

Dhimmi and the Assumption of Leadership of Muslim Countries: A Comparative Study with the Palestinian Law

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Abstract: This study examines the extent of eligibility of dhimmi to assume the leadership of an Islamic country. The problem of the study lies in removing the requirement of Islam in the head of a Muslim country; and the extent of the eligibility of members of non-Muslim minorities to hold this office. I wanted from this study to explain the Shariah view and look into authorities of each opinion; and additionally, the position of the Palestinian law for a non-Muslim to lead a Muslim country. The aim of looking at these authorities and discussing them is to reach to the Islamic view which is in line with the Shariah provisions, and to explain the extent upon which the Palestinian law has granted religious minorities this right. The study adopts inductive approach in getting the opinions and authorities; and the study then follows the analytical approach in analyzing these views and authorities and came out with comfortable strong evidence. I started by explaining the nature of Islamic political system and that it is discretionary branch of Shariah. The study further addressed views on the ruling of leadership of dhimmi in Islamic countries, which ranged between two views: The first view and the holders are the vast majority of scholars and thinkers; they say it is prohibited. And the second opinion which is the view of some contemporary thinkers and scholars where they say dhimmi is allowed to lead Muslims. And after studying both views and their authorities the study preferred the prohibition of leadership of non-Muslim on Muslims, and this is based on the principle of justice and there is no violation of values, principles and foundations of citizenship. Finally, the Palestinian Basic Law does not require specific religion for the presidential candidate of the state.

Keywords: Dhimmi, Assumption, Presidency, Shariah, Law, Palestine.

INTRODUCTION

Preface

Islamic political system is characterized by flexibility and that is why it is considered as discretionary and not fixed principles. Aamidi says regarding this: "I know that discussion on Imamate is not among the fixed and eternal principles in the religions in such a way that it cannot be left out or ignored" [1].

According to Shirazi, the Imamate and the governance issues are discretionary while responding to the Shiites who see the Imamate as a fixed principle of the religion: "This is contrary to what has been mentioned on the issue of the Imamate...and it is not like that here; it is among the discretionary issues" [2].

Ghannouchi says: "If Islam limits a number of principles and emphasizes on a number of *Maqasid*

(purposes of the Shariah) and did not mention detailed ruling except in a narrow range and left to the mind of Muslims extensive areas to interact with the diversity of time and place and this will result in diversity of governance in different forms" [3].

Ghannouchi confirms the need to differentiate between the historical experience of governance and the fixed and express principles. He also says that the historical experience of the rule as a whole has no value except to learn lessons [3].

Rashid Ridha said that the system of governance in Islam is discretionary and there is no objection to benefit from the contemporary systems unless they are contrary to the general rules of our religion, and he objected to those who say otherwise [4].

The Islamic political system is all from the discretionary branch depending on the public interest and the development of the times, and a very small part of it is among the fixed general provisions that are not subject to change. Dr. Awa says regarding this: “the political system of the Islamic state is originally left to the Muslims to choose what is suitable to different times and different circumstances [5], and this is a special feature of the Islamic political system; it is flexible in that it does not prevent changing its form or benefitting from other systems with what will improved its status and achieves the interest of the whole nation; but on condition that it does not contradict with those fixed Islamic political system. When you consider the latest developments with regard to the system of government we must bear the fixed rules in front of our eyes, and then we consider the extent upon which it achieves *maslahah* (public interest) of the general principles of Islamic law.

The ancient books of jurisprudence (*fiqh*) consist of branches and issues of governance; and in most of their details they adapt the names and terms available in that era; and this *ijtihad* (discretion) does not necessarily mean they are fixed and limited terms for the political system forever, but they are just discretionary depending on the time they were living in, and there is no objection to change opinions based on the needs of the new era in all times and places, provided there is no violation of the general rule agreed upon.

We conclude by saying that the Islamic political system is a branch that is subject to discretion according to the change of time and place, although there are general and fixed principles of this system but they are little; and the vast majority remain discretionary depending on changes and *maslahah* (public interest) provided they are in line with the spirit of the Shariah.

Finally, Islam was never a religion of worship only where it has no say in the affairs of the country or people; but Islam is a religion that takes care of the country, politics, economy..., and it is not right to separate the religion from the country as claim by some, and if this claim is applicable to Christianity it is not consistent with Islam; the fact that Christianity is devoid of rules and regulation governing the affairs of human beings and being a pure spiritual religion, this is not the same with Islam; Islam is a fundamental reference of the Islamic political system, and this means we have to be committed to the correct and general rules which are explicit explained by Islam in the Qur'an and Sunnah in various aspects of the rule of the Islamic state system, and to be flexible in the discretionary branches that are subject to change based on time and place [6].

Presidency of state

When talking about the presidency of the state we are talking about the head of the de facto authority of the country, and certain conditions must be available to the one assuming this position. These conditions differ from one community to another depending on prevailing customs, religion and political heritage of the country.

Based on custom among the nations, each country or even town or institution must have a head managing its affairs and organizes its position; and also works in implementing laws, and this is something approved by sound minds. There is no society in the past or present that is devoid of someone who assumes leadership role and implementing laws between the people, even if the nomenclature of the post varies, such as king, prince, Caesar, Imam, Caliph etc..., and there are certain conditions required of the ruler and all these depend on the structure of the political and social system of that community [7].

The first Islamic state was born and the Messenger of Allah Muhammad (saw) manages its affairs, and He (saw) was a Prophet and Messenger from Allah (swt) in addition to being the head of state working in managing its affairs and watching the status of its people, applying sanctions against offenders, responsible for its army by protecting it against any attack; thus He (saw) was the best example of a model for facilitating the affairs of state.

Presidency of state “imamate” in islam

The Islamic history has used various names for the actual ruler of the country; it used the title of Khalifah (Caliph), Amir al-Muminin (the Commander of the Faithful), and al-Imam al'azam (the greatest Imam). Although they all have the same meaning, after the death of the Prophet (saw), Abu Bakr (ra) assumed the leadership of the Islamic state and was called Khalifah, which means he replaced the Prophet (saw) in leading the Muslims and taking care of their affairs. Ibn Khaldun comments on this name by saying: “As for calling him Khalifah, it was because he succeeded the Prophet (saw) in the Ummah; it may be said: Khalifah, and khalifah of the Messenger of Allah (saw)” [8].

After the death of Abu Bakr (ra) Omar ibn al-Khattab took the leadership in the Islamic state, and he was called Amir al-Muminin (the Commander of the Faithful), as the Companions were satisfied with that name. Ibn Khaldun says: And they called him by that name and was known with that name among the people and the Khulafah (Caliphs) after him used the same name [8].

The title of al-Imam al-azam was used in the Islamic history on the leader to distinguish him from the Imam of prayer; and you find this name in the *fiqh*

books; where they discussed the conditions of Imam (leader) and how he may be removed, all under the topic of al-Imamah al-uzmah (the greatest Imamate) [9] and I think this title stems from the naming function of succession to leading the prayer.

The previous names known by the Islamic history are just names based on custom not religion; it is not a name that we worship Allah (swt) with; as such there is no harm in naming the leader with other names other than the ones inherited by the Islamic history, such as calling the leader president, prime minister, adviser etc. as long as the name does not contradict a belief issue [1]; Islam is interested in substance and not name of peels.

All the names known by the Islamic history carries the same meaning, and it makes the duty of Khilafah (Caliphate) or Imamah (Imamate) protection of religion and running worldly affairs [10]. Thus, Caliph or Imam is a deputy of the Prophet (saw) in the general interests of the Muslims of the establishment of religion and the maintenance of Muslims [11], and that is manifest in the definition of Khilafah or Imamah.

Mawardi defines it as: “the succession of the Prophet (saw) in guarding the religion and politics, and appointing who carries it in the Ummah; and it is compulsory by unanimous agreement of the Ummah” [12].

Ramly mentions that some define Imamate as: “the general leadership of the religious and worldly affairs by a person”. He himself defines it as: “Succession of the Messenger of Allah (saw) in the establishment of the religion and protecting it, so that all the Ummah will abide by it” [9].

Ibn Khaldun defines it as: “carrying all to follow the Shariah in their interests on this world and hereafter... in fact it is succession of the Prophet (saw) in guarding the religion running the worldly politics based on it” [8].

The author of the book of Caliphate summarizes its definition and combines between its names as he says: “Caliphate (khilafah), the greatest

Imamate (al-Imamah al-uzmah), and Imarat al-Muminin, are three words with the same meaning, which is the leadership of the Islamic government that combines the interests of this world and hereafter” [4].

From the above definitions, we find that Caliphate or Imamate is closely linked to religion, and the Imam has two responsibilities on his shoulder which are guarding the religion and running the worldly politics, in other words religious responsibility and civil responsibility. The former means easing affairs of the people and the state in accordance with the Islamic provisions, by following its provisions and making them available in all his politics, and he works in protecting pillars of the religion, and not to marginalize its provisions. As for the latter is by running the affairs of the subject and ensuring they have what is in their best interest, and works in ensuring good things for them, and protects their right, and protects them against injustice, and to secure their needs, and protects them against aggression, and all that will ensure them good livelihood.

We conclude that the function of the Imam is religious and worldly, and this does not mean that the ruling authority in Islam is religious authority vested in the clergy as practiced in Europe during the middle Ages when the church and its men govern the people and were considered as deputy for the God. And this result in a rupture and strife between the people and religion, and this was the result of the idea of separation of religion from the state. Hence, authority in Islam is not in this sense, but it is being practiced by the most competent from the Muslims, who puts in front of him commitment to the general Islamic provisions and facilitating the affairs of people in what achieves their interest [13].

CONDITIONS OF HEAD OF STATE “IMAM” IN ISLAM

The jurists bring several conditions for those who take the Great Imamate, and some of these conditions are agreed upon by consensus, whereas some are contentious. I see that some of these conditions agreed upon are consistent with the dictates of sound mind, and other conditions are discretionary and differ from one time to another, we may require the least among them or we consider them supplements which governance is valid without them [2] And when you follow the conditions of Imamate in *fiqh* books you find

¹ Of the names that are prohibited are ash-Shah Shah, or King of Kings, as it was reported from the Prophet (saw) prohibition of naming with King of Kings as reported by Sufyan Thauri: See Bukhari, 1987, Kitab al-adab, bab abgadul asma Ilallahi 8th Ed. P 56, Hadith No. 6205, 6206, See: Muslim, Abu Hussein, Muslim ibn al-Hajjaj ibn Muslim Qushayri Alnisabure, the whole right called Sahih Muslim, Kitab al-adab, bab Tahrim at-Tasammi bi malik al-amlak wa malik al-Muluk, Beirut: Generation and new horizons House, 6th Ed. P 174, Hadith No. 5734.

² Some of the conditions provided by the jurists were suitable with their time, among them is he has to be mujtahi and fiqh (jurist), and knowledgeable with war affairs; these are conditions that may not be available in all times, I see it has no consideration in our contemporary time as special advisers to the head of state will do the same job.

they are many, and I want to take the most common and important ones and they are as follows [14].

Islam, justice [3], Knowledge [4], diligence [5], physical and psychological soundness [6], courage [7], enjoying strong opinion to manage the people and ensuring their interest [15], which means he has to know politics and matters of war [8] and to be qualified to hold the general leadership; a male, free, adult of sound mind, and lineage to be from Quraish tribe [9].

VIEWS OVER THE RULING OF ASSUMPTION OF LEADERSHIP ON MUSLIMS BY DHIMMI

First view: Is it not allowed for a non-Muslim to be a leader over Muslims

This view is considered broader in the books ancient books including hadith books. The jurists unanimously agree on the requirement of Islam for the person who assumes al-Imamah al-uzmah. Imam an-Nawawi transmits this consensus from Qadi Iyad where he says: "The scholars are unanimous that Imamate (leadership) cannot be given to the infidel; even a present Imam will be removed if he becomes a disbeliever" [16].

Ibn Qayyim also transmits the consensus from Ibn Munzir and said: "all those that he memorizes from are consensus that an infidel cannot be a leader over a Muslim under any circumstances" [17].

This group has mentioned many evidences, some of which are as follows:

Religious function: the function of Imam is religious and political in nature, which is the succession of the Messenger of Allah in establishing the Shariah and defending it. He is required to safeguard the interests of Islam and Muslims; and in this case only a Muslim will be able to discharge this appropriately as he knows its provisions and principles. The duty required of a leader with its religious aspect necessitates that a leader of Muslim country to be a Muslim; and if

³ Just means to be of good character far away from wickedness

⁴ To be knowledgeable with Shariah provisions

⁵ To be able to deduce Islamic rules from the general authorities

⁶ Anything that affects his action, such as blindness, deaf, being cripple, not having hands, and anything organs that may not allow him to discharge his duty properly.

⁷ To be courageous in wars and anything that is related to protecting Islam and is able to carry out hudud.

⁸ To be intelligent in war and peace, and to know the time he is living in.

⁹ To be of Qureish lineage. There is a disagreement of this requirement. I see it as not a condition. But this is not a place to discuss this issue.

he is required to discharge something he does not believe in is a compulsion [18].

Contrary to the Qur'anic text: the Qur'anic text stipulates that it is not permissible for non-Muslim to be a leader over Muslims as well as following non-believers; and this clearly indicates that a non-Muslim becoming a leader over Muslims is contrary to the provisions of the Qur'an [19].

The evidences from the Qur'an are as follows:

(Let not the believers take for friends or helpers Unbelievers rather than believers: if any do that, in nothing will there be help from Allah)(al-Qur'an, al-Imran, 3:28).

(The Believers, men and women, are protectors one of another)(al-Qur'an, Taubah, 9:71).

(The Unbelievers are protectors, one of another: Unless ye do this, (protect each other), there would be tumult and oppression on earth, and great mischief.) (al-Qur'an, Anfal, 8:73).

A way on the Muslims: Leadership of non-Muslim over Muslims is contrary to the saying of Allah (swt): (And never will Allah grant to the unbelievers a way (to triumphs) over the believers (al-Qur'an, Nisa, 4:141) And Imamate is the greatest way [20].

And the leadership of a non-Muslim over Muslims is contrary to the principle of young treatment that we must do to the non-Muslims; we are commanded to disgrace them and not to honour them, and to allow them to be leaders is contrary to this principle [21].

The consensus of the jurists: the jurists are consensus that a non-Muslim shall not be a leader over Muslims; and the Islamic history through the fourteen centuries did not mention that a non-Muslim held the leadership (the greatest imamate), which shows an implied consensus that it is not allowed.

Reason: If the function of the Imam is to establish the Shariah and safeguards its provisions, then reasonably a Muslim shall be the one to discharge this duty and a non-Muslim cannot be compelled to do something originally not compulsory on him [22].

Second view: It is permissible for dhimmi to assume leadership over Muslims

In fact, the requirement of Islam before a person becomes a leader over Muslims have been mentioned several times in ancient and modern books; but in the past few years there are some Islamic scholars and thinkers who have the opinion that there is no objection for a non-Muslim to become a leader over Muslims. And to sincerely attribute the words to the

owners, I have not come across books for the owners of this view except newspaper articles or dialogic seminar posted on websites; I did not find literature in their books except the book of Dr. Awa with title the political system of the Islamic state [¹⁰].

The remarkable thing is that the works published for the majority of owners of this view requires Islam to the president of the Islamic state; if what has been quoted from them is true, it shall be a discretion leading to a change of government in their eyes or the emergence of new developments in the understanding of the issue, although I could see that this trend is due to two things:

First: the spread of Islam phobia [¹¹] phenomenon among non-Muslim communities after the event of September eleven, and the attempt of some to attribute extremism to Islam, and this led to intellectual and doctrinal revisions to a number of Islamic thinkers to remove this view and indicate tolerance of Islam in its dealings with others, this view was the outcome of this innovative movement.

Second: comforting Christian minorities living in Muslim countries, especially after the Arab Spring

¹⁰ Of those who say that this opinion: Yusuf al-Qaradawi, Rashid Ghannouchi, Mohamed Emara, Fahmi Howeidi, Mohammad Salim Al-Awa, Saad al-Din Hilali, Mohamed Ben Mokhtar Shanqeeti, Tariq human, Sayed Askar, see: Awa .2008 m, 256 Howeidi, Fahmi .2007 m, Brotherhood in their party program unjust and oppressed, newspaper Middle East October 3, 2007 and the number 10536. see: Moony, Saad Eddin, the presidential inauguration of a non-Muslim in the Islamic Republic, an article published on his personal blog, and the chairman of Comparative Jurisprudence at Al Azhar University. Page Link: <http://www.saadhelaly>. Date seen: 03/03/2014 M.oanzer: Shanqeeti, Mohamed Ben Mokhtar, 2010, the geography of the new social contract and the state of the non-Muslim head of state and the victims of injustice Msugon him, an article published on the island site Net, dated: 03/30/2010 m. Page Link: <http://www.aljazeera.net>. Date seen: 03/04/2014 m. See: human, human advisor Tariq, the national group dropped the contract disclosure, interview, see the World Center for Moderation, Page Link: <http://wasatiaonline.net> site. Date seen: 03/03/2014 m. See: Arab satellite site, a news story entitled: Islam accepts the Christian presidency and respect and not to be considered from the disbelievers 06/21/2010 AD, the history of viewing: 05/04/2014

¹¹ Is a phenomenon of fear of Islam as a religion, and having a bad image of Islam and its people, and the spread of this phenomenon started after the events of 11 September 2001, which resulted in hitting the twin towers of the World Trade in New York.

which resulted in the attainment of a number of Islamist parties to power. What supports this view is the fact that most of those who said this opinion belong explicitly or implicitly to Islamic movements and groups that came to power after the Arab Spring. In addition to the fact that that it is impossible for a non-Muslim to assume the presidency of a Muslim country; so they said this opinion and contradict the *fiqh* books in this matter and supported their view with evidences supporting their view.

EVIDENCE OF THOSE WHO SAY IT IS PERMISSIBLE

The difference on the form of government: the modern systems today made organizing and assigning public decisions or on individual, but to the bodies; the president does not have independent decision, but the decision is on the bodies, such as parliaments, the House of Representatives, or like a presidential council; so as long as the decision is on the body and not individual, it is possible for Muslims and non-Muslims to participate together in taking this post; and the main reference will remain the legal system in the country [¹²].

Civil Function: the function of the president is purely life and civil function based on efficiency and justice and not religious function. Thus, it is sufficient for a person assuming this function even if he is not a Muslim as people will take anything from the president being religious but can only take their rights from his justice. There are texts that give preference to the characteristic of justice over that of religion. Some of these texts are the saying of Allah (swt): {but say: "I believe in the Book which Allah has sent down; and I am commanded to judge justly between you. Allah is our Lord and your Lord: for us (is the responsibility for) our deeds, and for you for your deeds. There is no contention between us and you. Allah will bring us together, and to Him is (our) Final Goal.} (al-Qur'an, Shura, 42:15) and the generality of the saying of Allah (swt): {We sent aforetime our apostles with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice} (al-Qur'an, Hadid, 57:25), so the purpose of leader in the Islamic state is the administration of justice, even if he is a non-Muslim [¹³].

¹² Al-Bushra, al-Mustashar Tariq, the national group dropped the contract of dimmi, interview, and see the World Center for Moderation, Page Link: <http://wasatiaonline.net> site. Date seen: 03/03/2014.

¹³ Hilali, Saad Eddin, the presidential inauguration of a non-Muslim in the Islamic Republic, an article published on his personal blog, and the chairman of Comparative Jurisprudence at Al Azhar University. Page Link: <http://www.saadhelaly>. Date seen: 03/03/2014 m. Dr. Awa said the same, 200, p 256.

The decider is the Constitution: in ancient times, king is the one who determines the religion of his people “people follow the religion of their kings”. Thus, the opinion that prohibits a non-Muslim to become a president took into account the interest in those ages, and this is different in our time; we are no longer living in the age of empires and is no longer a danger to Islam if the head of state is not a Muslim because the relationship between the state and religion is prescribed by the Constitution, and not the belief of the head of state or his personal taste; and people today are on the religion of their constitution not the religion of their kings; and what was good in the past might not necessarily be good in our time; but justice and interest today lies in building a free and democratic countries where citizens are equal, regardless of race and belief [¹⁴].

Islamic justice: the requirement of Islam on the head of state is not consistent with the concept of Islamic justice, which includes Muslim and non-Muslim alike, Allah (swt) says: {and I am commanded to judge justly between you. Allah is our Lord and your Lord: for us (is the responsibility for) our deeds, and for you for your deeds.}(al-Qur’an, Shura, 42:15)

System of governance is compromised: the system of governance in Islam is compromised which can be negotiated between the Muslims and between Muslims and others, according to the authority of their choice: this is because Islam has not put a constant system of governance like worship matters, such as pilgrimage and fasting..., the issue here depends on interest.

General citizenship: the system of dhimmis does not longer exist; everyone is united by the concept of citizenship regardless of their belief affiliation; and they are all equal in nation building and organizing its affairs and this include not preventing anyone from running for the presidency of the state, even if he is a non-Muslim.

The social contract: the social contract in our time is based on the geographical basis; and citizenship is based on that, and religion has no relationship to the concept of citizenship and difference of religion or race has no effect in the rights and duties of this citizenship. This is consistent with the first Islamic experience in Madina during the time of the Prophet (saw); and therefore, everyone has the right to assume any in the position the state without regard to his religious affiliation.

Consent and freedom of choice: among the purposes of Shariah is the principle of consent and

¹⁴ Shanqeeti, Mohamed Ben Mokhtar, 2010, the geography of the new social contract and the state of the non-Muslim head of state and the victims of injustice, article published on the site Jazeera Net, Dated: 03/30/2010 m. Impact: <http://www.aljazeera.net> link. Date seen: 03/04/2014.

freedom of choice, as consent is the way of straightening things and preventing sedition; hence, both Muslims and non-Muslims have the right to compete in proving the authority to assume the presidency of the state. But the protection of religion is through preaching which can be ensured through the believers’ hearts and minds.

Communal strife: preventing the presidency of a non-Muslim is a factor of sedition and the non-Muslim may also refuse the leadership of a Muslim and this may lead to a fatal affliction.

OPINION OF THE STUDY ON THE ISSUE

In fact, the owners of the second opinion still present it with shyness and reservation for violating religious, cultural and social inheritance of the Muslims as this a non-debatable issue; however, there is a need to look into the evidences of this view and to discuss them in order to reach to a jurisprudential opinion based on correct and explicit evidence.

I think the source of the differences between the two views is due to three main points, which are: the function of the country’s president in the Islamic state is it religious or civil? In addition to the change to the contemporary political system unlike old form of the Islamic state in the past, so we are obliged to consider the latest development and not to stand or inertia on the old form; and the last the characterization of minorities as citizens in the Islamic state entitles them this right, and to say the contrary contradicts this characterization, and also is contrary to the idea of justice and equality that Islam brought; these are the main points of difference in this issues.

After considering both views, I see that the first view (impermissibility of presidency of a non-Muslim over Muslims) is the best and probably closest to the texts of Islam and its spirit, and the opinion of the second group will change the inherited jurisprudence of centuries and supported by Islamic evidences and with no acknowledgement of the validity of the evidences mentioned by the first group [¹⁵].

The evidences of the second view may be rebutted as follows:

To say that it is permissible for a non-Muslim to be president over Muslims is contrary to explicit and implicit consensus. The explicit one is the statement of

¹⁵Among the evidences brough by this group and this study disagrees with it what was quoted of disgracing dhimmis as this contradicts the Qur’anic texts and the Sunnah. Allah (swt) said: “Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just.” Mumtahanah, 8. The Prophet (saw) said: “He who maltreat dhimmi has maltreated me”.

Ibn al-Munzir and others; and the implicit is what has been transmitted by the history; throughout the fourteen centuries, a non-Muslim never presided over Muslims, and hence to say is permissible is against the source of Shariah which is consensus, and the Prophet (saw) says: "My Ummah (nation) will not meet upon an error" [16].

To say that the form and merits of the contemporary system of governments is different from what is found in the Islamic heritage, in that the president is not unique to opinion and judgment of our time is through the bodies and councils, and the system of government is negotiable may be refuted by saying that the system of governance in its details may be changed based on interest, but that does not mean is comprehensive to everything; there are general principles and provisions of politics in Islam that cannot be changed, and this includes requirement of Islam on the head of state. And the difference of government structure in our time does not mean to change our political system based on these conventional systems. Yes, it is true that there is no objection in benefiting from other systems if there is interest of the Ummah and is not contrary to Shariah, but to change our Islamic system in order to be in line with the contemporary systems, in this saying there is going against acceptable Islamic way. And the saying that councils are those who govern and not individuals, that is correct in its generality; it is necessary that during our time opinions and governance are through bodies and councils as collective opinion is mostly better than individual opinion, but that does not stop the practice that the final say is for the head of state. In this our time, the political imprint of the head of state is clear in various Western and Islamic states, and we do not recognize this statement.

To say that his function is purely civil and not religious, to rebut what they say, yes the system of governance in Islam is not priestly in the sense that only jurists and scholars will govern, but it is well known that the function of the head of state is religious and civil; and we mean by religious to implement Shariah provisions and only Muslim can do this; hence to say that his duty is only civil is not consistent with characteristics of the Islamic political system that recognizes a state and its law to be civil but the source must be Islamic provisions; it is a special system that creates civil state with Islamic source. Therefore, only a Muslim can implement these laws; in addition a non-Muslim does not believe in the soundness and

¹⁶ Narrated by Ibn Majah, 2009, Kitab abwab al-Fitan, Bab ma yakunu minal fitan, 5th Ed.: p 96, Hadith No. 3951, Arna'ut said: Is an authentic hadith. Tirmidhi also narrated the same hadith, Kitab al-Fitan an Rasulallah (saw), Bab Ma ja'a fi luzumil Jama'ah, 4th Ed.: p 446, Hadith No. 2167, Albany said: Is an authentic hadith.

correctness of the provisions that contradict his belief, hence the best thing is for a Muslim to assume this duty.

It is reasonable that a Muslim leader be a Muslim, as it is unreasonable for a country with vast majority Muslims to be ruled by a person who does not believe in Islam; this is far from justice and reason; as even minority Christian do not normally object the condition that the head of state of a Muslim country must be a Muslim, and see that as part of the Islamic specialization and they do not see it as against the principle of justice and equality [17]. Dr. Rafiq Habib – Coptic intellectual and researcher at the Coptic Evangelical Authority- while discussing the programs of the Muslim Brotherhood, where the program prohibits the assumption of leadership of a Muslim country by a non-Muslim: "The program of the Muslim Brotherhood is considered in achieving equality between the Muslims and Christians ... the Muslim Brotherhood say this post and its responsibilities shall be vested on someone who is committed to the Islamic law, and he has the responsibility of protecting the religion, that is the administration of religious affairs considering he is the top religious authority, and therefore he represents the general mandate, and it was their opinion that it is not permissible for a Christian or a woman to be the head of state."¹⁸

Many of the contemporary Western constitutions require the president of the country to belong to a particular religion before he can take this job [19] and we did not hear that someone said that this contradicts justice and equality, but I think in this there is achievement of the principle of justice and equality and respect for the opinion of the majority [15].

Islam recognized the principle of citizenship for all people of different beliefs, but this does not mean that the state has no privacy in the religious part; it requires that a leader must be a Muslim to preserve the provisions of Islam and should work in undermining them. Just as Islam has its privacy Christian country

¹⁷ This statement applicable to the majority of Christian minorities in the Arab countries, however, recently appeared in some of the voices calling for Christian eligibility to run for president, and noted that these voices belong to the Coptic minority in Egypt.

¹⁸ El-Erian, Essam.2006, El-Erian prevention of Coptic candidacy for the presidency is customary, the World Center for Moderation, Publication Date: 06/01/2009 AD, the site of the World Center for Moderation, Page Link: <http://wasatiaonline.net>, viewing history: 04/07/2014 AD.

¹⁹ There are several Western constitutions stipulate that the Head of State, must belong to a particular religion, and some of these countries are: Denmark, Greece, Spain, Sweden, England and some Latin American countries. See: Howaidy, 2007.

also has its own; is it fair to say that a Muslim may run for the presidency of the Vatican; just as a Christian cannot accept this idea, a Muslim will also reject the same.

Finally, the post of the head of state of a country with its importance, it is compulsory on us to require Islam for that post as the president is the interface of the country and the head of its system, since he has legal privacy that makes Islam as the spot of the country.

This issue is purely and theoretically controversial, can a non-Muslim reach to the presidency of a Muslim country through elections, and can he initially nominates himself; this issue is theoretical, but we must look at the issue from the Islamic point of view, and we cannot change them to comply with the needs of the contemporary time, even as we see that the issue is impossible to occur, and this is daring Islamic ruling supported by correct and legitimate Islamic evidences.

HEAD OF STATE IN PALESTINIAN LAW

The Basic Palestinian law did not mention religion of candidate for head of state, and did not require him to be a Muslim and referred the details to the election law, which it was stated in Article 34 “president of the Palestinian National Authority shall be elected direct from the Palestinian people in accordance with the provisions of the Palestinian election law” [23]. It is worth mentioning that the Palestinian Basic Law stipulates that Islam is the religion of the state, and its provisions are the main source of legislation. Article 4 of the Basic Law states: “Islam is the official religion in Palestine, and the other monotheistic religions have their respects and sanctities; the principles of Islamic law are the main source of legislation, and Arabic is the official language” [23]. There might be a confusion in the interpretation of Article 4 due to the fact that the principles of Islamic law are the main source of legislation; if it is used for the requirement of the candidate to be a Muslim, due to the fact that the Islamic law is unanimous on the impermissibility of a non-Muslim to be head of state of a Muslim country, but by referring to the Palestinian election law we may certainly say that the legal legislator does not require religion in candidate for the presidency, where Article 36 of the Electoral Act the requirements of candidate for the presidency, where it mentions:

It is required on the presidential candidate [24]:

- Palestinian born to Palestinian parents.
- Must have completed forty years of age, at least on the day of polling.
- To be a permanent resident in the Palestinian territories.

To be registered in the final record of the voters and fulfills the conditions to be provided for the exercise of the right to vote.

To abide by the PLO as the sole legitimate representative of the Palestinian people and the document of the Declaration of Independence and the provisions of the Basic Law.

Religion is not mentioned as part of nomination requirements, and it can be certainly said that the Palestinian law does not require a presidential candidate to be a Muslim.

We conclude by saying that Palestinian law did not require Islam on the president of the state; and therefore, the Christians and Samaritans have the right to run for this position, if fulfill these conditions, however, the Palestinian law does not prohibit it; but a non-Muslim never nominated himself in presidential election.

Based on the foregoing, the Palestinian law violated what Islamic law stipulated of preventing non-Muslims to preside over Muslims, and this is evident as the Palestinian legislature dropped this condition for those who run for presidency.

CONCLUSION

After listing the views on this issue, we can summarize the most important findings of the study as follows:

Islamic political system is discretionary with the existence of fixed general rules that do not change with time and place.

Views were divided on the issue of a dhimmi becoming a head of state over Muslims into two views: All ancient jurists and majority of contemporary jurists said it is impermissible; and very few among the contemporary thinkers said it is allowed, and it is view born few years ago.

The study suggested limiting the presidency on Muslims to only a Muslim, and that allowing dhimmi to preside over a Muslim country is contrary to the consensus and reason.

The study consider that preventing minorities from assuming the presidency of a Muslim country does not contain a contradiction the idea of the rights recognized in Islam but are derived from the Islamic political system privacy.

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