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The Pre-requisite of Being Religiously Cultured as Specified for the Presidential Candidate according to Egyptian and Algerian Legislation; An Evaluative Study in the Light of Islamic Law (Shari'a)

اشتراط العلم في المترشح لمنصب رئاسة الدولة في التشريعين المصري والجزائري؛  
دراسة تقييمية في ضوء ما قدرته الشريعة الإسلامية

By

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## Abstract

The study aimed at evaluating the pre-requisite of being religiously cultured stipulated for the presidential candidate according to Egyptian and Algerian Legislation in the light of Islamic Law (Shari'a). The study used the descriptive methodology to reach the targets in question. To gather the required data, a review of literature was administered. The study came to the conclusions that: first the Islamic Law stipulates that the presidential candidate must be knowledgeable about the Islamic Science; second, neither the Egyptian nor the Algerian Constitution necessitate the presidential candidate to be knowledgeable about the Islamic Science. The study recommended that the Egyptian and the Algerian Constitutions ought to necessitate the presidential candidate to be knowledgeable about the Islamic Science..

**Keywords:** Pre-requisite, Religiously Cultured, Presidential Candidate.

## الملخص:

استهدفت الدراسة الحالية بيان مدى اعتناء التشريعين المصري والجزائري بشرط العلم في المترشح لرئاسة الدولة، وتقييم ذلك في ضوء الشريعة الإسلامية. وتمثلت أداة الدراسة في مسح الأدبيات المتعلقة بموضوع الدراسة. وأسفرت الدراسة عن العديد من النتائج أبرزها الآتي: أن الشريعة الإسلامية تشترط في المتقدم للإمامة العظمى أن يكون على قدر وافر من العلم الشرعي - أن الدستورين المصري والجزائري أغفلا النص على اشتراط العلم فيمن يترشح لمنصب رئاسة الدولة. وأوصت الدراسة المشرعين الدستورين المصري والجزائري بضرورة النص على شرط العلم فيمن يترشح لمنصب رئاسة الدولة.

الكلمات المفتاحية: شرط العلم، المترشح لرئاسة الدولة.

## Introduction

Praise be to Allah and Peace and Blessings of Allah upon our Prophet Muhammad, his family, his companions and all who follow his guidance to the Day of Judgment .

(O, believers, be pious to Allah and care nothing but to die on Islam) <sup>(1)</sup>.

(O, people, be pious to Allah Who created all of you from a male and a female and who created the female from the male and created all humans from both of them. O, people, be pious to Allah Who you will stand before for Judgment and He will question you about what you have done with your relatives. Remember that Allah observes you all) <sup>(2)</sup>.

(O, believers, fear Allah and say what is right in order that Allah mend your deeds and forgive your sins. Whosoever obeys Allah and His Messenger shall win a great victory) <sup>(3)</sup>.

**To proceed** <sup>(4)</sup>:

The position of presidency is of utmost importance. This importance is confirmed by the Holy Text that orders the believers to obey their rulers as they obey Allah, Exalted be He, and His Messenger, peace be upon him. Allah, Exalted be He says: (Believers, obey Allah and obey the Messenger and those in authority among you) <sup>(5)</sup>; Allah, Exalted be He, ordains that all people must obey those who are in authority <sup>(6)</sup>. What also emphasizes the importance of this position is that it is an obligation for all the nation to commit to it as Jihad and Islamic Science seeking. This importance is also intensified by the idea that this office is legislated to follow in the footsteps of the Prophet, peace and blessings of Allah upon him, to guard Islam and to run the nation's affairs according the teachings of Islam <sup>(7)</sup>. Owing to the importance of this position, Islam requires particular pre-requisites to occupy it. Of these pre-requisites is that a candidate must be religiously cultured. It is not permissible for a religiously ignorant person to run a Muslim state <sup>(8)</sup>.

In spite of the importance of this pre-requisite, it is noted that Muslim countries deal with it differently. Some legislations refer to it whereas others pay no attention to it. That is why the question has been raised about how the Egyptian and the Algerian Legislations deal with this pre-requisite and to what extent they conform with the teachings of Islam. This is the core of the current study.

## The Problem of the Study

The study problem is put in the following main question;

**To what extent is the pre-requisite of being religiously cultured required for occupying the presidency office taken into consideration by both**

## **Egyptian and Algerian Legislations and to what extent do both of them conform with Islam teachings?**

This main question can be divided into the following subcategories;

- 1- What is Islam viewpoint of the pre-requisite of being religiously cultured specified for candidacy for the presidency office?
- 2- To what extent is the pre-requisite of being religiously cultured required for occupying the presidency office taken into consideration by Egyptian Legislation and to what extent does it conform with Islam teachings?
- 3- To what extent is the pre-requisite of being religiously cultured required for occupying the presidency office taken into consideration by Algerian Legislation and to what extent does it conform with Islam teachings?

### **The Objectives of the Study**

Based on the pre-raised questions, the study objectives are as follows;

- 1- Investigating Islam viewpoint of the pre-requisite of being religiously cultured specified for candidacy for the presidency office.
- 2- Investigating to what extent the pre-requisite of being religiously cultured required for occupying the presidency office is taken into consideration by Egyptian Legislation and to what extent it conforms with Islam teachings.
- 3- Investigating to what extent the pre-requisite of being religiously cultured required for occupying the presidency office is taken into consideration by Algerian Legislation and to what extent it conforms with Islam teachings.

### **The importance of the Study**

The study importance is shown in two aspects;

#### First: Theoretically;

The study seeks to bridge the gap in this area to develop what previous studies have come to.

#### Second: Practically;

The study draws the attention of legislators to adopt the Islamic viewpoint concerning the pre-requisite of being religiously cultured specified to be able to candidate for presidency office.

### **The Methodology of the Study**

The study has used the descriptive methodology to reach the targets in question. To gather the required data, a review of literature has been administered.

### **The Scheme of the Study**

The study has been planned as follows;

- Introduction.
- Chapter I.
- Chapter II.

- Chapter III.
- Conclusion.
- Bibliography.

The introduction has been given. So, the coming lines will tackle the other points in further detail.

## Chapter I

### Islam Viewpoint of the Pre-requisite of Being Religiously Cultured Specified for Candidacy for the Presidency Office

Islamic Law (Shari'a) stipulates that a candidate for presidency of a Muslim state must be religiously cultured <sup>(9)</sup>. The Scholars unanimously make a condition that a candidate for presidency must be a religiously cultured person <sup>(10)</sup>.

Imam Al-Mawardi says: " A candidate for Imamate must be knowledgeable about Islamic sciences" <sup>(11)</sup> " He must know the basic Knowledge of Islam " since this knowledge is the key element of prosperity and welfare in this world and the world to come <sup>(12)</sup>.

Imam Ibn Hazm also states that " a candidate for the Caliphate must be learned about the basics of Islam" <sup>(13)</sup>.

Sheikh Abd Al-Kader Ouda says that it is a must for a candidate for presidency to be informed about the teachings of Islam as he is meant to put these teaching into effect. " If he is ignorant about these teachings, he is not permitted to stand as a candidate for a Muslim state presidency" <sup>(14)</sup>.

Not only do the Scholars stipulate the candidate for Imamate to be learned, but they require him to be jurisprudent as well <sup>(15)</sup>. That is, it is not permissible for him to be a carbon copy of other Scholars <sup>(16)</sup>. He must have his own views <sup>(17)</sup>.

There is abundant evidence that the candidate for the presidency of a Muslim state must be a male. Of which are the following:

#### -First Evidence;

The Holy Qur'an refers to the pre-requisite of being religiously cultured when narrating the story of Talut <sup>(18)</sup> and it considers it as a quality that made him worthy of being appointed as a leader for the people of his country. Allah, exalted be He, when telling about the story of the Sons of Israel, says: (And their Prophet said to them, "Indeed, Allah has appointed Talut as a king over you". They said, " How can he be a king over us when we are fitter than him for the kingdom, and he has not been given enough wealth". He said," Verily, Allah has chosen him above you and has increased him abundantly in knowledge and stature. And Allah

grants His kingdom to whom He wills. And Allah is All-Sufficient for His creatures' needs, All-Knower" <sup>(19)</sup>. Imam Kortoby says: " Allah starts with religious science in this holy verse <sup>(20)</sup>. And this shows that Islam stipulates that a candidate for Imamate must be knowledgeable about religious science " <sup>(21)</sup>.

#### -Second Evidence;

Allah, exalted be He, when telling about Yusuf (Joseph), says: " Set me over the store-houses of the land; I will indeed guard them with full knowledge " <sup>(22)</sup>. Imam Kortoby says: " This verse indicates that being learned about religious science is a must for the candidacy for the Imamate " <sup>(23)</sup>.

From this, it is clear that Islam requires a candidate for the position of Imamate to be knowledgeable about religious science so that he is capable of fulfilling the two main aims of the Imamate which are guarding the religion from those who are trying to uproot it and running the Muslim state in the light of the teachings of Islam.

## Chapter II

### **Egyptian Legislation Viewpoint of the Pre-requisite of Being Religiously Cultured Specified for Candidacy for the Presidency Office**

The Egyptian legislation makes a condition that a candidate for presidency must be an educated person. It requires him to be a university graduate <sup>(24)</sup>. Act (1) of Rule no. (22) for the year 2014 regarding the regulations of the presidential elections state that: " It a must that a candidate for the presidency office to be a university graduate". The reason for making this condition is to guarantee that the candidate is so learned that he can take over the presidential duties and responsibilities <sup>(25)</sup>.

It is noted that the constitution does not require a particular field of study but what matters for the candidacy for presidency is to be a university graduate whatever the field is. This makes it evident that it is not important for the candidate to be specialized in Islamic science. This shows that the constitution does not pay due attention to the pre-requisite that a candidate for presidency must be informed about religious science. And this breaks the principles of Islam since it requires the candidate for the Imamate must be learned about religious science as well other sciences that are needed to qualify for the job <sup>(26)</sup>.

It is also observed that this breaks what Act Two of the 1971, 2012 and 2014 constitutions require. This Act dictates that: " Islam is the established religion of the country ... and the principles of Islam are the main source for legislation ". According to this Act, it is not acceptable for a candidate for presidency to be uneducated about the principles of Islam as he is meant to put these principles into practice.

It is noticed, too, that the pre-requisite of being learned about religion is not mentioned in the constitution document itself, but it is stated in the supplementary laws. This may be due to the thought that this pre-requisite is subject to being amended in response to changeable circumstances. If it is the case, nothing is required but to have the consent of the member of parliament. But, if it is mentioned in the constitution document, the change of this pre-requisite needs more complicated procedures, more time and more effort.

Although this opinion is plausible, not having this pre-requisite in the constitution document makes it less important. And claiming that this pre-requisite is excluded from the constitution document because it is amendable is unacceptable. On the contrary, this pre-requisite is as essential as other pre-requisites mentioned in the constitution document for the candidacy for presidency. It is not permissible for the candidate to be religiously uneducated. What can be amended is not the religious science itself but the degree required in this area. This degree can be amended in response to changeable circumstances and can be annexed in the supplementary law <sup>(27)</sup>.

No doubt that requiring the candidate for presidency to be religiously educated is crucial for putting the teachings of Islam into practice internally and externally. In addition, dictating this pre-requisite explicitly in the constitution document provides the opportunity for those who are religiously learned to stand as candidates for presidency office and excludes those who are not so.

### Chapter III

#### **Algerian Legislation Viewpoint of the Pre-requisite of Being Religiously Cultured Specified for Candidacy for the Presidency Office**

It is surprising that the Algerian legislation does not refer to the pre-requisite of being religiously learned stipulated for the candidacy for presidency neither in any of the Algerian constitutions nor any of the supplementary laws. The quick look at the 1996 Algerian constitution



and its 2016 amendments, for example, shows that this pre-requisite has not been referred to.

Act (87) of this constitution states that: " Nobody has the right to stand as a candidate for presidency but those who:

- has not had any non- Algerian nationality;
- enjoys ONLY the original Algerian nationality and their parents hold the original Algerian nationality too;
- embraces Islam;
- is not less than forty on the day of election;
- enjoys their civil and political rights <sup>(28)</sup>;
- his wife enjoys only the original Algerian nationality;
- proves that he has stayed in Algeria only for at least ten years before standing as a candidate for presidency;
- proves that they participated in the first of November 1954 Revolution if they were born after July 1942;
- proves that none of his parents worked against the first of November 1954 Revolution if they were born after July 1942.
- makes a clear statement of their capital assets;
- meets the other requirements given by the supplementary law" <sup>(29)</sup>.

It is noticed that the Algerian constitution and the supplementary laws make no mention of the pre-requisite that a candidate for presidency must be knowledgeable about Islam. This may be owing to the idea that there is no need to have it in the constitution document or the supplementary laws since the Supreme Islamic Council will do the same duties that are demanded by this pre-requisite. Act (195) of the 2016 Algerian Constitution states that: " A presidential supreme Islamic council is to be founded to do the following;

- Encouraging and developing Jurisprudence.
- Investigating the Islamic viewpoint of different asked questions".

However, making no mention of this pre-requisite breaks the codes of Islamic Law. It has been stated that Islam requires the candidate to be informed about Islam teachings. It is unreasonable that the candidate for the presidency of a Muslim state who is meant to put Islamic teachings into practice to be ignorant of his religion principles.

The Algerian constitution stipulates that it is not permissible for governmental establishments to break the codes of Islam. Act (10) in the 1996 Algerian constitution and its 2016 amendments that says: " It is not permissible for the authorities ... to break the codes of Islam". From these acts, it is understood that women are not permitted to stand as candidates for presidency as it breaks the teaching of Islam.

Furthermore, the Algerian constitution emphasizes the idea that the candidate for presidency must be learned about the principles of his religion in the oath taken for presidency. Act (110) of the 1976 Algerian constitution, Act (73) of the 1989 Algerian constitution and Act (76) of the 1996 Algerian constitution and its 2016 amendments dictates that: " The president of state takes the oath



saying: I swear by Allah, the Exalted and the Greater, that I must respect and glorify Islam".

These Acts show that the candidate for presidency is meant to obey and to put the teachings of Islam into effect. So, it is necessary to be informed about his religion.

### **Conclusion**

The study came to two the following findings:

**First;** Islam explicitly requires that a candidate for presidency to be religiously cultured.

**Second;** the Egyptian constitution does not make a condition that a candidate for presidency must be religiously cultured.

**Third;** the Algerian constitution does not make a condition that a candidate for presidency must be religiously cultured either.

In the light of these findings. The study recommends that the Egyptian legislator ought to explicitly make a condition that a candidate for presidency must be religiously cultured. This comes in agreement with what Islam dictates in this question and goes line in line with the 2014 Egyptian Constitution Second Act states saying:" Islam is the established religion of the state ... and Islam teachings are the main source of legislation".

In the light of these principles, the study suggests that Act (141 ) of 2014 constitution should be annexed by the following article:

-A candidate for presidency must be religiously cultured.

The study also makes the recommendation that the Algerian legislator should make a condition that a candidate for presidency must be religiously cultured. Bearing this in mind, the study suggests that Act (87) of the 1996 Algerian constitution and its 2016 amendments is to be annexed by the following article:

--A candidate for presidency must be religiously cultured.

### **Notes**

- 1) Surat Al-Imran (The Family of Imran) III, verse: 102.
- 2) Surat An-Nisaa (The Women) IV, verse: 1.
- 3) Surat Al-Ahzab (The Confederates) XXXIII, verse: 70.
- 4) Al-Albany, **Sahih Al-Targheeb wa Tarheeb**, edit. 1, p.3.
- 5) Surat An-Nisaa (The Women) IV, verse: 59.
- 6) Al-Mawardi, **Al-Ahkam Al-Sultania**, edit. 3, p. 3.
- 7) Al-Mawardi, **Al-Ahkam Al-Sultania**, edit. 3, p. 3.
- 8) Ibn Hazm, **Al-Fesal**, no edit., part 5, p. 10, Al-Kortoby, Al-Gamie' Le-Ahkam Al-Qura'n, edit. 1, part 1, p.271, and Al-Kamal Ibn Aby Shoreif,

**Al-Mosamara Besharh Al-Mosayra**, no. edit., p. 277 and **Al-Azhary, Jawaher Al-Eklil Sharh Mokhtasr Khalil**, no edit., vol. 1, p. 222.

9) **Al-Azhary, Jawaher Al-Eklil Sharh Mokhtasr Khalil**, no edit., vol. 1, p. 222.

10) **Al-Bezday, Usul A-Din**, no edition, p. 192, **Al-Iji, Al-Mawakef Fe Elm Al-Kalam**, no edition, p. 398, **A-Kamal Ibn Aby Shoreif, Al-Masamara Besharh Al-Mosaira**, no edition, p. 277 and **A-Dahlawi, Hojjat Allah Al-Balegha**, edit. 1, vol. 1, p. 149.

11) **Al-Mawardi, Al-Hawy Al-Kabber fe Mazahab Al-Imam Shafie**, edit. 1, vol. 16, p. 159.

12) **Al-Mawardi, Abo Al-Hassan**, (1983). **Nasehat Al-Muluk**, edit. 1, p. 122.

13) **Ibn Hazm, Al-Fesal**, no edit., part 5, p. 10.

14) **Abd Al-Kader Ouda**, (no date). **Al- Islam and Awdena Al-Siasia**, no edition, p. 103.

15) **Al-Mawardi, Al-Ahkam Al-Sultania**, edit. 3, pp. 84-85.

16) Jurisprudence means discretion in passing judgments. Refer to: **Al-Jerjani, A-Taa'refat**, edit. 1, p. 58.

17) **Ibn Taimia, Ahmed Ibn Abd Al-Haliem, A-Siyasa Al-Sharia fe Islah A-Rae'y wa Raeia**, no edition, p. 27, **Al-Iji, Al-Mawakef Fe Elm Al-Kalam**, no edition, p. 398, **A-Taftazani, Sharh Al-Mahasid**, edit. 2, vol. 5, p. 244, **A-Kamal Ibn Aby Shoreif, Al-Masamara Besharh Al-Mosaira**, no edition, pp. 275-276, **Ibn Abdeen, Radd Al-Mohtar**, edit. 2, vol. 1, p. 548, **Al-Maqdesi, Al-Odda**, edit. 1, vol. 2, p. 383, **Al-Khateeb A-Sherbini, Moghni Al-Mohtaj**, edit. 1, vol.5, p.421, **Al-Ghazali, Fadaeh Al-Batenia**, no edition, pp. 191-194, **Al-Kortoby, Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.1, p. 270, **Al-Buhoti, Kashaaf Al-Kena'**, no edition, vol. 6, p. 294, **Ibn Hazm, Al-Fesal**, no edit., part 5, p. 11, **Al-Kalkashandi, Ma'ether Al-Inafa**, edit. 2, vol. 1, p. 37, **A-Ramly, Nehaiat Al-Mohtaj**, last edition, vol. 7, p. 409, **A-Shawkani, A-Sail A-Jarrar**, no edition, vol. 4, p. 507-508, **Al-Hattab, Mawaheb Al-Jalil**, edit. 1, vol. 6, p. 103, **Al-Azhary, Jawaher Al-Eklil Sharh Mokhtasr Khalil**, no edit., vol. 1, p. 221 and **Mohamed Ra'aft Osman, Riasat A-Dawala Fe Al-Fiqh Al-Islami**, no edition, p. 132.

18) **Talut** is a person from the tribe of the Sons of Israel. It is believed that he was one of the prominent Scholars of this tribe. That's why he was selected by Allah, exalted be He, to be a king over the tribe of the Sons of Israel. Refer to: **Al-Kortoby, Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.1, pp. 245-246.

- 19) Surat Al-Bakara (The Cow) I, verse: 247.
- 20) Al-Kortoby, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.1, p. 271.
- 21) A-Shanqeeti, **Adwa' Al-Bayan**, no edition, vol. 1, p. 28.
- 22) Surat Yusuf (Prophet Joseph) XII, verse: 102.
- 23) Al-Kortoby, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.9, p. 216.
- 24) Sobhi Al-Qassem, **A-Ta'leem Al-Aaly fe Al-Watan Al-Arabi**, edit. 1, p. 58, p. 80.
- 25) Abd Al-Kareem A-Serwy, **A-Reqaba A-Sha'bia Ala Sultat Ra'ees A-Dawla**, no edition, p. 84.
- 26) Abd Al-Kader Ouda, **Al- Islam and Awdena Al-Siasia**, no edition, p. 109, Mohamed Farahat, **Al-Mabade' Al-A'ma Fe A-Nezam A-Siasi Al-Islami**, no. edition, p. 224 and Saeed Hawwa, **Al-Islam**, edit. 2, p. 383.
- 27) Ahmed Shawki Mahmoud, **A-Raees fe A-Nezam A-Dostori for the USA**, no edition, p. 69.
- 28) Enjoying civil rights means that the person is not prevented from the right of making a family, the right of ownership or the right of financial contracting because of insanity or interdiction. Whereas enjoying political rights means that the person is not prevented from the right to vote or to be voted for because of being convicted of committing crimes. Refer to: Jameel Al-Sharkawy, **Drous fe Usul Al-Kanon; Al-Madkahal Ledrasat Al-Kanon**, edit. 2, pp. 227-235 and Wael Abd-Al-aa'l, **Netaq Tabeek Al-Mahkama Al-Dostouria Al-Olia Lmada A-Thania Men A-Dostour, Drasa Tahlelia Mocarana**, edit. 1, p. 549.
- 29) Refer to the supplementary law relating to the procedures of election in Algeria.

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