as pedagogy posits the emergence of a national group as the history of a subject becoming aware of itself and its deeply rooted historical characteristics. In our case, ‘moderation’ (al-Ash’ari in doctrine, al-Shafi’i in jurisprudence and sharia, and al-Ghazali in philosophy and thought) becomes the national narrative about Islam and the distinguishing feature of Egyptian religiosity.¹³ So-called ‘moderate Islam’ in the contemporary sense is nothing more than a manifestation of nationalist ideology in the religious sphere, an artefact of modern society.¹⁴ The distinction between the nation as pedagogy and the nation as performance, although both involve the creation of meaning, becomes clear in the latter’s connection to the question of the other. National identity can only be realised by distinguishing those who belong to the nation from those who are outside of it¹⁵ and controlling those who taint or threaten the nation. Here we see moderation used as an instrument to expose the deviation of political Islam—or secular thinkers, atheists, and religious minorities—from the Egyptian nation, due to their nonconformity with the normative standard of national identity. National identity is thus an arena of conflict over definitions of the self and others. Whereas in past times, the other

was colonialism, today it is Islam Behery or atheists in general, who represent an extension of colonialism in some form or another.

National identity is shaped through an overlapping binary process: a productive process that creates the meaning of identity and its narrative, and a coercive process that disciplines those who do not conform. Nationalism by definition is an ideology. Louis Althusser explains the need of any system to reproduce the conditions of its own production, including the reproduction of citizens who fit the prevailing economic paradigm.¹⁶ The mission of forming a suitable citizenry falls to the ideological organs of the state, among them religious institutions. Althusser observes that these organs ideologically internalise national identity and function to entrench and consolidate it.

In Egypt, Al-Azhar is the primary locus for the reproduction of the religious component of national identity ('moderate Islam'), ensuring state hegemony over religion and the religious sphere as well as the production of citizens who constitute the majority adopting the state's version of Islam. Hegemony, according to Gramsci, is the space in which popular consent is manufactured,¹⁷ its goal being to control individuals, space, and time. This temporal control extends not only to the present and future, but to the conflict over the definition of the past, including the definition of religious tradition and its evolution, the state's narrative of it and, in turn, the attitude towards those who contradict this narrative. In other words, the state's ideological apparatus plays both a productive and a coercive role, though its main function is to produce meaning.

Law and the production of national identity

The law regulates the production of national identity, and allows us to see more clearly how the law's productive and coercive roles overlap. On one hand, we can see codification—the exclusive purview of the nation state—as part of the process of conceptualising and formalising the nation insofar as it defines the nation and individuals in time and space and renders them part of the national character. Codification is therefore foundational to the process of creating the nation. Just as it has the power to define a space as a nation, it can also define it as colonised, and the same is true of temporality and national subjects. This process is effected through normalisation, meaning the production of a normative nation state and national subjects.¹⁸ The law defines the nature of religion or delegates this role to one of the state's ideological organs, Al-Azhar in this case. The law also defines for national subjects the nature of religiosity, how to practice religion, and the limits of this practice, all of which we may call the law's role in productive control.

If this productive function entails the production of normativity, the law's second role—coercive or repressive—is made apparent when the national subject transgresses the boundaries of national normativity, stepping outside of the nation to become 'un-Egyptian'. The law then acts to suppress these non-conforming subjects as a threat to normative national identity and to demonstrate the essence of nationalism, which is the normalised subject. Hence the importance of punishment in preserving the national subject—that is, in shaping obedient subjects who yield to

the arrangements of power, its conceptions of them and their surroundings, and what they should do and how. Compliance is enhanced to the degree that punishment is enacted.

Nevertheless, how do legal discourse and the discourse of religious institutions work in tandem - in a simultaneously productive and coercive mode - and also with the discourse of national subjects (citizens/the majority) to situate religious moderation as a primary component of national identity? How does the law express national identity in its provisions? How does it function to produce this religious component in its articulation of the role of religious institutions and their relationship with this religiously-moderate national identity? Finally, how does the law defend this religious component of national identity? Tactics centre upon repressing what is deemed a threat to the national religious identity by relying on the discourse of religious institutions, *hisba* lawsuits, and majority violence against the minority.

Ambiguity as a feature of secularism

The way the Egyptian state restricts religious freedom of expression using the ambiguity of legal statutes is an expression of a broader ambiguity in the modern state's role in regulating the relationship between religion and politics, which in turn is reflected in the statutory framework and state policies on freedom of religion and belief and freedom of expression.

The view of secularism, academically, has evolved from understanding it merely as the separation of religion and politics. Secularism is now seen as a manifestation of the sovereign state's power to reformulate and produce religion and universalise this production through law, by conferring the appropriate sensibilities on the law and tuning religious traditions to suit it. Accordingly, state secularism does not mean state neutrality towards all religions, nor even neutrality towards all practices and narratives in a single religion. Rather, secularism is an expression of the sovereign state's power to determine where to place the line dividing religion and politics and what position religion is allowed to occupy in public life, although this expression is also itself fraught with much ambiguity.¹⁹

To understand the ambiguity of the limitations on freedom of expression, we will look at three features of modern secularism and explore the ambiguity manifested in the legal authority of the secular state. The first feature is what Hussein Ali Agrama has called 'the principle of the secular domain',²⁰ or the state's authority to determine and define what is religious and its permissible scope. This includes the state's role in defining the abstract nature of religion, or what it should be, as well as determining the approved texts that govern this definition. We see this, for example, in Egyptian courts' interpretation of 'extremist ideas' as a denial of that which is necessarily known from religion and the consensus of scholars.

The second feature of modern secularism is the state's absolute discretion to determine the boundary between the public and the private. While the Egyptian constitution and international conventions protect freedom of religion and belief as a private matter, the state has the exclusive right to regulate the exercise of this freedom. It determines when such practice is a private religious matter and when state intervention is required to regulate religious practice in order to prevent infringements of the public order.

The third feature of modern secularism is the rule of law. The state derives its authority to regulate and demarcate the permissible boundaries and spaces for religion from the authority of law. Nevertheless, the process of regulation implies a preference for a particular religion and specific types of religiosity. This legal bias favouring one religion contradicts the notion of citizen equality under the law, which is the essence of the rule of law.²¹

These three features of the modern secular state are condensed in the term ‘public order’. Inherent to the public order are the state’s preference for a particular version of a particular religion, which in turn allows the state to suppress specific religious practices on the grounds of maintaining public order. This is the most glaring manifestation of the contradiction inherent in the structure of liberal law, which claims to treat all citizens equally even as it embodies the beliefs and sensibilities of the majority and the state’s desire to preserve and consolidate them.²²

Production Control: Al-Azhar as Guardian of Islam and Preserver of Public Order

It is important to distinguish between secularism as a principle of governance and an expression of sovereign power that obscures the relationship between religion and politics due to its ambiguous nature—something that Egypt, France, the United States, and all modern nation states have in common—and secularism as an ideology and manifestation of national identity, which explains the ambiguous relationship between religion and politics,²³ depicts the reality of the state’s relationship to religion, and appears in law, official discourses, and everything that expresses the reality of religion in the public sphere. The latter is an arena for conflict between political and social forces because it is a reflection of identity. This means that secularism as an ideology is not the same in Egypt as it is in France, the United States, or elsewhere. To put it in simplistic terms, if secularism as a principle of governance is the basic coin of the realm in all states, secularism as ideology is the inscription on the coin, which differs from one state to another.

It is therefore important to move the discussion of the concept of public order from the theoretical abstraction of the ambiguous features of secularism towards an attempt to dismantle it, in order to understand the relationship between religion and state in Egypt (secularism as an ideology). To do this, we will explore how Egypt’s judiciary approaches the concept of public order. Does the term imply a preference for a particular religion, or more precisely, what is the relationship between ‘public order’ and Islam as the majority religion? Does it privilege a particular narrative of Islam, or who is responsible for defining what the state deems ‘Islam’? Is there a relationship between the concept of public order and Al-Azhar as the official religious establishment? Here the broader political context must be taken into consideration, which impacts the judiciary’s approach to the concept of public order, for in my view public order is the legal expression of national identity and the conflict over it.

Throughout the 1980s and 1990s, Egypt witnessed a rising confrontation between the regime of Hosni Mubarak and the Islamist movement. This had an impact on the position of religion in the public sphere, resulting in what we may call the authoritarian secularisation of religion and the Islamisation of the public sphere. The state pursued a set of policies and authoritarian practices

aimed at subordinating religion to state authority. The effect was to expand the role of religion and religious institutions, especially Al-Azhar, in controlling and influencing the public sphere. The Islamist movement constituted a threat to both the regime's political legitimacy and Al-Azhar's religious role.²⁴

The Nasserist state's control of Al-Azhar and its reconstitution as an entity subordinate to the state in Law 103 of 1961 led to a diminished social role for the institution. It was thus necessary to redefine its role, in order to enable the institution to confront the Islamist movement intellectually. In its new role, Al-Azhar became the legitimate religious response to the Islamist movement, responsible for demonstrating how the latter had defied not only the state, but moderate Islam as well. At the same time, however, Al-Azhar explained the rise of the Islamist movement and Islamist extremism as a consequence of secular extremism. The state accepted a deal whereby Al-Azhar would confront Islamist extremists in exchange for a greater role in the public sphere as the guardian of legitimate religion and public morals.²⁵ As a religious guardian, Al-Azhar would give expression to the concept of moderation between Islamist and secular extremism. Subsequently, the Sheikh of Al-Azhar, Gad al-Haq Ali Gad al-Haq, asked the State Council to define the nature and scope of Al-Azhar's authority to censor artistic works, and the State Council's fatwa and legislation division issued a legal opinion on the matter.²⁶

The legal opinion addressed the statutory framework governing the censorship of artistic production, including Law 38 of 1992, which amended Article 1 of Law 430 of 1955 on the regulation of censorship to state that the purpose of censorship was 'to protect the public order and morals and the state's supreme interests'. The opinion then attempted to answer a question: Since the legislator had aimed to protect the public order through censorship and the sheikh of Al-Azhar had asked about Al-Azhar's role in censorship, what relationship did Islam have to the legislator's intent (i.e., protecting the public order)?

The opinion expounds at length on the relationship between the Egyptian state and Islam. It describes Islam as 'the religion of the overwhelming majority of the Egyptian people' and notes that since its establishment as a legal entity, the modern Egyptian state has stipulated in all its constitutions that 'Islam is the state religion', from the 1923 constitution to the 1971 constitution, Article 2 of which declared that 'the principles of sharia are the main source of legislation'. This provision had persisted throughout various historical periods from the monarchy to the republic, and throughout changing social orders. This persistence, the opinion stated, was illustrative of a more deeply rooted, longer-held, and meaningful truth—namely, that 'Islam, its principles, and its values permeate the public order and morals and are also comprised by the supreme interests of the state'.

After demonstrating that Islam, and its values and principles, were an original component of the public order, the opinion moved to another question: Does the protection of the public order fall within Al-Azhar's remit? The opinion reviewed the statutory framework governing Al-Azhar from Law 10 of 1911 (the first relevant law) up to Law 103 of 1961, concluding that the legislator had entrusted the institution with 'preserving sharia and heritage, and it has the preponderant opinion in matters related to religion'. As such, Al-Azhar had 'discretionary authority in matters

of Islam, which permeates the protection of the public order and morals and the state's supreme interests. The power of discretion in this matter falls within Al-Azhar's jurisdiction'.

The importance of this legal opinion lies not only in its legal value, but in its demonstration of the law's production of national identity through the demystification of the term 'public order', affirming that Islam is indeed one of its constituent parts and that Al-Azhar - as the historical legal guardian of Islam and related affairs – plays a legal role in protecting it. This dispels the ambiguities inherent in the features of secularism. We can see the principle of secular domain at work as the state defines religion (Islam) by taking Al-Azhar's narrative of it (moderate Islam) as the proper conception of religion, which in turn requires criminalising other conceptions of religion.

Regarding the distinction between the private and the public, since Islam is a component of the public order, the state can act to restrict or criminalise public religious practices it deems contrary to Islam and therefore in violation of the public order. As for the third feature of modern secularism (the inherent contradiction in liberal law), the law here claims to be addressing all citizens equally yet it clearly adopts the majority's version of Islam (Al-Azhar's conception) in considering it a constituent element of the public order.

Coercive Control: Blasphemy as a Tool to Reinforce Hegemony over Tradition

This article has detailed the relationship between the modern Egyptian state and Islam, looking at how Al-Azhar's moderate form of Islam has become a major component of Egyptian national identity, reinforced by the judiciary in elevating moderate Islam as a component of the public order and Al-Azhar as its protector. Nevertheless, this is certainly not the sole iteration of religion within the Sunni Islamic heritage, either historically or currently.

This process has created a religious minority within the Islamic tradition itself, composed of multiple voices whose conceptions of Islam differ from that of Al-Azhar. They are not necessarily cohesive, coherent, or even capable of offering a systematic critique of Al-Azhar's narrative, but they exist nonetheless. Their enjoyment of freedom of expression and freedom of belief is enhanced through the adoption of what they see as different perceptions and visions of religion and responding to them intellectually and academically rather than through the courts.

Historically, Al-Azhar and Islamists have employed the law to silence these voices. The Court of Cassation upheld the judgment divorcing scholar Nasr Hamid Abu Zayd from his wife because of his writings, which the court—as well as Al-Azhar—deemed to be evidence of his deviation from Islam. Al-Azhar has also been directly responsible for the confiscation of numerous books by researchers and writers, such as Mohamed Said al-Ashmawi, Adel Hammouda, and Alaa Hamed.²⁷ A group of lawyers relied on briefs prepared by Al-Azhar on the writings of intellectuals Hassan Hanafi and Sayyid Al-Qemany in a lawsuit filed to withhold the State Appreciation Award from Hanafi and Al-Qemany, and blasphemy laws have been used as a weapon to suppress voices that contradict Al-Azhar's narrative.²⁸

Since assuming power, President Abdel Fattah al-Sisi has called for 'a renewal of religious discourse' to counter extremism and terrorism, seemingly dissatisfied with the performance of religious institutions on this issue and Al-Azhar's failure to address it.²⁹ At about this same time, program presenter and researcher Islam Behery gained renown, drawing in a broad audience to his television show that included both supporters and critics of his ideas. Behery focused his criticism on tradition and Al-Azhar's curriculum, considering it one reason for the spread of extremism and terrorism. Many people affiliated institutionally or intellectually with Al-Azhar expressed their dissatisfaction with Behery's ideas, among them the president himself. Though he advocated religious renewal, Sisi denounced the way some people approached the issue, which had distressed religious institutions. His statement was widely understood as a message from the state and a comment on the debate between Behery, Dr Osama Sayyid al-Azhari, Sisi's advisor for religious affairs and an appointed member of the 2015 parliament, and Sheikh al-Habib Ali al-Jifri, who is known for his closeness to power. The government and its religious symbols and institutions were obviously displeased with Behery's ideas.

Through the process of direct litigation, a group of lawyers filed suit with the Misr al-Qadima Misdemeanour Court, accusing Behery of transgressing Islam and the Muslim polity by promoting extremist ideas with intent to foment civil strife and contempt of scholars, jurists and imams; the suit demanded the application of articles 98(f), 160, and 161 of the Penal Code. In May 2015, the Misr al-Qadima Misdemeanour Court sentenced Behery to five years in prison for contempt of Islam. In December 2015, the Misr al-Qadima Appellate Court reduced the sentence to one year, and in July 2016 the Court of Cassation rejected the appeal and upheld the verdict.³⁰

The Behery case is a vivid illustration of how three actors—the law, the judiciary, and religious institutions, working in concert with national subjects—act to suppress dissenting voices. The case also embodies all the crises of blasphemy cases in Egypt, from lawyers filing *hisba* lawsuits to contradictory court rulings. Although the Court of Cassation upheld Behery's prison sentence, the October 6 Misdemeanour Court had previously acquitted him of the same blasphemy charges, stating in its judgment that 'the accusation is surrounded on all sides by a thick cloud of doubt and suspicion'. It added that Behery 'presents...a type of criticism of one sheikh of Islam's understanding or interpretation without broaching the dignity of Islam'. The verdict was upheld by the October 6 Misdemeanour Appellate Court when it denied the prosecution's appeal.³¹

In contrast, the Misr al-Qadima Appellate Court held that Behery had deliberately exploited religion to promote extremist ideas with intent to foment civil strife. Like many previous rulings, the appellate court's judgment encapsulated all the aforementioned crises. For one, it championed a single narrative of Islam (Al-Azhar's narrative). The court interpreted extremist ideas to mean 'denial of what is known by religion by necessity and the consensus among scholars', claiming that Behery had shown contempt for Islam and for the jurists and imams who took it upon themselves to spread the Prophet's sunna, in clear reference to Behery's criticism of ninth-century scholar al-Bukhari. Praising Bukhari's methodology as 'the best method in history', the court considered Behery to have insulted Bukhari.

The ruling also emphasised the centrality of Islam to the Egyptian state, claiming that the aim of Behery's television show had been to 'tear societies apart and blow them up from within, since religion is a cornerstone of the state', thereby underscoring the judiciary's vision of tradition and the single imagined Islam, the infringement of which is a threat to national identity and the nation state that produced it, as well as to the role of the religious institution entrusted to protect it. The court stated that Behery 'provoked the anger of Muslims and spurred Al-Azhar to take action to deny and refute these offenses', adding that he had sought to 'make people question the fixed principles of religion and foment strife'.

Once again, in its interpretation of the term 'civil strife', the court privileged the feelings of the Muslim majority, which is in fact an imagined majority the court believes it is defending. The anger of a group of lawyers and Al-Azhar came to represent the majority, and that majority's 'anger' became a restriction on freedom of expression and a reason to imprison citizens.

The same process was repeated with journalist Fatima Naout, who was sentenced by the Misr al-Qadima Appellate Court to a six-month suspended prison sentence on charges of contempt of Islam for writing a Facebook post criticising Islamic ritual sacrifice.³² The Court of Cassation also upheld a two-year prison sentence and a fine of LE1,000 against Muhammad Abdullah Nasr, who holds a bachelor's degree in religion, after he was charged with violating the sanctity of the Islamic religion.³³

In parallel with the blasphemy lawsuit against Behery, Al-Azhar petitioned the Administrative Court to suspend his program, citing Article 2 of the Egyptian constitution and Article 2 of Al-Azhar law, which entrusts the institution with 'the preservation of the Islamic tradition'. The lawsuit argued that Behery had undermined the nation's heritage by describing the book *Sahih al-Bukhari* as fraud and deception and describing Al-Azhar as teaching terrorist curricula and producing terrorists. Referring to Behery and his ilk as extremists, the petition said that they give succour to Islamist extremism even as Al-Azhar stands on guard against extremism and is the trustee of moderate Islam. The concept of moderation in its discriminatory instrumental sense emerges here as a space between Islamic extremism and secular extremism, with Al-Azhar standing watch over this imagined space.

The Administrative Court accepted the lawsuit and banned Behery from appearing in the media.³⁴ The court cited the Misr al-Qadima Misdemeanour Court's verdict of blasphemy against Behery, as well as the report of the Islamic Research Academy³⁵—a subsidiary of Al-Azhar and a litigant in the case—which asserted that Behery had 'prejudiced the science of hadith and its scholars, which is a disturbance of public peace'. The report thus implicitly confirmed that religious tradition, as understood by Al-Azhar, is a restriction on freedom of opinion and expression, and a component of the public order, the violation of which constitutes a threat to public peace.

Blasphemy as an Instrument to Criminalise Atheism

Egypt has a long history of persecuting atheists. Despite the constitution's affirmation of freedom of belief and the absence of any statute criminalising atheism, the Egyptian state has used

blasphemy provisions to punish atheists. State religious institutions and the judiciary view atheism not as a free expression of religion, but rather as a threat to Islam and thus to national identity and state sovereignty over the public sphere, as well as a provocation of the majority. The state therefore penalises atheists for taking a position contrary to the majority religion, describing atheism as an extremist concept.

In the past, atheist intellectuals have been imprisoned on blasphemy charges on the basis of their writings. Salah Mohsen, for instance, the author of *Tremors of Enlightenment*, was sentenced in 2001 to three years in prison by the State Security Court for 'spreading extremist ideas' and promoting perverse ideas with the aim of distorting Islam. When interrogated by the prosecution, Mohsen said that he was an atheist who did not believe in any religion and that he was trying to spread his vision and ideas through writing. As an atheist, these ideas were most certainly contrary to Islam.³⁶

Atheists benefited from the two years of relative openness that followed the 25 January 2011 revolution, which was accompanied by a tangible expansion in the use of social media. Atheists established numerous Facebook pages, the most well known of which were *Atheism Is the Solution*, *Radical Atheists Without Borders*, and *A Rational Atheist*. Some atheists chose to post on YouTube using Black Duck software. Nevertheless, the period of political openness—and consequently the margin of freedom for atheists—did not last long. After 30 June, as the state sought to restore its hegemony over the public space and under the banner of fighting terrorism, the Ministry of Endowments waged a battle with the Islamist movement for control of the country's mosques. At the same time, in cooperation with the Ministry of Youth and Sport, it launched a national campaign to combat the spread of atheism among young people.³⁷ In line with the vision of religious institutions in Egypt and linking the rise of terrorism to atheism, a ministry conference recommended the need to emphasise moderation in order to prevent terrorism and a turn to atheism and moral decay, insofar as these deviations had paved the way for terrorism.

The same idea found expression in an article by Minister of Endowments Mohamed Mokhtar Gomaa, titled 'The Industry of Atheism and Terrorism'. Declaring terrorism and atheism as equivalent threats to the nation and its stability, Gomaa wrote, 'Terrorism and atheism are both a colonial product that threatens our national security and works to destabilise us. There must be concerted efforts by religious and cultural institutions to confront this phenomenon'.³⁸

The article confirms once again that the subjects over which religious institutions seek control are an extension of the same colonialism that national identity emerged to confront. These institutions, according to Gomaa, are currently threatened by atheists or terrorists, both arising from the same source: colonialism. Despite the enormous difference between terrorism, which aims to harm human beings, and atheists' free expression of belief, religious institutions consider them both to be non-compliant for contravening the conception of moderation they protect.

As discussed above, national subjects produced by religious institutions play an active role in producing national identity and thus reproducing the discourse of these institutions. If the institutional discourse incites against atheists, then it is expected that atheists would be subjected to popular repression at the hands of 'patriots', which typically manifests itself in two forms. The

first is the physical assault of atheists. To take just one example, Ahmed Harkan was attacked by citizens in Alexandria and turned over to the police.³⁹ In the second form of repression, citizens file police complaints or lawsuits against atheists, as happened with blogger Alber Saber. A citizen filed a complaint against Saber at the police station, alleging that he had published online content offensive to religions. After several extremists tried to break into his apartment, Saber called the police. They took him to the station, where he learned of the complaint against him. Saber was physically assaulted inside the station as well as by prisoners at the direct instigation of a policeman.⁴⁰

Security services and the judiciary turn a blind eye to inflammatory rhetoric emanating from religious institutions, as well as extremist attacks against atheists, and in turn, the minority is punished. The prosecution charged Saber with contempt of religion and interrogated him about his position on religion and the reasons for his atheism. The investigation report revealed that Saber maintained a Facebook page titled *Nākeḥ al-Āleha* (Copulator of Gods) and was also an administrator of the *Egyptian Atheists* page. The court sentenced him to three years in prison for promoting extremist ideas and creating web pages advocating atheism. As such, the court supported religious institutions' view of atheism as an extremist concept, demonstrating the law's role in punitive control and the protection of the majority's religion through the suppression of alternative conceptions. The same scenario was repeated with two students, Sherif Gaber and Karim al-Banna, both of whom were sentenced to prison for advocating atheism online.⁴¹ In June 2020, the Alexandria Economic Misdemeanour Appellate Court upheld a three-year prison sentence given to blogger Anas Hassan for insulting religions and misusing social media; Hassan was an administrator of the *Egyptian Atheists* page on Facebook.⁴²

The Punishment of Muslim Sectarian Minorities

Historically, Sunni Islam was not the sole narrative of Islam. The history of Islam contains many narratives, which in turn were reflected in the establishment of various rites, first and foremost Shiism. Yet, the Egyptian state's combined role of religious imam and political leader led it to see diversity within Islam as a threat to its sovereignty over religion. The state thus views religious fealty to the Sunni rite as a condition of political loyalty and conversely sees adherence to Shiism as a rejection of the state's political and religious sovereignty. The crisis for Shiites was compounded by the historical legacy of the Sunni-Shiite divide around political sovereignty, and the escalation of the Gulf-Iranian conflict further exacerbated the Sunni-Shiite conflict in the Middle East, which has had a significant impact on the situation of Shiites in Sunni-majority countries, including Egypt.

In 2004, the Egyptian Initiative for Personal Rights published a report on violations against Shiites in Egypt.⁴³ Most of the violations involved interrogation or torture, but no Shiite was sentenced by a court. This changed after the revolution of 2011. As the security apparatus loosened its grip on Shiite activity, Egyptian Shiites were able to enter the public sphere in an organised fashion, publicly practice their religious rituals, and demand their rights as citizens. Egyptian

Shiites sought to establish a political party and civic associations, and they organised numerous Shiite gatherings, some attended by Shiite scholar Ali al-Kurani. Regardless, the more relaxed security surveillance and Shiites' greater public visibility did not mean that they began to enjoy their right to freedom of belief.

Three actors compensated for the absence of security surveillance: the judiciary, official religious institutions, and religious hardliners, especially Salafis, who are known for their hostility to Shiites. After Kurani's visit to Egypt, Al-Azhar issued a statement stressing its adherence to orthodox Sunni doctrine and announcing, for the first time, the formation of a committee to counter Shiism in Egypt. Meanwhile, Salafi groups harassed Shiites while they were commemorating Ashura in Hussein Square in 2011. In June of the same year, citizens of Kafr al-Zayat surrounded a mosque while an alleged Shiite was inside praying. The police dispersed the crowd, but instead of enabling the worshipper to exercise his right to worship and holding those who tried to attack him to account, the police arrested him. He was charged with desecrating a building intended for religious rituals, under Article 160 of the Penal Code. The court sentenced him to three years in prison, which was subsequently reduced to one year. This was the first judgment against a Shiite citizen after the revolution.⁴⁴

The tenure of President Mohamed Morsi witnessed rising incitement against Shiites by official religious institutions and hardliners from across the Islamist spectrum. At a conference to support Syria, attended by the president, a Salafi preacher incited against Shiites in the president's presence. A few days later, a mob attacked Shiite preacher Hassan Shehata with a group of his students in the Zawiya Abu Muslim area of Giza, beating the preacher and his students to death in full view of security services. The village had witnessed anti-Shia incitement from the imam of the local endowments mosque as well as from Salafi groups.

With Morsi's ouster and Sisi's assumption of power, the security services resumed its close monitoring of Shiite activity. Despite the decline in incitement from political Islamist movements due to the crackdown on them, Shiites continued to be harassed by Salafi groups acting in concert with security services. The incitement coming from official institutions increased, most markedly from the Ministry of Endowments. One ministry official told the media, 'As a Sunni, I will not allow Shiism in Egypt, even if the cost is my blood'.⁴⁵

State security services used blasphemy statutes as a legal umbrella to punish Shiites and regain control of the religious sphere. In the run-up to the commemoration of Ashura in 2013, the Ministry of Endowments announced that Shiites were barred from any religious practice in mosques and that it would close the Hussein shrine on Ashura to prevent Shiites from assembling, urging the Interior Ministry to take action against offenders. Meanwhile, groups of Shiite citizens visiting the shrine were attacked by Salafi groups who had assembled around the mosque. The Salafis handed some Shiite citizens over to the police, including Shiite activist Amr Abdullah, who was charged with contempt of Islam and later given the maximum sentence of five years in prison under Article 98(f).⁴⁶ In June 2020, the State Security Court sentenced Mustafa al-Ramli and Mahmoud Youssef to one year in prison on charges of promoting Shiite thought.⁴⁷

Blasphemy cases against Shiites evinced all the contradictions mentioned earlier. The state tolerates inflammatory rhetoric and violence against Shiites and then punishes them for the incitement by the majority. In its judgment against Amr Abdullah, the court considered his expression of Shiite faith to be a denial of what is known of religion by necessity, and consequently saw it as the promotion of extremist ideas with the purpose of fomenting strife within society, again reiterating a definition of extremism that contravenes freedom of belief. According to the court judgment, expressing a different belief, as Shiites do, necessarily denies the truths of the Sunni rite. The ruling's implication that such expression foments strife also demonstrates the court's bias towards a particular religious group—the Sunni majority in Egypt—over the Shiite minority, demonstrating how the court exploits ambiguous statutes to codify the oppression of religious minorities in Egypt.

Conclusion

An alliance between the law and the judiciary on one hand, and religious institutions and extremists on the other, constituted a weapon to punish minorities who advocated for citizenship rights. The alliance compensated for the retreat of the security apparatus, to which the state had long entrusted the issue. This explains the conspicuous rise in the number of blasphemy cases after the 2011 revolution. This alliance functioned as an instrument for restoring social control and the hegemony of the state, its policies and its religious institutions, over the religious sphere.

This period of security sector retreat was nevertheless short-lived. The country's political trajectory after 30 June derailed Egypt's democratic transition, leading to a shrinking margin of freedom and the rise of the regime led by President Sisi, who has sought to establish a new authoritarianism, consolidate his hegemony, and regain control of the public sphere. To this end, the Sisi regime has launched security campaigns targeting all those who diverge from the state's vision of the fit citizen under the new authoritarianism, including political opposition, religious minorities, the LGBTQ community, belly dancers, and social media influencers.⁴⁸ The regime has proved diligent in institutionalising a model of religious and moral conservatism to which everyone must submit. Minorities seem to have no choice but to accept what is given by the system and end their pursuit of citizenship.

The Sisi government has also taken advantage of the war on terror to expand the prerogatives of religious institutions in the public sphere. We are facing two parallel wars, one waged against Islamists as a struggle over political and religious authority and the other against religious minorities, who, by threatening the desired model of religious conservatives, are seen as the flip side of religious terrorism. Members of religious minorities have thus been sentenced to prison on blasphemy charges, and religious institutions and conservative citizens were instrumental in securing these sentences.

These rulings demonstrate the extent of the contradiction inherent in the Sisi regime. On one hand, we have the president's rhetoric about renewing religious discourse and protecting freedom of belief in Egypt while on the other we see the regime's practices towards religious minorities in

Egypt. The rhetoric seems designed for external consumption by the international community; indeed, Sisi has gained a large part of his international legitimacy by posing as the saviour of religious minorities from the oppression of Muslim Brotherhood rule. This oppression, however, has simply assumed another guise in the Sisi era. While communal violence against minorities, carried out by non-state actors, was prominent under the Brotherhood and before that under the rule of the Supreme Council of the Armed Forces, the situation of religious minorities under Sisi is one of violence inflicted by security services and repression codified by blasphemy laws—with parliamentary calls to amend them rejected by the government⁴⁹—backed by incitement from official religious institutions and citizens alike.

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