

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

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Abstract:

The study aimed at evaluating the wife's nationality pre-requisite stipulated for the presidential candidate according to Egyptian and Algerian Legislations 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 pays attention to the religion – not the nationality – of the presidential candidate's wife; second, unlike the Islamic Law, both the Egyptian and Algerian Constitutions pay attention to the nationality – not the religion - of the presidential candidate's wife, which breaks the Islamic teaching in this regard. The study recommended that the Egyptian and Algerian Constitutions ought to regard the religion – not the nationality - of the presidential candidate's wife.

Keywords: *The Nationality Pre-requisite, Presidential Candidate's Wife.*

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) ⁽¹⁾.

(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) ⁽²⁾.

(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) ⁽³⁾.

To proceed ⁽⁴⁾:

The position of presidency is of utmost importance. Due to this importance, several modern legislature not only demands particular pre-requisites fulfilled by those who are to stand as candidates for presidency, but it also lays down some requirements that must be met by their wives. Of them is what is called the nationality of the candidate's wife's nationality pre-requisite.

It is noted that both of Egyptian and Algerian legislations follow in the footsteps of this convention.. That is why the question has been raised about how Egyptian and 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 the presidency candidate's wife's nationality is 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's viewpoint of the pre-requisite of the nationality of the presidency candidate's wife?
- 2- To what extent is the pre-requisite of the nationality of the presidency candidate's wife 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 the presidency candidate's wife's nationality 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 the nationality of the presidency candidate's wife.
- 2- Investigating to what extent the pre-requisite of the nationality of the presidency candidate's wife is taken into consideration by Egyptian Legislature and to what extent it conforms with Islam teachings.
- 3- Investigating to what extent the pre-requisite of the nationality of the presidency candidate's wife 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 the nationality of the presidency candidate's wife.

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 coming lines will tackle these points in further detail.

Chapter I: Islam Viewpoint of the Pre-requisite of the presidency candidate's wife's nationality

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) ⁽⁵⁾; Allah, Exalted be He, ordains that all people must obey those who are in authority ⁽⁶⁾. 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 ⁽⁷⁾.

Owing to the importance of this position, Islam requires particular pre-requisites to occupy it. However, none of which is what is nowadays called the presidency candidate's wife's nationality pre-requisite. Imam Ibn Hazm, may Allah be merciful to him, mentioned that there are four pre-requisites needed for presidency ⁽⁸⁾ as follows: " The candidate must be Muslim, mature; that is; being of age and sane, male and Qurushes" ⁽⁹⁾. He adds that a candidate must also be a practicing ⁽¹⁰⁾ Sunni ⁽¹¹⁾.

Imam Qurtobi, may Allah have mercy on him, mention that there are eleven pre-requisites needed for the candidacy for the Imamate. They are as follows; " being Qurushes, discrete in passing judgments, experienced in military affairs, brave, freeborn, Muslim, male, able-bodied, mature, sane and virtuous " ⁽¹²⁾.

Imam Badr A-Din Ibn Jama'at points out that there are ten pre-requisites needed for the candidacy for the Imamate. They are as follows;" being male, freeborn, mature, sane, Muslim, virtuous, brave, Qurushes, discrete in passing judgments, experienced in politics" ⁽¹³⁾.

It is noted that these pre-requisites are related to the candidate himself not his wife. This means that nothing is required as to the candidate's wife except being a dutiful Muslim wife, as the teachings of Islam goes, whatever her nationality is.

There is abundant evidence that what is considered concerning the candidate's wife, according to the principles of Islam, is her religiousness not her nationality. Of which are the following:

A. Evidence from the Holy Book:

- First Evidence;

Allah, Exalted be He, says: "Righteous women are obedient, guarding in secret that which Allah has guarded" ⁽¹⁴⁾. Imam Shawkani – may Allah has mercy on him-: " This verse shows that righteous women are those who are committed to the teachings of Islam " ⁽¹⁵⁾. This means that what should be paid attention to is the religiousness of the wife not her nationality, race or the country she lives in.

- Second Evidence;

Allah, Exalted be He, says: " It may be that if he divorces you his Lord will give him in your place better wives than yourselves, women who have surrendered, believing, obedient, penitent, worshippers and given to fasting who were previously married, and virgins too " ⁽¹⁶⁾. Imam Shawkani – may Allah has mercy on him-: " This verse makes it clear that the righteous woman is that who has surrendered, believing, obedient, penitent and worshipper " ⁽¹⁷⁾. This means that the righteous woman from the viewpoint of Islam is the religious one. If women's nationality, race or any political affiliation count, the verse will have them mentioned. But it doesn't. This indicates that what considers is a woman's piety rather than her nationality or otherwise.

B. Evidence from Sunna:

- First Evidence; Abdullah Ibn Amr Ibn Al-A'as narrated that Prophet Muhammad, peace and blessings of Allah upon him, said: " This worldly life is an enjoyment, and the best enjoyment in it a religious

wife" ⁽¹⁸⁾ This prophetic say shows that a woman's religiousness is that counts not any other quality ⁽¹⁹⁾.

- Second Evidence; Abu Hurairah narrated that Prophet Muhammad, peace and blessings of Allah upon him, said: " Women may be married for four reasons; for her property, her ranks, her beauty and her religiosity. So get the one who is religious and prosper (may your hands cleave to the dust)" ⁽²⁰⁾. This makes it clear that what counts is a woman's religiousness not anything else ⁽²¹⁾. Imam Nawawi – may Allah has mercy on him, says: " This Prophetic Say urges Muslims to accompany those who are religious since they benefit by their good manners and feel safe from their evil " ⁽²²⁾. It is also clear that religiousness, not nationality, is the criterion that should be taken into consideration when judging others.

C. Evidence from Reason:

If religiosity of the wife is not the main aspect that should be paid attention to, other aspects will be of no importance and continuing with such a wife will turn hell. This is evidenced by what Allah, exalted be He, states saying: " For whosoever does a righteous deed, be they believing men or women, We shall recompense them with their wage according to the best of their deeds" ⁽²³⁾. Allah, exalted be He, says:" but whosoever turns away from My remembrance, his life shall be narrow and on the Day of Resurrection We shall raise him blind" ⁽²⁴⁾. These verses show that nobody gets true happiness but through the commitment to the teachings of Islam.

Furthermore, if the nationality of the wife is regarded, this ruins the bond of religious brotherhood Islam calls for. Islam aspires to the unity of the nation and rejection of disintegration.

From this, it is shown that what is of importance from the viewpoint of Islam is a wife's religiousness not her nationality. Consequently, demanding a particular nationality of the presidency candidate's wife violates what Islam seeks after.

Chapter II: Egyptian Legislation's Viewpoint of the Pre-requisite of the presidency candidate's wife's nationality

The Egyptian constitution is categorized as one of the republican constitutions that are interested in making strict conditions for the candidacy for presidency ⁽²⁵⁾. Since the candidate is expected to come from

any class of the society, it is important to make sure that the candidate is fit for the office ⁽²⁶⁾.

The Egyptian constitutions have prescribed particular pre-requisites for the candidacy of presidency since the 1952 Revolution. Of them is that the candidate must not be married to a non-Egyptian wife ⁽²⁷⁾ and this wife must not be a dual national.

Article (134) of 2012 constitution prescribes that: " It is a must that the presidential candidate is not married to a non-Egyptian".

It is noticed that this Article has made a pre-requisite that the presidential candidate must not be married to a non-Egyptian in the time of candidacy.

However, this Article does not make a condition that the Egyptian nationality the candidate's wife holds is an original one ⁽²⁸⁾. The candidate who is married to a woman holding an original or acquired nationality can stand as a candidate for presidency.

Article (141) of the 2014 constitution states that: " It is a pre-requisite that a presidential candidate is not married to a dual national wife ". This Act prescribes that a presidential candidate must not be married to a woman that has held a non-Egyptian nationality previously or at the time of candidacy. Nevertheless, it is understood that it is not a pre-requisite that the Egyptian nationality the presidential candidate's wife holding is original.

It is also noted that the constitution not only bans any candidate that is married to a non-Egyptian wife from the candidacy for presidency but it also bans the would-be president from marrying a non-Egyptian wife during his term ⁽²⁹⁾.

Some jurists think that the reason for creating this pre-requisite in later constitutions is that " the president's wife plays a vital role, even from behind the scenes, in the life of the people her husband rules ⁽³⁰⁾. That is why it is necessary to ensure that she is politically loyal to the country her husband presides ⁽³¹⁾ and not to be influenced by any other loyalties.

From this, it is clear that the Egyptian constitution only cares for the presidential candidate's wife's nationality whatever her religion is and whatever she is religious or not. As long as the presidential candidate's wife is Egyptian, it is not important, according the Egyptian constitution, if it appears to be Muslim, Christian or even an atheist; religious or not.

The Egyptian constitution breaches the codes of Islam by giving prior importance to the nationality of the presidential candidate's wife. What should be of utmost importance is religiosity of the candidate's wife not her nationality. The argument that the candidate's wife's nationality pre-requisite is a guarantee for political loyalty is not acceptable because the real guarantee for enhancing and consolidating every form of loyalty and affiliation is the religiosity not the nationality. In addition, it is undeniable that paying attention to the nationality at the sake of religiosity destroys the unity of the nation and makes it a prey for its enemies internally and externally.

Chapter III: Algerian Legislation's Viewpoint of the Pre-requisite of the presidency candidate's wife's nationality

The Algerian constitution follows suit of the Egyptian constitution. It also makes a condition that a presidential candidate 's wife must be Algerian. Act (73) Of the 1996 Algerian constitution prescribes that: " It is not permissible to stand as a candidate for presidency unless it is proved that the candidate's wife is Algerian". Act (87) of 2016 Algerian constitution demands further pre-requisites saying that: " " It is not permissible to stand as a candidate for presidency unless it is proved that the candidate's wife is holding the Algerian nationality only". This means that if the presidential candidate's wife is carrying a non-original Algerian nationality, he won't be able to stand as a candidate for presidency.

It is observed that the Algerian constitution is so adamant in comparison with the Egyptian one. The Egyptian constitution does not require the presidential candidate's wife's nationality to be original as it is the case of the Algerian constitution.

Some jurists think that the Algerian constitution' insistence on this pre-requisite is so significant to ensure the candidate's wife's loyalty and allegiance ⁽³²⁾.

Now it is obvious that the Algerian constitution only cares for the nationality of the presidential candidate's wife, as the Egyptian constitution goes, no matter if she is Muslim or not and no matter if she is religious or not. As it is mentioned before, giving priority to the nationality of the presidential candidate breaks the codes of Islam. What matters, from the perspective of Islam, is the candidate's wife's religiosity not her nationality. Arguing that emphasizing the candidate's wife's nationality is the key to

ensuring her loyalty is not plausible as religious faith, not nationality, is the real way to realize this target.

CONCLUSION

The study came to two the following findings:

First; What should be considered from the viewpoint of Islam is the religiosity of the presidential candidate's wife not her nationality.

Second; What is considered from the viewpoint of the Egyptian constitution is the nationality of the presidential candidate's wife not her religiosity. What matters is that the candidate's wife is Egyptian and it does not matter if she is Muslim or not; religious or not.

Third; What is considered from the viewpoint of the Algerian constitution is the nationality of the presidential candidate's wife not her religiosity. What matters is that the candidate's wife is Algerian and it does not matter if she is Muslim or not; religious or not.

Fourth; Giving priority to the nationality of the presidential candidate's wife breaches the principles of Islam which pay attention to the religiosity rather than the nationality. .

In the light of these findings, the study recommends that the Egyptian legislator ought to make a condition that a presidential candidate's wife must be a practicing Muslim. This comes in agreement with what Islam dictates in this question and goes line in line with the 2014 Egyptian Constitution Second Article 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 Article (141) of 2014 constitution should be annexed by the following article:

-A presidency candidate's wife must be a practicing Muslim.

The study also makes the recommendation that the Algerian legislator should make a condition that a presidency candidate's wife must be a committed Muslim in conformity with what Islam calls for and with what Article (10) of 1996 Algerian constitution and its 2016 amendments prescribes saying: " It is not permissible for the State's bodies to breach the codes of Islam". Bearing this in mind, the study suggests that Article (87) of the 1996 Algerian constitution and its 2016 amendments is to be annexed by the following article:

--A presidential candidate's wife must be a practicing Muslim.

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, pp. 10-11.
- (9) Ibn Hazm, **Al-Fesal**, no edit., part 4, p. 180, part 5, pp. 10-11 and , Ibn Hazm, **Mohalla**, no edit., vol. 9, pp. 359-362.
- (10) Ibn Hazm, **Al-Fesal**, no edit., part 4, p. 180, part 5, pp. 10-11 and , Ibn Hazm, **Mohalla**, no edit., vol. 9, pp. 359-362.
- (11) Ibn Hazm, **Al-Fesal**, no edit., part 5, pp. 10-11.
- (12) Al-Kortoby, **Al-Game' Lahkam Al-Qura'n**, edit.1, vol.1, p. 404.
- (13) Ibn Jamaa't, **Tahrir Al-Ahkam fe Tadbeer Ahl Al-Islam**, edit. 1, p. 51.
- (14) Surat An-Nisaa (The Women) IV, verse: 34.
- (15) A-Shawkani, **Fath Al-Kadeer**, edit. 1, vol. 1, p. 531.
- (16) Surat At Tahreem (The Forbidding), verse: 5.
- (17) A-Shawkani, **Fath Al-Kadeer**, edit. 1, vol. 5, p. 299.
- (18) Reported by Muslim. Refer to: Muslim, **Sahih Muslim**, no edition, vol. 2, Book of breastfeeding, Chapter of The Best Thing in Life is the Righteous Woman, Hadith no. (1467), p. 1090,
- (19) A-Sendi, **A-Sendi Footnote on Sunan Ibn Maja**, no edition, vol. 1, p. 573.
- (20) Al-Bukhari, **Sahih Al-Bukhari**, Book of Marriage, Chapter of Religious Fitness, Hadith no. (5090), p. 7 and Muslim, **Sahih Muslim**, no edition, vol. 2, Book of breastfeeding, Chapter of Desirability of Marrying Religious Women , Hadith no. (1466), p. 1086.
- (21) A-Seddiqi Al-Aziem Abadi, **Oun Al-Ma'aboud**, edit. 2, vol. 6, p. 31.
- (22) A-Nawai, **Al-Menhaj Sharh Sahih Muslim Ibn Al-Hajjaj**, edit. 2, vol. 10, p. 52.
- (23) Surat A-Nahl (The Bees), verse: 97.
- (24) Surat Ta-Ha (Taahaa), verses: 123-124.
- (25) Tharwat Badawi, **Al-Kanon A-Dostori wa Tattawor Al-Anzema A-Dostoria fe Misr**, no edition, p. 304, Suliman Al-Tamawy, **A-Sulutat Al-Thalath fe A-Dasateer Al-Arabia Al-Moa'sera wa fe Al-Fekr Al-Siasy Al-Islamy, Drasa Mekarana**, edit. 4, p. 232, Tharwat Badawi, **A-Nuzum A-Siyasia**, no edition, p. 179, Zohal Al-Amin, **Al-Kanon A-Dostori wa A-Nuzum A-Siyasia**, no edition, pp. 134-135 and Nick Howard, **Beginning Constitutional Law**, p.21.
- (26) Suliman Al-Tamawy, **A-Sulutat Al-Thalath fe A-Dasateer Al-Arabia Al-Moa'sera wa fe Al-Fekr Al-Siasy Al-Islamy, Drasa Mekarana**, edit. 4, p. 238.
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- (29) Shams A-Din Al-Wakiel, **Al-Mojaz fe Al-Jensia wa Markaz Al-Ajamib**, edit. 3, pp. 38-39, Fouad Abd Al-Mon'em Riyadh, **Al-Wasiet fe Al-Jensia; Drasa Mokarana Lahkam Al-Kanon Al-Misri**, no edition, pp. 24-45 and Essam A-Din Al-Kasabi, **Al-Wajeez fe Al-Kanon A-Dawli Al-Khas**, no edition, pp. 87-96.
- (30) Suliman Al-Tamawy, **A-Sulutat Al-Thalath fe A-Dasateer Al-Arabia Al-Moa'sera wa fe Al-Fekr Al-Siasy Al-Islamy, Drasa Mokarana**, edit. 4, p. 240 and Zein Badr Farraj, **A-Shroot Al-Motatallaba fe Raees A-Dawla fe A-Nuzum A-Siyasia Al-Mo;asera wa fe A-Shareea' Al-Islamia**, no edition, p. 582.
- (31) Jameel Al-Sharkawy, **Drous fe Usul Al-Kanon; Al-Madkahal Ledrasat Al-Kanon**, edit. 2, pp. 227-235, Wael Abd-Al-aa'l, **Netaq Tabeek Al-Mahkama Al-Dostouria Al-Olia Llmada A-Thania Men A-Dostour, Drasa Tahlelia Mokarana**, edit. 1, p. 549 and Louis Fisher, **Constitutional Rights: Civil Rights and Civil Liberties**, vol. 2, pp. 1233 – 1249, John Bell, **French Constitutional Law**, pp. 138 – 226, Alex Carroll, **Constitutional & Administrational Law**, pp. 323 – 396.
- (32) Suliman Al-Tamawy, **A-Sulutat Al-Thalath fe A-Dasateer Al-Arabia Al-Moa'sera wa fe Al-Fekr Al-Siasy Al-Islamy, Drasa Mokarana**, edit. 4, p. 240 and Zein Badr Farraj, **A-Shroot Al-Motatallaba fe Raees A-Dawla fe A-Nuzum A-Siyasia Al-Mo;asera wa fe A-Shareea' Al-Islamia**, no edition, p. 582.