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The principle of equality and its effects on the marital relationship and its end within the framework of international law

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Abstract

Our research topic deals with "the principle of equality and its effects on the marital relationship and its end within the framework of international law", and we mean here international law in its broad sense, i.e., international status covenants, to which are added the international provisions that came under Islamic international legislation. The problematic issue of this issue stems from the lack of a specific concept of the principle of equality and its scope within the framework of international law, as well as what are the effects that this principle can impose or have - in its positive and Islamic international concept - on marital relationship and its end? In order to explain this specifically, we divided the research into an introduction and two requirements: First, to clarify the concept of the principle of equality within the scope of international law in a broad sense, and the second to define the effects of the principle of equality on the marital relationship and its end. The conclusion included an important number of results and recommendations in this regard, the most prominent of which are: The positive international law adopted the principle of equality in its absolute concept with everything related to marital relationship and its end, unlike international Islamic legislation, the principle of equality was adopted in its relative concept in the scope of marital relationship and its end. Both positive international law and international Islamic law have their justifications and arguments in support of this adoption.

Introduction

Throughout history, the position of women among peoples and nations has

varied. And since a woman is a human being, and regardless of the date of recognition of her rights, the rights that are established for man in general are covered by them, and therefore her rights are devoted to general rights, and others of her own by international covenants that mention the woman by name.

One of the most prominent principles that has become so popular in this era is what is known as the principle of equality, and it is not possible to find a comprehensive definition that prevents the concept of equality in legal jurisprudence, except by talking about the forms of equality and its manifestations.

Most of the international covenants concerned with human rights and freedoms were keen to perpetuate the right to equality in its absolute concept, and the repeated affirmation of it made this right a general principle within the scope of general international law as a whole, especially in the field of international human rights law, so

we decided to call it in the title of our research "The principle of equality, not the right of equality," in order to mention the legal description to which it is dedicated, and which is "the principle" and not "the right."

The scope of our research is determined in the intended meaning of the principle of equality and the effects this principle entails on the marital relationship at its stage of existence and its end within the scope of international law, and here we mean international law in its general concept or its broad scope, i.e. all positive international conventions, to which international rules or international provisions that came It has international Islamic legislation.

The research hypothesis: The wife has obtained equality in her absolute sense in the field of marital relationship and its end in light of the application of international law in its positive aspect, and in that regard she gained a degree of equality in her absolute concept in some cases and a portion of equality in its relative meaning in other cases within the scope of the application of international Islamic legislation.

The problem of research stems from the absence of a specific concept of the principle of equality and its scope within the framework of international law, as well as what are the effects that this principle can impose or have on the marital relationship? That is, does the marriage contract, with all the rights and obligations it holds between the spouses, take into account the principle of equality in its absolute concept within the framework of positive international law? Or is the concept of the principle of relative equality devoted to the marital relationship and its end according to the international Islamic legislation?

To address the important issues and problems that we discussed above, we will adopt the descriptive analytical approach and the comparative approach, to define and analyze international legal texts as brought by positive international covenants with reference or comparison with Islamic international covenants or provisions of international Islamic legislation, to indicate the points of convergence and the difference between them in the matter of adopting the absolute concept The principle of equality or the relative concept of this principle in the framework

of the marriage contract and its expiration.

To demonstrate the foregoing, and to provide remedies for this important topic within the broad scope of international law, we will divide this research into two requirements, as follows:

The first requirement: the concept of the principle of equality within the scope of international law in its broad sense

The second requirement: the effects of the principle of equality on the marital relationship and its end

The first requirement: the concept of the principle of equality within the scope of international law in its broad sense

We cannot find a comprehensive inhibiting definition of the principle of equality in legal jurisprudence except by talking about the types and forms of equality, as well as through the manifestations of this equality. However, it is possible, through looking at the articles and texts of the 1948 Universal Declaration of Human Rights, to define a concept of the principle of equality as "the right of everyone to enjoy all rights and freedoms, without distinction as to race, sex, language, religion, political opinion or Non-political, national, social, wealth or other status"¹.

From a briefing on the provisions of the 1948 Universal Declaration of Human Rights, we note that the latter was keen to emphasize, at the beginning of almost every article, the universality of these rights, by repeating the words: for every individual, i.e. human being, as well as the repetition of the word equality, and full equality)².

The United Nations Charter of 1945 indicated that the international community must believe in the political rights of man and in the rights of equality between the categories of men and women)³.

The truth is that the forms are not in the principle of equality but in the philosophy of equality between the provisions of international covenants that adopt Western philosophy, and international covenants that are based on the provisions of divine religions, as in the provisions of international Islamic legislation for example, so international covenants that adopt Western philosophy, unlike the provisions of international legislation The Islamic woman looks at equality between a woman and a man (the wife and the husband) absolutely, so that the wife does not have to provide her husband with a "cup of coffee" for example, because positive international law did not require her to serve anything except within narrow or rare limits, perhaps, she did not know Those are International status codes including courtship called husband and do the rest of the wife, as is the case in the Islamic international legislation)⁴.

The International Covenants on Human Rights also recommended that states parties are obligated to ensure equality in all civil, political, economic and social rights between men and women, and not to discriminate on the basis of sex or color)⁵.

We will deal with the following, adapting the principle of equality and clarifying its types and manifestations within the framework of international law in the broad sense:

First: adapting the principle of equality

If we follow the question of adapting the principle of equality in the field of international norms and bodies related to human rights, there is a set of international rules and texts devoted to achieving equality in the reality of people, we find that UNICEF, for example, recognizes equality and non-discrimination as essential in relation to Gender equality⁽⁶⁾

The World Bank has worked for and encouraged gender equality in developing countries through loans and grants, the exchange of knowledge, analytical work and policy dialogues for the purpose of focusing and supporting projects related to gender equality in the poorest countries⁽⁷⁾. In general, the World Bank seeks, through supporting these projects, to eliminate the remaining aspects of gender discrimination in the field of education, increase employment opportunities for women, as well as increase the ability of women to express their opinion and represent women, and to ensure that the usual forms of gender discrimination do not pass on to future generations⁽⁸⁾.

While UNESCO believes that gender equality is an essential input for the purpose of achieving human development⁽⁹⁾.

In the first paragraph of the preamble of the 1948 Universal Declaration of Human Rights, it was stated that "Since the recognition of the inherent dignity of all members of the human family and their equal and inalienable rights is the foundation of freedom, justice and peace in the world ...". The first article of the aforementioned declaration affirmed that "all people are born free and equal in dignity and rights, and they have endowed reason and conscience and they should treat each other with a spirit of brotherhood"⁽¹⁰⁾.

In the International Covenant on Civil and Political Rights of 1966, it was stated that "all people are equal before the courts ..."⁽¹¹⁾.

The International Covenant on Economic, Social and Cultural Rights of 1966 affirmed that everyone has equal opportunities for promotion, remuneration and vacations, and the right to enjoy just and favorable conditions of work⁽¹²⁾.

The United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 1963 also affirmed that everyone has the right to equality before the law and to equal justice⁽¹³⁾.

The 1967 United Nations Declaration on the Elimination of Discrimination against Women recognized the provision of civil and political rights, especially the right to nationality, marriage and choice of spouse, and the right to inherit⁽¹⁴⁾.

The provisions of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women: Enforce legal protection of women's rights on an equal basis with men⁽¹⁵⁾.

The parties to the International Convention on the Political Rights of Women of 1952 also affirmed the right of women to vote in all elections, and to hold public office⁽¹⁶⁾.

And if it is well to mention international law, with its positive side, for all these legal texts, which elevate the principle of equality, but what is taken on it is that it

has restricted the principle of equality on the material side, and its dependence on absolute equality, in addition to that the application of these texts prevails over the form More than reality (Mwangi & Nasieku, 2022; Nair & Wider, 2021).

Second: the types and manifestations of the principle of equality, for the principle of equality, within the framework of international law, types and manifestations, my agency:

1: Types of equality, among which are the following:

A: absolute and relative equality: it is noted that absolute equality does not accept natural difference, it is equal to all members of society, regardless of their personal abilities, and it is based on the idea that general legal rules do not recognize the special privileges of some members of society, while relative equality is accepting natural difference In capabilities, therefore, the legislator is the one who has the discretion in setting the conditions for determining legal positions so that it does not violate the principle of equality⁽¹⁷⁾.

It seems that this division, especially the relative equality, is in harmony with reason and logic, because a person who is tired and diligent cannot be equated with a lazy person relying on others, what is confirmed by the principle of equality is providing work opportunities for both together if they are on the same level of knowledge and knowledge.

B: Leverage equality and low equality: Leverage equality means raising the weak to the level of the strong and reconciling them so that young people from society become adults, while lower equality is lowering the strong to the level of the weak⁽¹⁸⁾.

This kind of equality is desirable, in our opinion, provided that it is carried out by legal and moral means and mechanisms (such as interdependence, cooperation, donations, and other means that bridge the gap between social classes) and not by suspicious means and narrow interests.

C: Legal equality and de facto equality: legal equality is the equality of all individuals before the law and the enjoyment of its protection, and equal public costs between individuals regardless of color, gender or any other consideration⁽¹⁹⁾. As for de facto equality, it is the guarantee of equal rights for the individual to achieve de facto equality⁽²⁰⁾.

In fact, legal equality is a formal principle, and the category of their ability can only be used by the wealthy group. As for the poor, nothing of that will be achieved for them, so the lesson, as we see, is in seeking through specific legal means to achieve actual equality as a final and basic goal.

2: The manifestations of the principle of equality. Among these are the following:

A: Equality before the law: This is achieved when the texts and provisions of laws are drafted in a way that addresses individuals in view of their circumstances and positions, and a settlement between them on the basis of that, and this is what is achieved from the generality and the abstraction of the legal rule⁽²¹⁾.

The truth is that this appearance cannot be effectively achieved on the ground unless the concept of justice and its general rule are launched, that is, everyone must adhere to the principle of justice, meaning that people are based on justice.

B: Equality before the judiciary: equality before the judiciary means that some individuals are not distinguished from others in litigation procedures or appear before the courts when considering discounts that relate to them, and that everyone is equal before the judiciary, and they are subject to one law and one judiciary⁽²²⁾.

What is wrong with the law in that is that the immunity enjoyed by heads of state and holders of the diplomatic corps is a disadvantage that affects the principle of equality before the law and the judiciary together, then equality before the law and the judiciary must be clear, comprehensive in text and reality, and there must be precision and in order to be reconciled between Opponents.

C: Equality in jobs: It means equality in front of public jobs and not distinguishing one group of citizens from another in holding public positions in the state if they meet the conditions required to occupy the job in a similar way⁽²³⁾.

Consequently, all racial or class considerations should be abolished, and public functions be considered as assignments and those responsible for them shall serve the people, as they are responsibilities and trusts.

D: Equal use of public utilities: This means that no individual is distinguished in the performance of public utilities services from others, whether in terms of performance of the service or the request for compensation, knowing that setting conditions for the use of utilities does not conflict with the principle of equality, this determination applies to everyone without Highlight⁽²⁴⁾.

Consequently, we find that it is not permissible to prejudice anyone else in the use of public utilities, for the latter is to serve the population of the state and its citizens, and therefore it is not permissible to give priority to anyone over others in requiring a public benefit unless there is a justification dictated by the rules of justice, which makes the principle of equality Exceptions in some of its applications converge with considerations of justice and interest.

E: Equality in duties and costs: especially bearing the tax burden, so that everyone is equal in the rate of payment of taxes by the amount of wealth he possesses, and that the escalation of the tax rate with the high percentage of wealth and exempting those with limited income from tax is not inconsistent with the principle of equality, provided that According to a general rule that applies to all of these cases without exception or discrimination⁽²⁵⁾.

Thus, when imposing taxes, a criterion must be adopted: the imposition of these taxes in order to fulfill the necessities and ensure the minimum standard of decent living for every citizen, so the state may impose taxes, taking into account the principles of justice and equality.

So one of the important parts that international covenants seek to achieve with regard to the legal protection of the family is equality between men and

women, because these covenants called for an end to all manifestations of discrimination against women, and considered that discrimination against them is a reality in the event that they are not equal with men, and this inequality or discrimination represents an affront to dignity Humanity for women, and the term discrimination against women means "any discrimination, exclusion or restriction that is made on the basis of sex and whose purpose is to undermine women's recognition of human rights and fundamental freedoms in the political, economic, social, cultural, civil and other areas, on the basis of Q This is a violation of the principle of equality between men and women "⁽²⁶⁾.

It is noted that the positive international charters contained positive aspects regarding women and the family in general. For example, the 1979 Convention on the Elimination of All Forms of Discrimination against Women included the affirmation that special measures taken by states parties to protect motherhood are not a matter of discriminatory measures ⁽²⁷⁾.

This means that all measures designed to protect motherhood are not considered prohibited discriminatory measures, since motherhood is a lofty goal that should be taken care of and efforts to preserve it ⁽²⁸⁾. Likewise, the woman will achieve several gains when she performs the function of motherhood and custody, when the woman sees that having children and being attached to the family will not lose her rights or constitute a fatigue for her, then this job will be accepted with passion and desire ⁽²⁹⁾.

International conventions have considered discrimination against women a real obstacle for women in their equal participation with men by building their country politically, socially, economically and culturally, because discrimination violates the human dignity of women, according to the viewpoint of positive international agreements, and it impedes the prosperity of society, which means that achieving full equality Between women and men, it is necessary to radically change the traditional role of men, and the role of women also in society and the family by eliminating any discriminatory differences⁽³⁰⁾. It is nice that there is a trend to eliminate differences and work to achieve social justice ⁽³¹⁾.

The second requirement: the effects of the principle of equality on the marital relationship and its end

One of the most important problems included in positive international law is the issue of marital relationship and its effects, in terms of absolute equality between men and women in rights and duties before, during and after the marriage contract, unlike the international Islamic legislation that takes relative equality in this regard.

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women indicated explicitly to full equality between husband and wife regarding the enjoyment of nationality with her children ⁽³²⁾. And this agreement was considered that one of its most important provisions is equality of rights and duties between men and women during and after the dissolution of the marriage contract, as article 16 of this agreement indicated the necessity of taking

appropriate measures by all the states parties in all matters related to marriage and family relations with a view to equality in rights and duties between men and women⁽³³⁾.

If the application of the principle of equality in the marital relationship and its termination apply in some cases in the international Islamic legislation, however, it disappears or diminishes in other cases within the framework of the marital relationship and its termination, as in cases of stewardship, polygamy in marriage, and inheritance, unlike the positive international law that called for equality Divorced between husband and wife. On the issue of stewardship, international Islamic legislation has devoted the distinction between husband and wife in the matter of stewardship, as it conferred privileges on the husband and gave him authority over the wife⁽³⁴⁾. Whereas, positive international law makes guardianship for husband and wife together, because this law is absolutely equal between the sexes.

International Islamic legislation also granted the husband (the man) the right to polygamy in marriage, while a woman must marry one man⁽³⁵⁾, and positive international law prohibited polygamy in marriage in the sense that the latter contradicts the principle of absolute equality that this law calls for⁽³⁶⁾.

With regard to inheritance, the international Islamic legislation came by virtue of the difference in the husband's share from the wife's share in the inheritance, so the wife from her deceased husband has half the share of the husband from the legacy of his deceased wife⁽³⁷⁾. This difference does not execute the existence of some special cases of inheritance⁽³⁸⁾.

As for positive international law, it called for equality in everything, that is, equality at all in the inheritance of the wife and husband in the inheritance, without regard for its origin in the difference in sex between them.

International conferences have always taken up the issue of the equality of the husband with the wife in the right of inheritance and considering inequality as a matter of discrimination against women⁽³⁹⁾.

The husband is the head of the family, and he is the guardian of it, and he is charged with spending on all its members. As for the wife, it is not costly even to spend on herself. It was fair that the husband's fortune from the inheritance was greater than the wife's luck, so that he would have what helps him to do these material costs that he obligated It has international Islamic legislation, so if the heirs only had what they inherited from their dead, the wife's money would always be more than the money of the husbands⁽⁴⁰⁾.

Consequently, the marriage contract, according to the aforementioned Article 16, will arrange equal rights and duties on both parties of the contract (husband and wife), so proving any right of one of them means proving it to the other, and this is not beneficial in launching it, because the rights that the husband meets have obligations on the wife and vice versa⁽⁴¹⁾.

Likewise, the annulment of the marriage contract arranges equal rights for the husband and wife in the perspective of positive international law, and this is not correct to divorce him, as it is acceptable, for example, to request separation, as

in the case of discord, conflict, faults and diseases, however there are cases that a man has the right to separate, such as divorce by will. Individuals for the purposes, purposes and controls established by the provisions of international Islamic legislation for Islamic countries. There are also cases where the wife is entitled to request separation without the husband, as in separation for insolvency to pay dowry or alimony ⁽⁴²⁾.

In the same field, Article 15, paragraph 4, of the 1979 Convention on the Elimination of All Forms of Discrimination against Women states that women must be equal to men in legislation regarding freedom of movement of persons, freedom to choose their residence, residence and movement in general ⁽⁴³⁾.

The text of the aforementioned paragraph 4 will lead to the dispersal of the family entity rather than maintaining its cohesion, because allowing the wife to choose a place of her own to live away from her husband will lead to the loss and dispersal of the children, and granting this right to the wife, i.e. choosing a place to live alone, is inconsistent with the purposes of the marriage contract. The goals of family formation, caring for children and ensuring a stable and dignified life for them.

Finally, positive international agreements included advanced positive judgment, by stipulating that women be given full rights to choose their husbands ⁽⁴⁴⁾.

According to Islamic international legislation, a woman has her full civil character after marriage, so she does not lose her name and eligibility to contract, nor her right to own property, so she maintains her name and family name, and all her civil rights, her eligibility to assume obligations, and conducting various contracts of sale and purchase, mortgage, gift, will, etc. In addition, it reserves the right to own property independently of others. In Islam, the wife has his full civil personality, her private wealth, and her financial protection, and in this she is independent of her husband's personality, wealth, and purity ⁽⁴⁵⁾.

In the stage of marriage, the woman has been exempted from the burdens of living and the husband is obligated to support her, without costing any burden in the family's expenses, no matter how wealthy. And upon him the expenses of his children, the wages of their custody and breastfeeding, and the expenses of raising them after that ⁽⁴⁶⁾.

Conclusion

From our overall research on the topic "The principle of equality and its effects on the marital relationship and its end in the framework of international law," we reached a set of results and recommendations, in this regard, as follows:

First: the results

1. The principle of equality is guaranteed in the sentence in international law, the status and international Islamic legislation, however, the mentioned principle is based, in positive international law, on absolute equality, unlike

international Islamic legislation that is based on relative equality, for example, between international Islamic legislation, for example, That there is no absolute equality between husband and wife, there are differences and provisions that distinguish between husband and wife in terms of equality, for example in topics: marriage and polygamy, inheritance, stewardship, and others.

2. Everyone seeks to promote the principle of equality in order to contribute to human civilization, but the West must take advantage of the legal stock found in the international Islamic legislation, and in return, we must view positive international law as a common heritage with a realistic mind and not to exaggerate the ruling on positive international law regarding The subject of our research is, it is not fair to criticize this law based on some special texts and limited agreements that may be only bilateral and not general, so we must always take into account the noble goals that the international community aims to achieve, on the basis that they are jurisprudence Evil is wrong and right, and it is mostly positive, it should not be critically criticized and we follow the specific and specific in terms of its difference with Islamic international legislation, because positive international law came with new provisions regulating all life, he had not previously had any legislation, heavenly or positive, if it was contrary to international Islamic legislation Or it is deficient in controlling some rights. It is a human legislation in the end that the Islamic peoples and countries should take from it what serves them and leave what is in contradiction with the international Islamic legislation without reducing them and considering them a package of errors and legislative disasters that are free of anything positive.
3. What is raised about the wife's inheritance and its inequality with the husband's inheritance, we say that the husband's share of the inheritance was made on the basis of the husband's financial burdens in family life, compared to the wife's burdens, and this matter does not mean reducing or distinguishing between the husband and the wife, or diminishing her rights, The wife's inheritance in Islamic law is not intended for himself. Rather, it is arranged according to the marriage system in it. It is like the process of subtraction after the collection process to produce the correct result from both processes. , Lest it lead to widowhood and the loss of And c father, it was so much for her financial type of reserve to the ravages of age.
4. What is raised about a man's right to polygamy to four, for his ruling on the ruling on marriage from the first may take the rule of duty and may be forbidden, and scholars of international Islamic legislation have decided that limiting to one may be the first if the chastity took place, and polygamy may be the first And if the chastity took place in one, such as calling for multiple conditions and specific reasons, including that the person is able to multiple and has a close interruption, he misses the age of marriage, and he wants

to be relieved by joining him as a wife, or that there is an orphan without a breadwinner and wants charity for her to marry her to join him in his house, and to achieve the chastity Alimony, or if war takes place, men are reaped, and there are more women A, it is first for those who are able to polygamy to marry in order to provide for the largest possible number of women who have lost their husbands or not yet married ... and so on.

5. Finally, at the level of international law, cultural difference and distinction, or what is known as cultural and religious specificity of some peoples, were not taken into consideration, especially in issues of equality in marriage, freedom of marriage and separation, where some abuses were marked on some sacred values of some peoples, which Reduce the effectiveness and effectiveness of international law in the mentioned matter.

Second: Recommendations

1. The efforts of the United Nations organization to conclude a comprehensive agreement binding on all states that includes all or most aspects of the effects of the principle of equality on the marital relationship and its end, including including a text defining the scope or extent of equality between the wife and wife, while working as much as possible so that the provisions of this international agreement are compatible with General provisions in international Islamic legislation.
2. A concerted effort among the countries of the Islamic world to stand united in a united way against the challenges facing the marital relationship from the perspective of the principle of equality in its scope or absolute concept.
3. Considering coercion to marry a domestic violence that requires intervention and condemnation.
4. In order for equality before the judiciary to be clear and comprehensive, both in text and in reality, and in order to ensure the necessity of a settlement between the litigants, we recommend the conclusion of an international agreement within the framework of the United Nations organization titled: The Obligation of Settlement between the Courts before the Courts.

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42. Mustafa Bin Al-Adawi, Provisions of Divorce in Islamic Sharia, I, Ibn Taymiyyah Library, Cairo, 1988, p. 11 and beyond.

43. Paragraph 4 of Article 15 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women states: "States Parties shall grant men and women the same rights with regard to legislation relating to the movement of persons and the freedom to choose their domicile and residence."

44. For example, as a model for international conventions on the full right of a wife to choose her husband, Article 16, paragraph 1, of the 1979 Convention on the Elimination of All Forms of Discrimination against Women states: "1. States Parties shall take all appropriate measures to eliminate discrimination against women in All matters relating to marriage and family relations, in particular, guarantee, on the basis of equality between men and women: (a) the same right to enter into marriage, (b) the same right to freely choose one's spouse, and to enter into marriage only with their free and full consent...".

However, the Islamic countries made reservations to item (b) of paragraph 1 of this article. A man must be a Muslim in order for him to marry a Muslim woman.

Dr.. Musa Abdel Hafeez Al-Qunaidi, Estimating the Legal Protection of the Family in the Light of International Agreements, a research published in the Business Book of the International Arbitrator Conference: Family Disintegration, Tripoli - Lebanon, 21-22/3/2018, p. 5.

45. Ali Abdel Wahed Al-Wafi, Women in Islam, 2nd Edition, Dar NahdetMisr for Printing and Publishing, Cairo, 1979, p. 11.

46. Dr.. Sameh Abdul Salam Muhammad, the position of the Islamic Sharia position on the issue of equality between men and women

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