

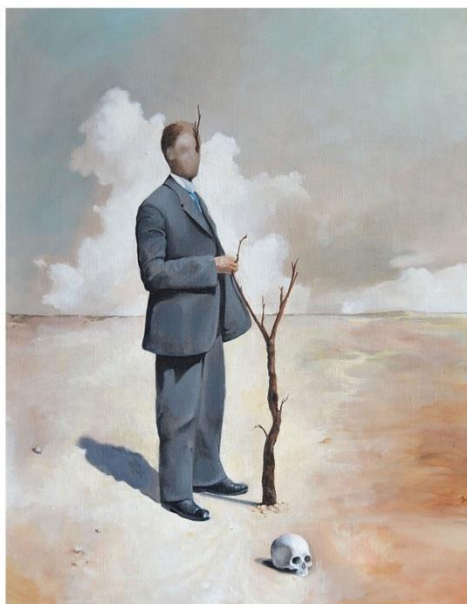
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To what extent does a Christian husband have the right to have several wives

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Abstract

The study aims to investigate whether a Christian husband has the right to have several wives via a mixed methodology that combines the deep consideration of the background of the hypothesis of the research and the analytical approach. As a result, for a Christian husband to have more than one wife at the same time even if they are followers of different sects or doctrines is groundless. In conclusion, the principles of Islamic Sharia Law shall apply under the above-mentioned assumption then a Christian husband shall enjoy the same rights as a Muslim husband.

Keywords: Polygamy, Christianity, Wives.

¿En qué medida un esposo cristiano tiene derecho a tener varias esposas?

Resumen

El estudio tiene como objetivo investigar si un esposo cristiano tiene derecho a tener varias esposas a través de una metodología mixta que combina la consideración profunda de los antecedentes de la hipótesis de la investigación y el enfoque analítico. Como resultado, que un esposo cristiano tenga más de una esposa al mismo tiempo, incluso si son seguidores de diferentes sectas o doctrinas no tiene fundamento. En conclusión, los principios de la Ley Islámica de la

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Sharia se aplicarán bajo la suposición mencionada anteriormente, entonces un esposo cristiano gozará de los mismos derechos que un esposo musulmán.

Palabras clave: poligamia, cristianismo, esposas.

1. INTRODUCTION

The civil law is universally acknowledged as the law that governs the relationships between individuals regardless of the nature of such a relationship. It governs the legal relationship between an individual and his community, and hence establishes the legal status that is created by these relationships. An individual's relationships in his community are either relevant to his personal status or to financial issues. This is why the civil law in most countries of the world governs both these relationships, the personal and the financial.

However, due to certain historical circumstances in Egypt, the relationships of personal status of citizens have not only become independent and separate from the civil law but have also set forth diverse legal principles of personal status due to the diverse religions, doctrines, and sects of the Egyptian community. Thus the legislator was not governed by uniform principles that apply to all those living on the Egyptian territory. But such relationships were governed by the personal statute of every individual according to his religion or sect.

The Egyptian legislator considered the law of the nationality the law of personal statute for foreigners. But the law that governs issues of personal relationships for Egyptians is the law of Personal statute,

as is provided for in Article 11 of Law No. 1 for 2000 which is the law of nationality that states: Court rulings shall be issued in accordance with the prevalent personal statute and the Wakfs. As regards issues that are not covered by the provisions of these laws, then the most preponderant opinion of the doctrine (Mazhab) of Imam Abi Hanifa shall apply. However, court rulings in disputes of personal status between non Muslim Egyptians of the same sect or doctrine that have judicial religious bodies organizing their personal status up to 31 December 1955 shall be issued according to the provisions of their own law of personal status set forth in their religion or faith or sect so long as these provisions are not in contradiction with public order. Thus the enforceable substantive laws in cases of personal status foremost of which is divorce are diverse.

Therefore, a judge may in one case apply Islamic Sharia Law and in others apply the provisions of laws of other sects, according to the religion of the litigants. As we stated earlier not all Egyptians are governed by uniform rules and principles when it comes to issues of personal status, unlike cases of real estate disputes where all Egyptians are governed by one law.

Thus the provisions of Islamic Sharia Law are applicable only to Egyptian Muslims in cases of disputes of personal status, while the religious principles of the different sects govern the disputes of personal status of non Muslim Egyptians if they are of the same sect or faith. It has been established in Islamic Sharia Law that a Muslim husband has the right to have several wives, while it has been also

established that none of the Christian sects or doctrines allow polygamy, for it is the faith of monogamy (one wife).

Whereas Islamic Sharia Law allows a Muslim husband to have several wives a question was raised as to whether a Christian husband may benefit from such provision and hence would have the right to have several wives in cases where the provisions of Christianity do not apply, and the provisions of Islamic Sharia Law would be the applicable provisions, on the grounds that the husband in such a case may be governed by the provisions of Islamic Sharia Law, or is the right of a husband to have several wives is the exclusive right of a Muslim husband?

The purpose of conducting this study is to guide our legislator before he takes his expected step of unifying the objective basis of the law of personal status, while carefully taking into consideration the faith of both the Muslims and the non Muslims, a matter that is neither difficult nor new to the Egyptian legislator.

It is not difficult as there are numerous issues relevant to marriage and its consequences that may be unified without difficulty, as they do not deal with the religious principles, but other issues relevant to religion then the principles would be different in each religion. These issues of differences are limited in number. Therefore, special principles would be laid down for each faith in accordance with the most preponderant principles of each religion regardless of the sectarian differences as such differences do not affect the substantial principles of the religion, but are only differences in the points of view in the interpretation of religious texts (MOHAMED, 1990).

This is also not new to the Egyptian legislator who had unified the jurisprudence of all these issues when they were scattered among different authorities. For in 1955 Law No. 462 was enacted putting an end to Islamic Sharia Courts and the Milli (Egyptian Christian) courts and referring all cases that were under consideration by these courts until 31 December 1955 to the national courts to proceed with their consideration in accordance with the Code of Procedures. Thus the ordinary courts were given full jurisdiction to consider disputes between all Egyptians alike, Muslims and Christians. The jurisdiction of the national ordinary courts had been recognized and established earlier with regard to foreigners, after the lapse of the transitional period following the cancellation of the mixed and consular courts. The jurisdiction of the national ordinary courts to consider all the different disputes including cases of Personal Status was recognized as a result of the enactment of Law No.462 for 1955 (ESSAM, 2001).

2. METHODOLOGY

We shall follow here a mixed methodology that combines the deep consideration of the background of the hypothesis of the research and the analytical approach. The research seeks to examine the background of the details that give rise to the question that the study poses and attempts to arrive at general principles that may govern those details. We shall also apply the analytical approach, as we are going to examine the general principles and rules, and then attempt to

apply them to different details. This process requires considering and examining the details of all points of view and provisions relevant to the topic of the research so that we may ultimately answer the question that it raises.

The opinions of the Egyptian jurists responding to this main question of the research were diverse. These opinions were actually divided into two main approaches, and we shall deal with each one separately as follows:

The first approach is that Polygamy of a Christian husband is possible: Supporters of the first approach believe that a Christian husband may have several wives so long as the provisions of his religion or sect or doctrine do not apply, and in which case the provisions of Islamic Sharia Law would be the applicable law, and as these provisions allow polygamy for a Muslim husband, thus it would also allow polygamy for a Christian husband. Supporters of this approach build it on the following arguments:

1- That the Jewish religion allows polygamy, though many attempts have been made lately to prohibit it. It is also known that the Torah, The Old Testament, is one of the basic sources of Christianity. It is also known that Christ said: Do not think that I have come to break the rules or refute the teachings of Prophets. I have come not to destroy but to complete. This clearly means that Christ approves everything that preceded him in the Torah, including polygamy.

2- That polygamy was known in the early eras of Christianity to the extent that Emperor Valentinian II issued a decree

allowing all the nationals of the empire to have more than one wife and no church or clergy opposed his decision.

3- That there is nothing in all the Bibles that overtly prohibits polygamy in spite of the fact that certain verses prohibit divorce except in cases of adultery, and that he who divorces his wife for a reason other than adultery and marries another he would be committing the sin of adultery, and that he who marries a divorcee would also be committing the sin of adultery as well. All these provisions do not include a definite prohibition of polygamy. All these provisions prohibit divorce for any reason other than adultery and marriage based on such a groundless divorce.

4- That the statement of St. Paul regarding the prohibition of polygamy in Christianity only applies to the clergymen. This means that it is allowed by other men.

And finally that the correct application of the second paragraph of Article 6 of Law No. 1955 states that a Christian husband may, in this case, have several wives. For it states; With regard to disputes relevant to the Personal Statute for Egyptian non-Muslims who are followers of the same sect or doctrine who have religious authorities governing the affairs of their Personal Status at the time of the issuing of this law, the court rulings shall be issued according to the provisions of their own religion. Whereas it is well understood that in accordance with the concept of contradiction with this paragraph, that should the terms and conditions for the application of the specific religion do not apply, then the court rulings shall be issued in accordance with the provisions of Article 28 of the regulations determining the order of the

religious courts. That is in accordance with the provisions of Islamic Sharia Law with no restriction that would limit its application to Muslims only and not to non-Muslims.

Thus if the court decides that it is the Islamic Sharia Law that is applicable and not the provisions of the religion of neither the husband or wife, then the religions of neither would be taken into consideration as to whether it allows polygamy or not, so long as it is the provisions of Islamic Sharia Law allowing polygamy that are applicable. Stating the contrary would mean that while the court believes that the principles of Islamic Sharia Law are applicable, it at the same time casts aside this belief and allows the application of the religion of either husband or wife. This is definitely a contradiction that cannot be legally acceptable.

The Second Approach is considered Defective for the Following Reasons:

1- That this approach is in contradiction with the statement of Christ himself as mentioned in the Bible of Mathew: Have you not read that at the beginning the Creator made them male and female, and also said: For this reason, a man will leave his father and mother and be united his wife, and the two will become one flesh, so they are no longer two but one flesh. Therefore, what God has joined together let no one separate.

Christian clergymen had concluded from this statement that Polygamy is prohibited in Christianity, on the basis that marriage has made the wife and husband one body, in which the husband is the head and the wife is the body. Therefore, it is not logical that a man, the

head, would have two or three or four bodies. Furthermore, a husband who has several wives cannot be attached to all of them, for in marriage a man leaves his father and mother and becomes attached to his wife.

2- That the absence of a clear cut provision in all the bibles prohibiting polygamy does not mean that Christianity allows it. Christ himself says that Christianity is not a religion of texts, but it is a spirit and a life. Thus in accordance with this spirit of Christianity all Orthodox, Catholic, and Protestant churches are agreed that polygamy is prohibited in Christianity.

3- That this approach is in contradiction with all the sects and doctrines of Christianity. For no Christian sect or doctrine allows polygamy. Thus all Christian Churches do not recognize divorce even if it has been acknowledged by the court and consider that the marriage bond is still valid so long as the causes of divorce according to these churches do not apply. Therefore, these Churches prohibit the marriage of both the wife and husband in such a divorce to remarry, and no church would conclude a second marriage for either the husband or wife. This situation is rather embarrassing for the Christian religious bodies.

4- That this approach is in contradiction with the established civil legislation in Christian countries such as Greece, Italy, Germany, France, the United Kingdom, and the United States and others.

Supporters of the second approach believe that a Christian husband may not have several wives. As the principle of monogamy is

basic in all the Christian doctrines. Prohibiting a Christian husband from has entered into a marriage governed by Islamic Sharia law, that allows polygamy means the invalidity of this second marriage that he may conclude in violation of such deprivation. This invalidity is absolute to the extent that either the husband or wife may insist on. In fact, the first wife may adhere to it. This approach was supported by the Court of Cassation as it ruled that the Prohibition of polygamy is a basic principle in all the sects and doctrines of Christianity. This means that second marriage, while the first marriage is still valid, shall be nil and void even if the husband and wife accept it. Both husband and wife or anyone concerned may challenge this second marriage.

Some of the jurists commented on this ruling of the Court of Cassation supporting its logic and stating: That the court has interpreted the existence of Article 99/7 of the regulations setting the order of Islamic Sharia Courts requiring a court judgment validating a divorce before it can actually enter into force as laying down the basis of the necessity of respecting the principles of Christianity and not applying the principles of Islamic Sharia Law that are in contradiction with the principles of the Christian faith. Article 99/7 as understood by the Court of Cassation is the application of the principle of definitely not applying the provisions of the Islamic Sharia Law with regard to the relationships of non- Muslim if they are in contradiction with the principles of Christianity. This understanding is not an exception, but a rule that should always be applied. Those same jurists refer to the situation covered by Article 99/7 as a true application of

the general principle established by the Court of Cassation, namely, the nonapplicability of the Islamic Sharia Law in cases where it is in contradiction with the principles of Christianity. The Court of Cassation had based its ruling on the following grounds:

1- That if Articles 6 and 7 of the Law No.462 for 1955 abolishing the Islamic religious courts as well as the Christian (Melli) courts and Article 280 of the Decree promulgating Law No,78 for 1931 regarding the regulations relevant to the order of the abolished Islamic Sharia religious courts mean that the provisions of Islamic Sharia Law being the public religion is the applicable law in disputes of Personal Statute between a Christian couple if they are followers of different doctrines or sects, then these positive principles of Public Law according to which a Christian husband would enjoy the same rights as a Muslim husband shall not be applicable if they are in contradiction with one of the basic principles of the Christian faith. For should, a Christian believer violates such a principle he would be a defector and a disloyal Christian, so long as the principles of the special religion are not in contradiction with public order in Egypt. Therefore, whereas the prohibition of polygamy is one of the basic principles of Christianity, the principles of positive law that are in contradiction with it shall not be applicable (Shabbir, Abbas, Aman, & Ali, 2019).

2- That whereas there is a unanimous belief in the spirit of the Bible, the idea of one flesh and the adherence to the principle of chastity in a Christian marriage, and whereas the concept of monogamy is one of the basic principles of Christianity since its

emergence, and whereas the Christian marriage is based on the principle of one wife for one husband, therefore a Christian husband may not have more than one wife at a time, nor may a Christian wife have two husbands at the same time. Thus polygamy is prohibited for the husband and the wife. This has been a well-established principle in Christianity that all its followers have adhered to for the past twenty centuries.

3- That all the above, as well as the explanatory note of Law No.642 for 1995 which states that: The jurisdiction of the applicable law shall be respected, so that there would be no violation of the right of a group of Egyptians whether Muslims or non Muslims in the application of the law of each group, are all definitive proof that the legislator intended to respect the laws and principles of all religions, and that violation of the basic principles relevant to the essence of a religion never crossed his mind, and he never intended it.

This point of view is supported by the fact that the legislator has maintained the last paragraph of Article 99 of the Regulations setting the order of Islamic Religious courts that necessitate a court ruling validating a divorce on the basis of a claim filed by one non Muslim party of a marriage against the other. This paragraph actually addresses the followers of the Christian faith who believe that a marriage bond can never be broken, reflects the respect of the legislator of the essence of the Christian faith with all its different doctrines, and hence avoid the embarrassment or trouble of the specialized courts.

4- That although polygamy is allowed in Islamic Sharia Law yet it has linked this right of a Muslim husband to have several wives with two restrictions, first that he can only four wives at the same time and must treat them all on an equal basis, and second that he could provide for them. Although these two restrictions are not obligatory or are prerequisites for polygamy, and that even in their absence a second or third or fourth marriage would still be valid, yet a Muslim husband's disrespect of these prerequisites makes him punishable by God. It is very obvious that this permission of polygamy is exclusively directed to Muslims and therefore it is impossible to apply this purely Muslim religious principle to those who do not believe in this faith that allows polygamy. Therefore, for a Christian husband to have more than one wife at the same time even if they are followers of different sects or doctrines is groundless. Thus as the challenged ruling is in contradiction with this point of view and has applied the positive provisions of the public law while they should not apply, and has consequently allowed polygamy for a Christian husband although this is in obvious contradiction with one of the basic principles of his Christian faith, therefore, this ruling is worthy of being challenged as it violates the law.

The stand of the Court of Cassation and the jurists supporting it were criticized for the following reasons-

1- That it is in contradiction with a court ruling that allows a Christian husband to divorce his wife by his unilateral will if the provisions of the laws of his religion or sect do not apply to his case, and hence the marital status is governed by Islamic Sharia Law,

although this is considered in contradiction with the essence of the Christian Faith.

2- That the Court of Cassation and the Jurists that support its ruling have laid down the above-mentioned principle on the basis of Article 99/7. In fact, the Court of Cassation and the jurists that support its rulings believe that this Article is an application of the above-mentioned provision of the Public Law. How then could it be claimed that Article 99/7 is an application of a general rule, although this general rule itself is based on Article 99/7.

3- That it is in contradiction with a basic logical rule That an exception cannot be taken as a rule that may be widely interpreted. The rulings of the Court of Cassation have established that Islamic Sharia Law is the applicable public law in issues of Personal Statute for Egyptian non Muslims of different religions or sects or doctrines. The rulings of this court are based on its belief that Islamic Sharia Law is the Public law, that governs the family relationships of Muslims and non Muslims alike. And that the provisions of other religions are to be applied as an exception under certain circumstances. Thus the principles of Islamic Sharia Law shall apply to non Muslims of different sects or doctrines as a rule and not as an exception. The provision of Article 99/7 requiring a court ruling for a divorce to enter into force is an exception of the general rule which is the application of Islamic Sharia Law.

4- That the Court of Cassation has used an excessive language in making the validation of a divorce by a court ruling equal to a divorce made by ta unilateral will, when it was defending the idea

of allowing a Christian husband to divorce his wife by his unilateral will, and at the same time prohibiting him from having several wives.

3. CONCLUSION

Having examined the Egyptian laws to determine to what extent a Christian husband may have several wives at the same time in case where the conditions set forth in the provisions of the laws of non Muslims do not apply, and hence the provisions of Islamic Sharia Law would be applicable, we found that jurisprudence is of two different opinions. The first believes that a Christian husband may have several wives at the same time. This opinion is justified in that as the principles of Islamic Sharia Law may be applied to non Muslims in disputes of Personal Statute in cases where the husband and wife are of different religions or sects or doctrines, then this principle should be applied in its entirety, and not to apply part of it and discard the other, for what is the criteria that would determine which part to apply and which part to discard. The Egyptian law provides for the application of Islamic Sharia Law in cases where the provisions of non Muslim religions do not apply.

The supporters of the second opinion believe that a Christian husband may not have more than one wife at the same time. In justification of this stand, they argue that there is no room for applying the positive provisions of the public law in disputes of personal statute, where a Christian husband may enjoy the same rights as a Muslim

husband if this right is in contradiction with one of the basic principles of the essence of the Christian faith. A Christian husband not abiding by this principle would be violating his own belief and diverging from it, so long as the provisions of his religion are not in contradiction with public order in Egypt. It must be taken into consideration in this respect that prohibition of polygamy is one of the basic principles of Christianity.

Thus any positive provision of the public law that is in contradiction with the provisions of the Christian faith shall not be applicable. We believe that the second opinion is preponderant as it is in conformity with the law. For so long as we have accepted a well-established concept that the principles of Islamic Sharia Law shall apply under the above-mentioned assumption then a Christian husband shall enjoy the same rights as a Muslim husband.

REFERENCES

- ABDULLAH, M. (2009). "The Family System for non-Muslims". **Dar Al Nahda Al Arabeya Publishing House**. Pp. 2010-P82. UK.
- AHAB HASSAN, I. (1957). "Explaining the Principles of the Personal Statute- First Edition". **No Publisher**. pp. 111-155. UK.
- AHMED, S. (1993). "The Personal Statute for Egyptian Non-Muslims". **Dar El Fir Arabi Paragraph**. pp. 188- 425. UAE.

EL SHARQAWI, J. (1969). "The Personal Statute for Egyptian non-Muslims and Foreigners". **Dar El Nahda El Arabeya Publishing House**. pp. 25-P.89. USA.

ESSAM, A. (2001). "Principles of Personal Statute for Non-Muslims". **EIHALaby Legal Publishing House**. pp. 201-269. UK.

FATEHI, A. (2000). "In Personal Statute for Egyptian non-Muslims". **Dar El Qalam Publishing House**. pp. 28-56. UK.

MOHAMED, N. (1990). "The Personal Statute for non-Muslims". **Al Gala'a Al Gadida Publishing House**. pp. 64-107. UK.

MOHSEN, A. (2003). "The Personal Statute for Egyptian Non-Muslims". **Maktabat Al Jala Al Jadida- Mansoura**. pp. 68-177. UAE.

NAGIDA, A. (1992). "Principles of the Personal Statute for non-Muslims". **Publications of the Police Academy of Dubai**. Pp. 67-68. UK.

RASIK, A. (1995). "In the Principles of Personal Statute for non-Muslims". **Publications of the Police Academy of Dubai**. Pp. 125-138. UAE.

Shabbir, M. S., Abbas, M., Aman, Q., & Ali, R. (2019). "Estrategias de reducción de la pobreza. Explorando el vínculo entre pobreza y corrupción de países menos desarrollados". **Dilemas Contemporáneos: Educación, Política y Valores**, Vol. 86, N° 2. Mexico.



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