



Research Paper

Assessing Validity of Conflict Resolution Rules of Islamic Countries in Personal Status: Comparative Study of Islamic Denominators

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Abstract

The conflict resolution rules of Islamic countries assign personal status disputes, wherein an alien element is involved, to the state of the relevant party, and according to them, foreign nationals residing in the territory of each of the Islamic countries are subject to the laws of their respective states in terms of issues related to personal status. Using descriptive-analytical method, this paper assesses the validity of the conflict resolution rules in personal status from the perspective of Islamic denominations' jurisprudence. In conclusion, from the point of view of Islamic jurisprudence based on the consensus of the jurists of Islamic denominations, citing several verses of the Qur'an about the necessity of judging according to what God has revealed, the only reliable source for judging and resolving conflicts between claims is just and right-oriented rulings of the Islamic Shari'a. Therefore, it is not permissible to refer the dispute of Muslim people who are subject to a non-Islamic country to a non-Islamic court, but Muslim disputes must be resolved according to Islamic rules, as referring to a non-Islamic ruling is equated with referring to Tāghout (falsehood). Consequently, it makes no sense to refer a Muslim's appeal to an Islamic court to a non-Muslim judge and, as a result, to non-Islamic rulings. This is a big flaw in the civil law of Islamic countries. According to Islam, the true boundary for ruling laws is the belief arising from Divine law. Therefore, people's religion should be taken into consideration in determining the competent court; For beyond concepts such as citizenship and residency, the religious belief of individuals determines the law governing their relations.

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Extended Abstract

1- Introduction

Conflict of laws rules concerning the presence of a foreign element assign disputes involving a foreign party to the jurisdiction of their home state, without regard to their religion. This means that judges should not issue rulings based on Islamic law in such disputes, even if both parties are Muslims who hold citizenship of a non-Islamic country, such as England. Article 11 of the Egyptian Civil Code and paragraph 1 of Article 12 of the Syrian Civil Code state: "The civil status of individuals and their capacity are governed by the law of the state of which they are citizens."

The main challenge addressed in this paper is whether referring a dispute between two Muslim individuals to the law of a non-Muslim country is permissible from an Islamic jurisprudential perspective. This issue also arises in dynamic conflicts, as the establishment of rights is evaluated solely based on the laws of the competent state to determine the effects of those rights. If two Muslims enter into a marriage contract that contradicts Islamic principles under the law of a country like England, conflict of laws rules generally respect that right. The question arises, "whether this approach aligns with the rulings and jurisprudence of Islamic sects."

2. Method

This article provides a jurisprudential analysis of conflict of laws rules in Islamic countries. The writing process involved consulting texts from Islamic jurisprudence and civil law sources from Islamic countries.

3. Results

The findings that can be extracted from the content presented in this article include:

1. The conflict of laws rules in Islamic countries state that if a non-foreign individual refers personal status matters to an Islamic court, the court must return them to the law of their home state; because in cases involving a foreign element, the law of the home state will prevail.
2. These conflict of laws rules do not take into account the religion or sect of either party involved in the dispute, and there is no mention of how being Muslim affects these legal provisions, either through exclusionary rulings or through specific applications.
3. Although in primary referrals, if the home state returns the dispute to an Islamic court, this issue may be resolved, the primary principle in resolving disputes is that it is impermissible to refer to a non-Islamic authority due to its non-divine origins.
4. From an Islamic jurisprudential perspective, supported by consensus among jurists from various sects and referencing multiple verses from the Qur'an emphasizing judgment according to what Allah has revealed (e.g., verses 44 and 45 from Surah Al-Mā'idah regarding the Torah: "... And whoever does not judge by what Allah has revealed — then it is those who are the disbelievers..." and verse 47 regarding the Gospel: "... And whoever does not judge by what Allah has revealed — then it is those who are the transgressors..."), referring disputes



involving Muslims who hold citizenship in a non-Islamic country to a non-Islamic court is impermissible; disputes among Muslims must be resolved according to Islamic law because referring to non-Islamic rulings constitutes referring to tyranny.

5. Laws enacted without regard for divine scriptures effectively disregard holy texts and invalidate divine laws. A fortunate person is one who remains indifferent to those who command against divine law and regulations. However, due to implications from Qur'anic verses, most fatwas from jurists regarding disputes between dhimmis (non-Muslims under Muslim rule) have been issued.

6. If an Islamic court is obliged to resolve disputes between two dhimmis according to Islamic law, it will be even more obliged to resolve disputes involving a Muslim with a dhimmi or between two Muslims according to Islamic rulings.

7. From an Islamic perspective, genuine boundaries for enforcing laws are rooted in beliefs derived from divine laws. Therefore, individuals' religions should be considered when determining competent courts; because beyond concepts such as citizenship and residence, individuals' religious beliefs dictate the governing law over their relationships.

8. The issue addressed in this research fundamentally differs from the principle of obligation; because the principle pertains to interactions between Muslims and

individuals from other religions, while this research concerns adjudication and resolution of disputes among Muslims by judges in Islamic courts. In other words, the key element for conflict resolution rules lies in foreignness and citizenship status, regardless of whether they are Muslim; however, the element for obligation pertains specifically to non-Muslim parties involved.

4. Conclusion

Judges handling personal status cases involving foreign elements must consider not only citizenship but also religion when resolving disputes among Muslims according to Islamic law.

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6. Authors' Contribution

Mohammad Taghi Moradi is the lead author of this article. Dr. Saeed Mahjoob and Sajjad Ranjbar Dafchahi are co-authors who provided scholarly guidance throughout the writing process.

7. Conflict of Interest

The authors declared no conflict of interest.

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