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The Coup d' etat's Effect on the Lawful President according to Islamic Jurisprudence and Secular Law; A Comparative Study

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Abstract

The study aimed at investigating the effect of the coup d'etat on the presidency according to the Islamic and secular Laws. The study used the comparative 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 ordains that the coup d'etat on the lawful presidency is not permissible. In case of its occurrence, it has no effect on the lawful president if it is possible to him free. But, if it not possible to do so and the conspirators have appointed a president, his term is to be ended and a new candidate for presidency ought to be nominated. If the conspirators have not appointed a president, the captivated president is still in office and the vice president is entitled to do his jobs until he is released; **second**, the secular dictates that the coup d'etat has no effect on the lawful president whether he is in capture or not; **third**, the viewpoint of the Islamic Law excels the secular legislation since it is not acceptable to cling the fate of the nation to the fate of the captivated president. In the light of these findings, it is recommended to reconsider the constitutional acts relating the reasons that end the presidency term to go line in line with what the Islamic Law decides to put into practice the text of the Second Act of the 2014 Egyptian Constitution that stipulates that Islam is the main source of legislation.

Keywords: *coup d' etat, lawful president, Islam, secular law*

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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⁾:

It is observed that the common characteristic of most Islamic Countries is the seizure of political authority through coup d'etats ⁽⁵⁾. Once a coup d'etat takes place in a country, others follow in its footsteps. For example. Egypt has witnessed four coup d'etats (1881, 1952, 1954, 2013). Iraq has also witnessed many coup d'etats (1936, 1941, 1958, 1968, 1979). Syria has witnessed the greatest number of coup d'etats since 1949. Sudan has also witnessed three coup d'etats (1958, 1964, 1969) ⁽⁶⁾. Yemen has witnessed three coup d'etats as well (1949, 1959, 1962). Algeria has witnessed two (1962, 1965) and Libya has witnessed one (1969) ⁽⁷⁾. And this is not the end to coup d'etats ⁽⁸⁾. And the common characteristic of coup d'etats is occupying the presidency office by force. And due to the serious repercussions and profound consequences of coup d'etats, a question has been raised concerning the effect of coup d'etat on the lawful president from the perspective of the secular law in comparison with the Islamic legislation. This is what the current study is going to focus on in the following lines.

II. The Problem of the Study

The study asks if the lawful president's term ends as a result of the coup d'etat or not in the light of secular law compared to Islam. This problem can be identified in the following key question;

- What is the effect of the military coup d'etat on the lawful president's term in the light of the secular law in comparison with the Islamic legislation?

This key question is divided into three sub-questions as follows;

1- What is the effect of the military coup d'etat on the lawful president's term in the light of the Islamic legislation?

2- What is the effect of the military coup d'etat on the lawful president's term in the light of the secular law?

3- To what degree the secular law go line in line with the Islamic legislation concerning the effect of the military coup d'etat on the lawful president's term?

III. The Objectives of the Study

In the light of the pre-raised questions, the study key objective is to investigate **the effect of the military coup d'etat on the lawful president's term in the light of the secular law in comparison with the Islamic legislation.**

The key objective of the study is divided into three sub-aims as follows;

1- Investigating the effect of the military coup d'etat on the lawful president's term in the light of the Islamic legislation.

2- Investigating the effect of the military coup d'etat on the lawful president's term in the light of the secular law.

3- Investigating the degree to which the secular law goes line in line with the Islamic legislation concerning the effect of the military coup d'etat on the lawful president's term.

IV. The Importance of the Study

The study importance is shown in two aspects;

First: Theoretically;

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

Second: Practically;

The study draws the attention of Muslims, individuals and groups, to be aware of the viewpoints of Islam legislation and secular law on the effect of coup d'etat on the lawful president of the country.

V. The Methodology of the Study

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

VI. The Borders of the Study

The study main focal point is investigating the effect of the military coup d'etat on the lawful president from the perspective of the Egyptian secular law compared to the Islamic jurisprudence as expressed by the four Sunni Schools, i. e., Hanafi's, Maliki's, Shafie's and Hanbali's, as well as Ibn Hazm's school.

VII. The Definition of Study's Main Terms

1- The Definition of 'Al-Imama Al-Qahryia':

The term 'Al-Imama Al-Qahryia' is a compound noun that consists of two words; 'Al-Imama' and 'Al-Qahryia'. 'Al-Imama', in its dictionary definition means taking precedence ⁽⁹⁾. 'Al-Qahryia' in the dictionary definition means 'coercive' ⁽¹⁰⁾, i. e., by force ⁽¹¹⁾. In the light of this, 'Al-Imama Al-Qahryia' means occupying the presidential office by force whatever this force is.

2- The Definition of ' Military Coup d'etat':

' Military Coup d'etat' is a compound term which consists of two words; 'Military' and 'Coup d'etat'. 'Coup d'etat' in the dictionary definition means changing something upside down ⁽¹²⁾. ' Military' means armed force ⁽¹³⁾. ' Military Coup d'etat' is legally defined as "a political movement that uses physical force to occupy the presidency office unconstitutionally" ⁽¹⁴⁾. Despite its importance, this definition is not exclusive since 'the physical force' refers not only to the force of weapons but it does also refer to the force of demonstration. It is a matter of fact that the ' Military Coup d'etat' depends primarily on the force of weapons not the force of demos. Bearing this into consideration,

' Military Coup d'etat' can be re-defined as: the movement of armed force to seize power illegally and toppling down the lawful president.

In light of this definition, it is evident that 'Military Coup d'etat ' is a form of 'Al-Imama Al-Qahryia' because the latter's way to power may be through the force of weapons or the force of protest gatherings. If it is the force of weapons, this means that it is a 'Military Coup d'etat', If it is a force of gatherings, this means it is a revolution.

Owing to 'Military Coup d'etat' is the dominant way to 'Al-Imama Al-Qahryia', both terms will be used synonymously and interchangeably in the current study.

VIII. The Scheme of the Study

The study has been planned as follows;

- An introduction.
- Chapter I.
- Chapter II.
- Chapter III.
- A conclusion.
- A bibliography.

The coming lines will tackle these points in further detail.

Chapter I. The Effect of the Military Coup d'etat on the Lawful President's Term in the Light of the Islamic legislation

First of all, it is noteworthy to remind that Islam forbids disobedience to the just ruler who keeps to the teachings of Islam. This is evidenced by the Hadith narrated by Jonadah Ibn Jundub, may Allah please him, in which he said, "We visited Ubadah Ibn A-Samet when he was sick and said, 'May Allah heal you, May you report to us Hadith you have heard from the Prophet peace and blessings of Allah upon him'. Ubada said, ' When the Prophet peace and blessings of Allah upon him, called us to Islam and we gave him the pledge, he stipulated that ⁽¹⁵⁾ we have to pledge on listening and obedience in 'Manshetena' and 'Makrahena' ⁽¹⁶⁾, and, 'Osrina' and 'Usrina' ⁽¹⁷⁾, and 'Atharaten' on us ⁽¹⁸⁾, and not to disobey the ruler ⁽¹⁹⁾ unless there is Kufran Bawahan ⁽²⁰⁾ on which a burhan from Allah ⁽²¹⁾," ⁽²²⁾.

This Hadith means that Muslims are not permitted to disobey their rulers unless it is proved that those rulers show signs of disbelief" ⁽²³⁾. This Hadith is evidence that rulers are not to be toppled down unless there is a clear and certain proof that they become disbelievers ⁽²⁴⁾. Ibn Hajjar, may Allah have mercy upon him, says, "It is unanimously agreed that the ruler who becomes apostate must be thrown down. It is the duty of every Muslim to turn him over" ⁽²⁵⁾.

But, if the military coup d'etat occurs, does this mean that the lawful president's term is to be necessarily ended or not? The Sunni Scholars think that if the legal president is toppled down and captivated by repellants whether being Muslims or not, he has two cases;

First, if it is possible to set him free, his term shall not be ended and the nation must do its best to release him by all means from the hands of those who captivated him whether they are disbelievers or 'Bogha' ⁽²⁶⁾, i.e., Muslim mutineers. If he is released, he comes back to office.

Second, if it is not possible to set him free and the mutineers have appointed a ruler, he is not to be the president any more and the parliamentary members have to nominate the most suited person for presidency. If the captivated president is released after that, he has no right to come back to office. But in case that the mutineers have not appointed an Imam, the captivated president remains in office and they have to be obedient to him and he has to appoint a deputy to do the presidential jobs on his behalf until he is released. In case of being unable to appoint a deputy, the parliamentary members are to select someone to do his jobs on his behalf. If the captivated Imam is set free, he returns to his job.

Al-Mawardi, may Allah be merciful to him, says, "The lawful Imam loses his freedom by two things; first of which is Hajr ⁽²⁷⁾ and the second is captivity ... and as to captivity, in

case there is no hope to set the legal Imam free, his term is to be ended since he is not able to do his duty and the nation has the right to nominate another suitable candidate for presidency. But if it is possible to release him, his term shall not be ended and the nation has to exert all possible means to set him free. If it is Iyias ⁽²⁸⁾, and he is captivated by non-Muslims, his term shall end and the parliamentary members are to nominate another suitable person to be Imam ⁽²⁹⁾. But in case of being captivated by Muslim repellants and there is a possibility to release him, he is to continue to be the Imam. If it is not possible to release him and the mutineers have not appointed a ruler, he remains the president and they have to show obedience to him. And in this case, the Imam have to appoint a suitable person to do his presidential tasks on his behalf. If he is not able to do so, councilors have to nominate a person to do the presidential jobs on his behalf. In case that the mutineers have appointed a ruler and it is not possible to release the lawful Imam, the latter is not to be a president any more and his councilors have to nominate the most suited candidate to be an Imam. In case that the captivated Imam is released, he is not to be in office any longer since his term is ended ⁽³⁰⁾.

Al-Qadi Abu-Y'ala Al-Fara'a, may Allah be merciful to him, emphasizes what Imam Al-Mawardi – may Allah have mercy upon him, saying, "If the Imam has been captivated by an enemy from whom he is not able to release, his term is to be ended since he is not capable of doing the presidency jobs whether the enemy is a Muslim mutineer or a disbeliever. And the nation is to nominate a new Imam. Al-Harth, a student of Imam Ahmed Ibn Hanal. reported that Imam Ahmed, may Allah be merciful to him, hinted that the term of the Imam is to be ended in this case. According to Al-Harht's narration, When Imam Ahmed was asked with whom people ought to perform Al-Joma;a Congregational Prayer when a coup d'tat occurs and people oftetino ⁽³¹⁾, and some people are for the coup but others are against, he answered that people ought to pray with the victorious Imam ⁽³²⁾.

Al-Qadi Abu-Y'ala – may Allah have mercy on him, comments that, "the outward meaning of Imam Ahmed's words is that if the mutineer beats the Imam, the latter's term is to be ended as he said that Al-Joma;a Congregational Prayer ought to be prayed with the victorious Imam. This means that whosoever makes a victory, he is to be the Imam. However, in another narration, Imam Ahmed, may Allah be merciful to him, emphasized that that Al-Joma;a Congregational Prayer ought to be prayed with the legal Imam not the victorious one. Al-Marwezi, a student of Imam Ahmed, may Allah be merciful to him, reported that when Imam Ahmed was asked about the evidence of with whom Al-Joma;a Congregational Prayer ought to be prayed with in time of Fitnah ⁽³³⁾, he replied that Uthman Ibn Affan, may Allah please him, ordered people to establish Al-Joma;a Congregational Prayer. This indicates that Imam Ahmed, may Allah have mercy on him, believes that Uthman Ibn Affan's term is not to be ended because of the mutiny and he is still the legal Imam despite the rebellion" ⁽³⁴⁾.

Al- Qadi Abu-Y'ala, may Allah be merciful to him, adds that "if the Imam has been captivated, it is an obligation that the nation has to set him free. And he is still the Imam in case that it is possible to release him with fighting or with ransom. In case he has been captivated by disbelievers and it is not possible to set him free, his term is to be ended and the duty of the members of parliament to nominate a new Imam ... and if he has been released after that, he is no longer an Imam. But, if he has been released before that, i. e., before his release is unrealizable, he is still the Imam" ⁽³⁵⁾.

Al- Qadi Abu-Y'ala, may Allah be merciful to him, adds that "if the Imam has be captivated by Muslim rebels, and it is possible to save him, he is still the recognized Imam. But, in case it is not possible to save him and the rebels have not nominated an Imam, he is still the recognized Imam too and his assistants ought to do the presidential jobs on his behalf. In case the rebels have nominated an Imam. The captivated Imam is no

longer an Imam since hope of his release is given up and the members of parliament should nominate a new Imam" ⁽³⁶⁾.

In the light of what has been discussed earlier, it is evident that in case the rebels seize the authority and captivate the legal Imam and it is possible to save him, he is still the Imam and it is the nation's obligation to set him free. And it is not permissible for any Muslim to support the rebels. It is advisable to settle this crisis with dialogue and negotiation at first. If the rebels insist on disobedience, the nation has to fight them to surrender ⁽³⁷⁾. A-Shahrstani, may Allah be merciful to him, says, "Whosoever rebels against the legal Imam is called Kharijjian, i. e., a dissenter, whatever the time of this rebellion, i. e., whether it is in the time of the Companions of the Prophet, peace and blessings of Allah upon him, or afterwards" ⁽³⁸⁾.

But, if hope is given up concerning the release the Imam, there are two possibilities;

First, in case the rebels have nominated an Imam, the captivated Imam's term is to be ended and the members of parliament are to nominate a new Imam. If the captivated Imam has been released after that, he is no longer a recognized Imam.

Second, in case the rebels have not nominated an Imam, the captivated Imam is still the legal Imam and he has to nominate a deputy to do the presidential jobs on his behalf if possible. If he is unable to do so, the members of parliament have to nominate the most suitable person to do his jobs on his behalf. If he is released, he resumes his presidential office.

Chapter II. The Effect of the Military Coup d'etat on the Lawful President's Term in the Light of the Secular Law

The secular law forbids the coup d'etat on the legal president. Article (87) (1) of the Egyptian Penal Law and its amendments for the year (2003) prescribes that: "Whosoever seeks to overturn, make amendments to the Constitution, the country's republican system or the government by force shall receive life

or rigorous imprisonment. In case the crime has been committed by an armed gang, those who have formed the gang and those who have been in charge shall receive death sentence". In the light of this article, the penalty of the coup d'etat ranges between life, rigorous imprisonment or capital punishment. But, in case the coup d'etat takes place and seizes authority from the legal ruler, shall the latter's term be ended or not?

The Egyptian Law states five reasons by which the legal president is no longer in office as follows ⁽³⁹⁾;

First, the elapse of the term:

The president leaves office by the end of his term ⁽⁴⁰⁾. The Egyptian constitution states that the presidency term is only four years starting from the next day of the end of the former's president's term. Article (140) of the amended 2014 Egyptian constitution prescribes that: " The president of the republic is to be elected for four years starting from the next day of the end of the later president's term. It is not permissible for him to be elected for a second term. The processing of the new president's election starts before the end of the later president's term by at least one hundred and twenty days and the result of the election shall be announced by at least thirty days". Thus, in the light of this article, the president's term ends by spending four calendar years or by the time a new president is elected in case the latter's term ends at a time no president has been elected.

Second, the president's resignation:

The president's term ends by resignation. Article (158) of the 2014 amended Egyptian constitution dictates that: "The president of the republic has the right to resign and he is to hand his resignation letter to the parliament. If there is no parliament, he is to submit it the general board of the high constitutional Court". According to this article, the parliament is the authority that is empowered to receive the president's letter of resignation. In case the parliament is not held, the general board of the high constitutional Court is to take its place. The parliament or the general board of the high constitutional Court has the right to

refuse the president's resignation and to ask the president to dissuade it. If the president insists on resignation, the parliament or the general board of the high constitutional Court has to accept it.

Third, the president's death:

The president's term ends by death. Article (160) of the 2014 amended Egyptian constitution prescribes that: "In case the position of presidency is vacant because of resignation, death or permanent disability, the parliament announces that presidency office is vacant. If it is vacant for any other reason, it is not acceptable to announce that it is vacant unless at least two thirds of the parliament members agree on this announcement. The parliament is to inform the national body for elections about that. The head of the parliament shall do the presidential jobs temporarily. If there is no parliament, the general board of the high constitutional court is to replace it and the head of this court is to replace the head of the parliament" ⁽⁴¹⁾. So, in case that the presidential office is vacant, the head of the parliament is entitled to do the presidential jobs temporarily. If there is no parliament, the head of the high constitutional court is to do the presidential jobs until a new president is nominated. It is observed that, unlike the 1971 Egyptian constitution, the present constitution explicitly states that death one of the reasons that ends the president's term. The reason for not explicitly stating this in the 1971 Egyptian constitution may be due to the belief that death is too clear to be mentioned as a reason that ends the president's term ⁽⁴²⁾.

Fourth, the president's permanent disability:

The president's term ends by permanent disability that makes him unable to do his jobs. Article (60) of the 2014 amended Egyptian constitution states that: " In case the position of presidency is vacant because of resignation, death or permanent disability, the parliament announces that presidency office is vacant. If it is vacant for any other reason, it is not acceptable to announce that it is vacant unless at least two thirds of the

parliament members agree on this announcement. The parliament is to inform the national body for elections about that. The head of the parliament shall do the presidential jobs temporarily. If there is no parliament, the general board of the high constitutional court is to replace it and the head of this court is to replace the head of the parliament". The permanent disability means that the president is physically or mentally unable to practice his jobs efficiently. That's why, the permanent disability is one of the reasons by which the president's term ends ⁽⁴³⁾. This implies that the physical and mental fitness is stipulated for the president to continue in his office.

Fifth, removal from power:

The president's term ends by ousting from office ⁽⁴⁴⁾ for being convicted of high treason or any other crime, not observing a requirement or more of what presidency stipulates or for not being trusted. Articles (159), (160) and (161) of the 2014 amended Egyptian constitution have regulated these cases.

Article (159) prescribes that: "Impeaching the president of the republic of violating the constitution, high treason or any other crime shall be by means of a letter signed from the majority of the members of the parliament at least ⁽⁴⁵⁾, and the ruling of impeachment shall not be issued until it has been approved from two thirds of the parliament's members and after an investigation conducted by the attorney general or one of his deputies if he is off duty ⁽⁴⁶⁾. As soon as the ruling of impeachment is issued, the president shall be stopped from work temporarily until the case is decisively ruled. The president of the republic shall be tried before a special court presided by the head of the high judiciary council with the membership of the senior deputy of the head of the high constitutional court, the senior deputy of the head of the high administrative court and the two senior heads of the courts of appeal. The attorney general shall be the authority that direct the impeachment before this court. In case that any of the above mentioned is not available, he is to be replaced with who precedes him in

seniority. And the rulings of this court are decisive. The law is to regulate the procedures of investigation and trial. If the president of the republic is convicted, he shall be removed from power and other penalties shall be considered as well".

Article (160) of the same constitution dictates that: "In case the president is unable to do his jobs, the prime minister shall do his jobs on his behalf". Article (161) emphasized that the president shall be removed from power if trust is withdrawn. This article prescribes that: "The parliament is empowered to suggest withdrawing trust from the president of the republic and to run early presidential election by means of a caused letter signed from the majority of the parliament members at least and the approval of two thirds of the members. It is not permissible to submit this letter twice in the same term. As soon as the suggestion of trust withdrawing is being approved, it shall be put into effect, and early presidential election shall be run in a public referendum upon the request of the prime minister. If the majority of the members of parliament gives consent to the decision of trust withdrawal, the president shall be removed from power and the presidency office shall be announced vacant. Early presidential elections shall be run within sixty days starting from the date of announcing the result of the referendum. If people vote against the referendum, the parliament shall not be working as a result and the president of the republic is to call for parliamentary election within thirty days".

In the light of this article, there are four reasons for removing the president from power as follows ⁽⁴⁷⁾;

First; removal from power because of political responsibility:

The president shall be removed from office because of his administrative offences before the parliament as with the case of being convicted of high treason ⁽⁴⁸⁾, violation of the constitution or misusing his political authority.

Second; removal from power because of criminal responsibility:

The president shall be ousted in case he is convicted of doing Jinayah ⁽⁴⁹⁾ such as the felony of intentional unreasoned killing.

Third; removal from power because of the lack of some of presidency's requirements:

The president shall be removed from power since he breaks a condition or more that is required to continue in office. For instance, if the president voluntarily concedes his original nationality or it is withdrawn because he has committed a crime that makes him unworthy of holding this nationality ⁽⁵⁰⁾, he shall be expelled as a result.

Fourth, removal from power because of trust withdrawal:

The president of the republic shall be ousted if the parliament, by majority, votes for withdrawing trust from the president.

As a whole, the president' term legally ends by its elapse, resignation, death, permanent disability or by being removed from power because of being convicted of high treason or any other crime, breaking the presidency requirements or for withdrawing trust from him.

In the light of what is previously discussed, it is obvious that the coup d'etat is not a reason for ending the legal president's term. In case it occurs, the legal president is still the lawful ruler of the country even if the rebels seize authority. The coup d'etat is illegal for two reasons;

First, the president of the country has been unlawfully removed from power.

Second, presidency has been illegally taken, i.e., it has been seized by force not by public election as democracy goes.

Not only is the coup d'etat unlawful, but what ensues goes illegal as well. Moreover, those who plan for the coup d'etat and put it into practice, and those who directly or indirectly participate in it should go on trial and be punished for

overturning the political authority and encroaching on the country's constitution.

Chapter III. The Effect of the Military Coup d'etat on the Lawful President's Term in the Light of the Secular Law in Comparison with the Islamic Viewpoint

It is evident that according to the Islamic law the military coup d'etat has no effect on the presidency of the lawful Imam in case that it is possible to set him free from captivity. In this case, he is the still president and the mutineers should be obedient to him, and the new Imam they have nominated is not to be acknowledged. Besides, the nation ought to do its best to release him and it is not permissible for any one of the nation to support the mutineers.

But if it is not possible to save the captivated Imam and the rebels have nominated a new Imam, the Islamic jurisprudence believes that the captivated Imam loses his office and the parliament ought not to confess the Imam nominated by the dissenters, nominate a new Imam and fight them as much as they can.

In case that the dissenters have not nominated an Imam, the captivated Imam is still the legal one even it is not possible to release him. The captivated Imam ought to nominate a deputy, if possible, to do the presidential jobs on his behalf. If it is not possible, the parliament should do this on his behalf. If he is released, he resumes his office.

Unlike the Islamic point of view, the secular law sees that the captivated Imam is the still legal ruler of the country even if it is not possible to save him. The secular law goes that the legal president loses his job only by one of the reasons that the law defines in this concern, i.e., elapse of term, resignation, death, permanent disability or removal from office. This means that the coup d'etat is not a lawful reason for losing presidency and it is not to be confessed since it reaches power illegally.

In spite of this, what the Islamic law goes to is the rightest and the most plausible since it is neither reasonable nor acceptable to cling the nation's fate on the Imam's if it is not

possible to release him. The Islamic jurisprudence is much more realistic and flexible in comparison with the secular legal point of view because it customizes the ruling to fit each case. If it is possible to set the Imam free, the Islamic law accentuates that the captivated Imam is still the legal ruler and it orders the nation to spare no effort to set him free. It also emphasizes his presidency provided that the dissenters have not nominated an Imam even if it is not possible to be rescued. In addition, it not only gives him the authority to nominate a deputy to do his jobs on his behalf till he is saved, but it grants the nation the same authority if he is unable to do so.

But, in case that the dissenters have appointed an Imam, and it is not possible to save the captivated Imam, the Islamic law, unlike the secular law, opens the door before the nation to nominate a new Imam to observe the national interest. If the secular law point of view is adopted, this implies that the individual's interest, i.e. the Imam's, is given priority over the national good and this is not logical. What is sensible is to prioritize the national interest if it is not possible to meet both ends. And this what the Islamic law supports.

Conclusion

The study aimed at exploring the effect of the coup d'etat on the presidency according to the Islamic and secular Laws. It reached the following results:

First, Islam forbids coup d'etat and any form of disobedience to the lawful Imam and considers this a great sin and an act of aggression on the legal political authority and a dagger that breaks up the unity of the nation. In case the military coup d'etat occurs and it is possible to release the legal Imam, the Islamic jurisprudence does neither acknowledge the coup d'etat nor the Imam they nominate and it ordains the nation to rescue the captivated Imam and forbids obedience to the dissenters. But, in case that it is not possible to release the captivated Imam, and the rebels have nominated an Imam, the Islamic Jurisprudence sees that the captivated Imam's presidency is no longer held and the nation ought to nominate a new Imam if possible. But if the rebels have not appointed an Imam, the

Islamic jurisprudence believes that the captivated Imam's presidency is still held even if it is not possible to set him free. The captivated Imam ought to nominate a deputy, if he can, in order to have the presidency jobs been done on his behalf. But if he cannot, the nation is to do so until he is released.

Second, the secular law has a different opinion to that's of Islam. It sees that the coup d'etat has not any effect on the legal Imam's presidency. That's, the lawful Imam's presidency is going whether it is possible to set the captivated Imam's or not, or whether the rebels have nominated an Imam or not. The secular law believes that the legal Imam's term does end only by the elapse of the president's term, his resignation, his death, the disability to do presidential jobs or removal from power for being convicted of high treason or any other crime, or because of withdrawing trust. Therefore, according to the secular law, the coup d'etat is not acknowledged. The secular law defines one way to the political power. This way is the public election not force as it is the case with the coup d'etat.

Third, what the Islamic perspective supports relating the effect the coup d'etat has on the lawful Imam's presidency is that is acceptable as it is not reasonable to prioritize the Imam's interest at the expense of the public good as the secular law goes to. According to Islam, if the nation has the ability to save the captivated Imam, his presidency's term is to be going and the nation ought to exert efforts to save him. He is also the confessed Imam even if the nation is unable to set him free on condition that the rebels have not nominated an Imam. Too, he is entitled to nominate a deputy to do his jobs on his behalf. If he cannot, the nation is empowered to do so. But, in case that the dissenters have nominated an Imam and the nation is not capable of releasing him, the Islamic jurisprudence, unlike the secular law, sees that his term is to be ended for the public interest. It is not logical to prioritize the Imam's interest at the cost of the nation's.

Bearing these results in mind, the current study make the recommendation that the legal articles relating the ways by which the president's term ends ought to be reconsidered and reviewed in the light of what the Islamic law enhances in response to the constitutional articles that dictate that Islam is the only source of legislation.

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) It is noteworthy that the military coup d'etat is a form of Al-Imama Al-Qahriya, i.e., coercive presidency, as both are a seizure of authority by force. But Al-Imama Al-Qahriya is more inclusive. That's, it includes all forms of taking power by force not by a democratic way such as the armed revolts and peaceful revolution. However, the coup d'etat and Al-Imama Al-Qahriya can be used interchangeably since the latter usually occurs using military force.
- 6) Sudan has witnessed many more coup d'etats as those occur in (1971), (1975), (1989) and (2019).
- 7) Majdi Khaddori, *Al-Itjihat A-Siyasia fe Al-A'lam Al-Arabi*, edit. 1, p. 149.
- 8) Kayed Qar'osh, *Turuq Intiha' Wilayat Al-Hukkam fe A-Shari'a Al-Islamiyah wa A-Nuzum A-Tostoriyah*, edit. 1, p. 686.
- 9) Ibn Manzur, *Lisan Al-Arab*, edit. 3, vol. 12, p. 25.
- 10) Ibn Manzur, *Lisan Al-Arab*, edit. 3, vol. 5, p. 120.
- 11) Al-Faiuomi, *Al-Mesbah Al-Munir*, no edition, vol. 2, p. 518.
- 12) Ibn Manzur, *Lisan Al-Arab*, edit. 3, vol. 1, pp. 685-686.
- 13) Ibn Manzur, *Lisan Al-Arab*, edit. 3, vol.4, p. 568.
- 14) A-Jarf, To'aimah, *Thawrat 23 July wa Mabad'e A-Nizam A-Siyasi fe A-Jomhoria Al-Arabiya Al-Mutaheda*, edit.3, p. 49.
- 15) This means that what follows is obligatory. See: Ibn Hajjar, *Fath Al-Bari*, edit.1, vol. 13, pp. 10-11.

16) 'Manshetena' means 'at times when we can' and 'Makrahena' means 'at times when we cannot'. See: Ibn Hajjar, *Fath Al-Bari*, edit.1, vol. 13, pp. 10-11.

17) 'Osrina' means 'at times of austerity' and 'Usrina' means 'at times of welfare and prosperity'. See: Ibn Hajjar, *Fath Al-Bari*, edit.1, vol. 13, pp. 10-11.

18) 'Atharaten' on us means that they shall be obedient to the Imam even if he is unjust to them. See: Ibn Hajjar, *Fath Al-Bari*, edit.1, vol. 13, pp. 10-11.

19) 'not to disobey the ruler' means that 'not to fight for power'. See: Ibn Hajjar, *Fath Al-Bari*, edit.1, vol. 13, pp. 10-11.

20) 'Kufran Bawahan' means 'explicit disbelief'. See: Ibn Hajjar, *Fath Al-Bari*, edit.1, vol. 13, pp. 10-11.

21) 'a burhan from Allah' means 'clear-cut evidence'. This indicates that we are not to disobey the Imam unless there is strong evidence that he disbelieves. See: Ibn Hajjar, *Fath Al-Bari*, edit.1, vol. 13, pp. 10-11.

22) Narrated by Al-Bukhari and Muslim but in Al-Bukhari version. Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Seditions, Chapter of the Prophet, peace and blessings of Allah upon him, statement "You will find things that you disapprove", Hadith no. (7055) and (7056), p. 1748 and Book of Imamate, Chapter of How People Give Pledge of Allegiance to the Imam, Hadith no. (7199) and (7200), p. 1780 and Muslim, **Sahih Muslim**, no edition, Book of Imamate, Chapter of the Obligatory Obedience to the Imams in What is Good, Hadith no. (1836), p. 691.

23) A-Nawawi, **Sahih Muslim be-Sharh A-Nawawi**, edit. 4, vol. 6, p. 470.

24) Ibn Hajjar, *Fath Al-Bari*, edit.1, vol. 13, pp. 10-11.

25) Ibn Hajjar, *Fath Al-Bari*, edit.1, vol. 13, p. 123.

26) 'Bogha' are Muslim dissenters who are disobedient to the Imam on the belief that unjust Imams are not acknowledged. But this belief is wrong since Muslims are ordered by Hadith that they should not disobey the Imam even if he gets unjust. This does not mean that Muslims ought to be passive towards the Imam's injustice. Muslims are ordered to repeatedly give advice

to the Imam to avoid injustice. If the Imam does not stop doing injustice, Muslims are ordered to remove him from power if possible. For further detail, see: Ibn Al-Arabi, *Ahkam Al-Qur'an*, edit. 3, vol. 4, p. 153, Badr A-Din Ibn Jama'a, *Tahrir Al-Ahkam fe Tadbeer Ahl Al-Islam*, edit. 3, vol. 1, pp. 239-247 and Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, pp. 400 – 415.

27) 'Hajr' means preventing from taking an action. See: Al-Faiuomi, *Al-Mesbah Al-Munir*, no edition, vol. 1, p. 121.

28) 'Iyias' means despair. See: Al-Faiuomi, *Al-Mesbah Al-Munir*, no edition, vol. 1, p. 33.

29) Mawardi, *Al-Ahkam A-Sultaniyah*, no edition, vol. 1, p. 47.

30) Mawardi, *Al-Ahkam A-Sultaniyah*, no edition, vol. 1, p. 48.

31) 'People oftetino' means 'people's conditions go wrong'. See: Al-Faiuomi, *Al-Mesbah Al-Munir*, no edition, vol.2, p. 462.

32) Al-Farra', *Al-Ahkam A-Sultaniyah*, no edition, p. 22.

33) 'Fitnah' means to examine. See: Al-Faiuomi, *Al-Mesbah Al-Munir*, no edition, vol.2, p. 462.

34) Al-Farra', *Al-Ahkam A-Sultaniyah*, no edition, p. 22.

35) Al-Farra', *Al-Ahkam A-Sultaniyah*, no edition, pp. 22 – 23.

36) Al-Farra', *Al-Ahkam A-Sultaniyah*, no edition, p. 23.

37) The evidence that 'Bogha', i.e., Muslim dissenters ought to be fought is His saying, exalted be He, (If two believing tribes fight, you ought to settle their dispute. If a tribe does not listen to settlement, it should be fought until it stops fighting and agree to a settlement. You ought to settle this conflict on just terms. Allah likes those who are just) (Surat Al-Hujurat 'The Roomc', verse 9). Al-Qurtobi, may Allah be merciful to him, says, "This verse is evidence that 'Bogha', i.e., Muslim dissenters, who are disobedient to the legal Imam, have to be fought if they do not listen to the voice of reason. And if fought, neither their captives or wounded are killed, their women are slaved nor their properties are confiscated". See: Al-Qortoby, *Al-Gamie' Le-Ahkam Al-Qura'n*, edit. 2, p. 317 and p. 320.

38) Shahrstani, *Al-Melal wa A-Nihal*, no edition, p. 114.

39) Mustafa Fahmi, *A-Nizam A-Dostori Al-Misri*, edit. 1, p. 295, Mustafa Fahmi, *A-Nizam A-Dostori Al-Misri and Riqabat*

Dostoriyat Al-Qawaneen, edit.7, p. 419, Mustafa Fahmi, *A-Dostor Al-Misri*; *Fiqhan wa Qa'da'an*, edit.9, p. 419, Mohamed Abu-Zeid, *Mabad'e Al-Qanun A-Dostori*; *Dirasah Muqaranah*, no edition, p. 232 and Salah A-Din Fawzi, *Al-Muheet fe A-Nuzum A-Dostoriyah wa Al-Qanun A-Dostori*, no edition, pp. 899 – 900.

40) It is noteworthy that the talk about the reasons by which the presidency's term ends means the republican political systems. These reasons are not applicable to the royal political systems since these systems acknowledge no term for ruling. See: Kayed Qar'osh, *Turuq Intiha' Wilayat Al-Hukkam fe A-Shari'a Al-Islamiyah wa A-Nuzum A-Tostoriyah*, edit. 1, p. 351.

41) The Egyptian legislator distinguishes between two types of reasons by which the presidency's term ends; the temporary and the permanent reasons. Article (82) of the 1971 Egyptian constitution refers to the temporary reasons saying, "In case there is a temporary objection preventing the president of the republic from doing his jobs, his deputy is to do these jobs on his behalf". Article (84) of the same constitution refers to the permanent reason saying, "In case the presidency office is vacant ... the head of the parliament shall do presidency jobs temporarily". See: Suliman A-Tamawi, *A-Sulutat A-Thalath fe A-Dasateer Al-Arabiya Al-Mo'asera wa fe Al-Fekr A-Siyasi Al-Islami*; *Dirasah Muqaranah*, edit. 4, p. 245.

42) Kayed Qar'osh, *Turuq Intiha' Wilayat Al-Hukkam fe A-Shari'a Al-Islamiyah wa A-Nuzum A-Tostoriyah*, edit. 1, p. 348.

43) Hazim Sadiq, *Sultat Rai'ees A-Dawalah bayna A-Nizamein Al-Barlamani wa A-Reassi*, no edition, p. 575.

44) Article (26) of the 1937 Egyptian Penal Law defines 'ousting from office' as: "removing from power and depriving of power's privileges whether the sentenced is still at work at the time of ruling issuing or not. And he is to be deprived from the right to work as a civil servant for the period the ruling fixes. This period is not permissible to be more than six years or less than a year".

45) It is obvious that this article toughens the procedures of directing impeachment to the president of the republic compared

to article (85) of the 1971 Egyptian constitution and its 2007 amendments that prescribes that: "Directing impeachment of high treason or any felony to the president of the republic shall be through a suggestion submitted from at least one third of the parliament's members". But Article (159) of the 2014 amended Egyptian constitution stipulates that this impeachment ought to be through a signed letter from at least the majority of the parliament members. It is evident that stipulating approval of directing impeachment to the president from the majority of the parliament members instead of one third is unjustifiable for two reasons; **first**, there is no need for raising the percentage of approval of this impeachment from one third to majority. Needless to say that none of the Egyptian republican parliaments have dared to think to direct impeachment of any crime to the president though all of the Egyptian presidents from the 1952 coup d'etat to-date have committed crimes some of which amounts to high treason; **second**, the majority, if not all, of the parliament members are nominated from among those who are servants to those who are in power and they are not expected to just think of reviewing the decisions the president takes. That's why it is unpredictable that the majority of the parliament might direct impeachment to the presidents. Supposing some of the parliament members might direct this impeachment, they will be no more than one fourth. Therefore, stipulating one third – as in article (85) – is sufficient for not abusing the right of directing impeachment to the president in case it is likely to happen.

46) Kayed Qar'osh, *Turuq Intiha' Wilayat Al-Hukkam fe A-Shari'a Al-Islamiyah wa A-Nuzum A-Tostoriyah*, edit. 1, p 205 and p. 701.

47) Kayed Qar'osh, *Turuq Intiha' Wilayat Al-Hukkam fe A-Shari'a Al-Islamiyah wa A-Nuzum A-Tostoriyah*, edit. 1, p 205 and p. 701.

48) The crime of high treason means disloyalty to the republican system. Article (6) of Act (247) for the year 1956 relating the trial of the president of the republic refers to the actions that empowers to direct impeachment of high treason to

the republic system saying, "The actions that are considered disloyalty to the republican system are as follows; **first**, seeking to change the republican system into a kingdom; second, drawing no or little attention to the constitution, or amending its rulings without following the legal steps to do so". It is noteworthy that the jurists differ concerning the conception of the crime of high treason. Some jurists see that neither the constitution or the law accurately defines this crime nor is it referred to in the text of any crime mentioned in the penal law. They explain that this is because the meaning of this crime is changeable and that it includes all forms of job's discrepancy the president commits as well as his inattention to the constitution. Therefore, these jurists emphasizes that it is advisable to let the parliament, considered an authority of impeachment, define this crime. Then, the political court decides the suitable punishment for this crime and it should not be confined by the penalties mentioned in the penal law. Others think that the constitution and the supplementary laws have explicitly mentioned and defined this crime. According to those jurists, it is the law not the parliament that decides the meaning and the elements of this crime. However, what is most supported is the opinion that sees that it is the role of the parliament not the law to define this crime since its conception is changeable from society to society and from time to time. In spite of this, the constitutional convention confirms that this crime usually occurs if the president encroaches on the constitution, abuses his constitutional powers or makes decisions that do harm to the country's high interests. For further details, see: Mahmoud Banna, *A-Nuzum A-Siyasiah; Usus A-Tanzeem A-Siyasi wa Sowarehe*, edit. 1, p. 332, Zein Badr Farraj, *Khulw Mansib Raees A-Dawlah fe Al-Anzema A-Siyasiah Al-Mo'asera*, no edition, pp. 102-103, Motahhr Anfa', *Jiraem Al-Khiyanah Al-Uzma fe A-Tashree' Al-Yamani*; Dirasah Mukarana, no edition, p. 48, Mohamed Ghoneim, *Al-Masouliya A-Siyasia wa Al-Jina'eya Le-Raees A-Dawlah, Dirasah Muqaranah*, edit. 1, pp. 559-560 and Kayed Qar'osh, *Turuq Intiha' Wilayat Al-Hukkam*

fe A-Shari'a Al-Islamiyah wa A-Nuzum A-Tostoriyah, edit. 1, p. 362.

49) Jinayah, i.e., felony, is a crime that is punishable by death, life hard labor, interim hard labor or imprisonment. Article (10) of the Egyptian penal law states that: " Jinayahs, i.e., felonies, are the crimes that are punishable by death, life hard labor, interim hard labor or imprisonment".

50) The citizen's nationality is removed by two reasons;

First, if the citizen holds a foreign nationality.

Second, if the government degrades the nationality of the citizen as punishment. This degradation does not mean that the citizen necessarily holds another nationality. The citizen might become without a nationality as a result of this degradation.

The citizen might be degraded of his nationality if it is evidenced that he is disloyal to his country. For further details, refer to: Hisham Sadiq, *Al-Jinsyah wa Al-Mawten wa Markaz Al-Ajanib*, no edition, vol. 1, pp. 480-540, Abd Al-Ghaffour Khalil, *Al-Waseet fe Sharh Ahkam Al-Jinsyah; Dirasah Muqaranah bayna A-Shari'a Al-Islamiya wa Al-Qawaneen Al-Wad'iya*, no edition, pp. 289-343, Mohamed Fahmi, *Usul Al-Qanun A-Dawli Al-Khas*, edit. 2, pp. 211-227, Fouad Riyad, *Al-Waseet fe Al-Jinsyah*, no edition, pp. 232-265, Ahmed Salamah, *Al-Mabsut fe Sharh Nizam Al-Jinsayah*, edit. 1, pp. 665-799 and Hosam A-Din Nasif, *Nizam A-Jinsiyah fe Al-Qanun Al-Muqaran*, no edition, pp. 140-182.

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