



Pre-requisite of Masculinity as Specified for the Candidacy for Presidency from the viewpoint of Egyptian and Algerian Legislation; An Evaluative Study in the Light of Islamic Law (Shari'a)

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ملخص:

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

Abstract:

The study aimed at evaluating the masculinity pre-requisite 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 a male not a female; second, neither the Egyptian nor the Algerian Constitution necessitate the presidential candidate to be a male. The study recommended that the Egyptian and the Algerian Constitutions ought to necessitate the presidential candidate to be a male.

Keywords: Masculinity Pre-requisite, Presidential Candidate.

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, be pious to 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. 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. Of these pre-requisites is that a candidate

must be a male not a female. It is not permissible for a female to run a Muslim state ⁽⁸⁾.

In spite of the importance of this pre-requisite, it is noted that Muslim countries deal with it differently. Some legislations require 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 masculinity pre-requisite 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 masculinity pre-requisite specified for candidacy for the presidency office?
- 2- To what extent is the masculinity pre-requisite 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 masculinity pre-requisite 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 masculinity pre-requisite specified for

candidacy for the presidency office.

2- Investigating to what extent the masculinity pre-requisite 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 masculinity pre-requisite 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 masculinity pre-requisite 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 Masculinity Pre-requisite Specified for Candidacy for the Presidency Office

According to Islam, the candidate for the presidency office must be a male ⁽⁹⁾. It is not permissible for a female to stand as a candidate for presidency unanimously ⁽¹⁰⁾. There is abundant evidence that the candidate for the presidency of a Muslim state must be a male. Of which are the following:

I. Evidence from the Holy Book:

-First Evidence;

Allah, Exalted be He says: (Men are the protectors and maintainers of women, because Allah has made one of them to excel the other) ⁽¹¹⁾. This verse signifies that men are the protectors and maintainers of women and not vice versa. Protecting and maintaining women mean that men are to be in charge of women, discipline and get them stay in houses. The verse justifies this authority given to men saying it is because men are usually more powerful, virtuous, sensible and open minded than women ⁽¹²⁾. This verse indicates that women are

in need of being protected and maintained. So, it is unreasonable to believe that they can manage and run men's public affairs ⁽¹³⁾. The verse also shows that men's protection and maintenance of women is not limited to their family affairs but it covers all their affairs within the family as well as outside ⁽¹⁴⁾. That is why women are not adequate for assuming to political posts ⁽¹⁵⁾.

– Second Evidence;

Allah, Exalted be He, says: (And stay in your houses) ⁽¹⁶⁾. Imam Kortoby says: " This verse makes it clear that women ought to stay in their houses " ⁽¹⁷⁾. This means that their job is related to that of family not of politics ⁽¹⁸⁾.

II. Evidence from Sunna:

Narrated Abu Bakrah (May Allah Please him): The Prophet, peace and blessings of Allah be upon him, said: " A people who make a woman their ruler will never be successful " ⁽¹⁹⁾. Imam Shawkani says: " This Prophetic Say shows that it is not permissible for women to stand as a candidate for presidency and it is not permissible for anyone to get them take over presidency " ⁽²⁰⁾. This

hadith make it clear that women are forbidden to assume to Imamate ⁽²¹⁾. This does not mean depreciating women but it means directing her potential the right way that suits her nature and the role she is created for.

The Scholars state that the reasons why women are forbidden to take up Imamate are as follows;

First: " Women are ordered to stay in their houses. This means that they should be shielded from mixing with men they can be married to " ⁽²²⁾ and " the Imam has to mix and consult with men and it is not permissible for women to do so " ⁽²³⁾.

Second: " Because women are inadequate ⁽²⁴⁾, they have no ability to have guidance to themselves. That is why they have no ability to have guidance to

others " (25).

Third: " Because women are not fit for fighting, waging wars or practicing politics " (26). Women do not have the physical strength to fight, make wars or any other job that need this strength. These jobs are indispensable to the Imamate (27).

C. Evidence from the Consensus of Scholars:

There is complete unanimity that the candidate for the presidency of a Muslim state must be a male. Imam Ibn Hazm reported this unanimity saying; There is complete unanimity that it is not permissible for women to take up the imamate " (28).

Imam Baghawi also reported this unanimity saying; There is complete unanimity that it is not permissible for women to take up the imamate since it needs physical strength to be able to do Jihad and it needs mixing with men to settle disputes and women lack this" (29).

Imam Kortoby also reported this unanimity saying; There is complete unanimity that it is not permissible for women to assume to the Imamate" (30). Imam Ghazaly says: " If a woman takes over the Imamate, it won't be religiously recognized whatever her potential and qualifications are since it is forbidden from assuming to any judiciary (31) or political post " (32).

The Saudi Scientific Committee for Scientific Researches and Fatwa was asked if women are permitted to assume to emirate and the answer came as follows: " Sunna, Maqasid (Aims) of Islam as well as the consensus of the Scholars make it clear that it is not permissible for women to take over emirate or judicial posts. In addition, no woman took over emirate or a judicial post in the times of the Orthodox Caliphs or the three preferred centuries in spite of being highly educated and sophisticated. Furthermore, no woman in these times looked forward to assuming emirate or any political post " (33).

It is noteworthy that excluding women from taking over political posts does not mean degrading or depreciating them ⁽³⁴⁾. But it means that protecting them from the dangers of jobs or roles they are neither created nor prepared for. These jobs are given to those who are able take responsibility. Only a few men who can do this. For this reason, many a man is excluded from taking over emirate, even in the time of the Companions, May Allah pleases them.

Chapter II

Egyptian Legislation Viewpoint of the Masculinity Pre-requisite Specified for Candidacy for the Presidency Office

The successive Egyptian Constitutions since the year 1956 have not considered pre-requisite of the gender of the candidate for presidency. The 2014 Egyptian constitution is an example for this.

Act (141) of the 2014 Egyptian Constitution states that: " The candidate for presidency must be Egyptian and born of Egyptian parents. He, his parents or his wife must have never held any other nationality but Egyptian . He must also enjoy civil and political rights. In addition, he must have performed the military service or having been exempted. Besides, he must not be less than 40 years old on the day of nomination".

It is noted that the constitution does not refer to the masculinity of the candidate for presidency. This might be due to the thought that it is an established principle that the office of presidency is restricted to males ⁽³⁵⁾ and the candidate for presidency must be a male ⁽³⁶⁾.

This might also be due to the idea that there is no need to stipulate that the candidate for presidency must be a male since it is implicitly understood from the

2014 Constitution's Act Two that states that: " Islam is the established religion of the country ... and the teachings of Islam are the main source of legislation " ⁽³⁷⁾. And according to Islamic Law, women are not permitted to stand as candidates for presidency. That's why a candidate for presidency must be a male ⁽³⁸⁾.

Nevertheless, not dictating that a candidate must be a male may cause misinterpreting legal texts to purposes they are not meant to. Some may argue that what is important is to put the teaching of Islam into practice whatever the gender of the candidate is. This argument might be enhanced by the idea that there is no explicit law forbids women from the candidacy for presidency. In addition, the 2014 Constitution's Act Two is inactivated. Moreover, there are constitutional texts conflict with Act Two. The 2014 Constitution's Act (11) is an example. It states that: " The government guarantees equal civil, political, economic and social opportunities for both men and women". According to this Act, women have the same right as men to stand as candidates for presidency. This clashes with what Act Two states. The reason for forbidding women from candidacy for presidency is that women are not physically and psychologically prepared to take presidency duties and responsibilities. Undoubtedly, women's main role is to look after their household affairs and bring up their children and participating in public matters especially political ones burdens them ⁽³⁹⁾.

Chapter III

Algerian Legislation Viewpoint of the Masculinity Pre-requisite Specified for Candidacy for the Presidency Office

The Algerian constitution follows in the same footsteps of the Egyptian equivalent. It also makes no mention of the gender of the candidate for presidency. Having a quick look at the Algerian constitution and its 2016 amendments, for example, it will be noted that this constitution does not refer to this pre-requisite. 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;
 - 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" ⁽⁴⁰⁾.

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 a male. And this might be owing to the thought that this pre-requisite is implied in other constitutional texts as it appears in the Preamble of the 1989 Algerian constitution and the 1996 Algerian constitution and its 2016 amendments which states that: " Algeria is the homeland of Islam". And as it appears in 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.

However, making no mention of the pre-requisite that a candidate for presidency must be a male opens the door wide for the anti-Islamist movements to allege for what they call the right of women to stand as candidates for presidency claiming that there is no explicit constitutional text that bans women from the candidacy for presidency. Furthermore, those anti-Islamists might also argue that Act (34) of the 2016 Algerian constitution enhances their claim. This act dictates that " All governmental establishments aim at guaranteeing equality for all men and women citizens in rights and duties and clearing away any obstacle that hinders develop the human being character and stops him or her from active participation in political, economic, social and cultural fields ".

According to the previous act, women have the right for the candidacy for presidency. This is supported by what happens in everyday life. It is widely known that there are some women who have really stood as candidates for presidency. Of these women is the dissident leftist Louse Hannon who works as chairwoman of the Algerian Labor Party. This woman stood as a candidate for presidency in the years 2004, 2009 and 2014 successively. In the light of this, no one can say that the Algerian constitution forbids women from the candidacy for presidency. For this reason, there is a nagging need to be explicitly stated that the candidate for presidency must be a male.

Conclusion

The study came to two the following findings:

First; Islam explicitly requires that a candidate for presidency to be a male not a female.

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

Third; the Algerian constitution does not make a condition that a candidate for presidency must be a male 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 a male. 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 a practicing Sunni Muslim.

The study also makes the recommendation that the Algerian legislator should make a condition that a candidate for presidency must be a male. 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 a male.

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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. 22.
- 9) A-Taftazani, Sharh Al-A'kaed A-Nasafia, no edition, vol. 1, p. 100, A-Kamal Ibn Aby Shoreif, Al-Masamara Besharh Al-Mosaira, no edition, p. 275, Al-Kastalany, Irshad A-Sari Lesharh Sahih Al-Bukhari,

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10) Al-Khateeb A-Sherbini, Moghni Al-Mohtaj, edit. 1, vol. 5, p. 418 and A-Ramli, Nehaiat Al-Mohtaj, last edition, vol. 7, p. 409.

11) Surat An-Nisaa (The Women) IV, verse: 34.

12) Al-Kortoby, Al-Game' Lahkam Al-Qura'n, no edition, vol. 3, p. 1739.

13) Mohamed Farahat, Al-Mabade' Al-A'ma Fe A-Nezam A-Siasi Al-Islami, no. edition, pp. 222-223.

14) Al-Mawdodi, Tadween A-Dostor Al-Islami, edit. 5, p. 71.

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16) Surat Al-Ahzab (The Confederates) XXXIII, verse: 33.

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- 37) Act Two of the 1971 constitution, 2012 constitution and 2014 constitution dictates that: " Islam is the established religion and Arabic is the established language of the country and the principles of Islam are the main source of legislation".
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- 40) Refer to the 2016 Supplementary Law relating to the legal procedures of election in Algeria.