



Exclusively for Adherents of “Divinely Revealed” Religions?!

**How did the preparatory work for the Egyptian constitutions
discuss issues of freedom of religion and belief?**



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The term “divinely revealed religions” is used in the constitution, laws, and some judicial rulings to restrict the religious freedoms of Egyptian citizens; specifically, those who do not adhere to Islam, Christianity, or Judaism, which are the only “divinely revealed religions” recognized in Egypt, according to the interpretations of the executive and judicial branches of government. Followers of these three religions enjoy certain religious rights and freedoms which are not afforded to adherents of any other belief.

Despite this, Egyptian constitutions prior to 2012 did not use the term “divinely revealed religions” nor was the concept constitutionally linked to the limits of religious freedoms in the country. The pre-2012 constitutions had been satisfied with guaranteeing freedom of belief and the freedom to practice religious rituals in a manner that does not conflict with public order and public morals. This sparked debate over the limits of religious freedoms allowed under these texts. Judges referred to the preparatory work for the 1923 constitution to deduce their interpretation of these articles, which supports the restriction of religious freedoms to the followers of “divinely revealed religions” alone. Judicial rulings continue to be based on the reasoning found in the preparatory work for the 1923 constitution, even in the presence of an explicit constitutional text that supports the opinion of limiting religious freedoms to the adherents of “divinely revealed religions” since 2012.

This paper seeks to reconsider the preparatory work for the Egyptian constitutions of 1923, 2012, and 2014, which witnessed important debates about the limits of religious freedom in Egypt. The aim is to discuss the most prominent arguments used in judicial rulings in the context of lawsuits that demand raising the ceiling of religious freedoms in Egypt and guaranteeing some religious freedoms to those who do not follow the three “divinely revealed religions”. The paper also aims to identify the different orientations in discussions among elites, the different positions of these elites across the Egyptian political spectrum in relation to freedom of religion and belief, and how these positions were reflected during the preliminary deliberations of drafting constitutions.

I: The 1923 Constitution

1- The Preparatory Work for the 1923 Constitution as a Reference for Judicial Rulings

The first of these rulings is the ruling of the Supreme Constitutional Court issued in 1975 in Case No. 7 of judicial year 2 when the court refused an appeal submitted by a group of Baha'is against a 1961 decision to dissolve official Baha'i assemblies. The last of these rulings was the ruling of the Administrative Court of Alexandria in December 2021, refusing to compel the Alexandria Governorate to allocate lands to be used as cemeteries for those who do not belong to one of the three Abrahamic religions to be used for the benefit of citizens with the symbol (-) in the religion field of their official paperwork. Between these two rulings, there have been many court decisions that repeated the same reasons and arguments provided in the ruling of the Supreme Constitutional Court in 1975.

These legal reasonings all refer to the preparatory discussions pertaining to Articles 12 and 13 of the first Egyptian constitution, which was promulgated in 1923. The claim is that these preliminary discussions concluded that the state's guarantee of the freedom to practice religious rites, as stated in constitutional articles since 1923 and up to the constitution of 1971 and its amendments, is restricted to followers of the three "divinely revealed religions."

The constitutional court ruling specifies that:

"it becomes evident from the investigation of the texts related to freedom of belief in successive Egyptian constitutions, that it originally began with Articles 12 and 13 of the 1923 Constitution; the former stipulated that freedom of belief is absolute, and the latter stipulated that the state is to protect the freedom to perform rituals of religions and beliefs in accordance with the customs observed in the Egyptian territories, provided that this does not violate public order and does not contradict morality. According to the preparatory work for this constitution, the two above-mentioned articles were originally one single article, which had been proposed by the committee establishing the general principles of the constitution, guided by a draft of the constitution prepared by Lord Curzon, the Foreign Minister of England, which was occupying Egypt at the time. The article stated as follows:

“Freedom of religious belief is absolute. All residents of Egypt have the right to perform the rituals of any denomination, religion, or belief in complete freedom, publicly or privately, as long as these rituals do not contradict public order or public morals.”

This text provoked strong opposition from the members of the constitution drafting committee because it is general and absolute, addressing the rites of all religions, whereas the religions whose rites must be protected are the recognized religions, which are the three divinely revealed religions: Islam, Christianity, and Judaism. Opinion settled on limiting the text to the rituals of these religions only, and not allowing the addition of any religion. The text was formulated in this way, fragmented between the aforementioned 12th and 13th articles. The former article contained the text on freedom of belief, and the latter contained the text on the freedom to practice rituals of religions and beliefs (...). These two texts remained in place until the 1923 constitution was abolished and replaced by the 1956 constitution, which was the first constitution of the revolution and in which the two aforementioned texts were combined into a single text contained in Article 43, which went as follows: “Freedom of belief is absolute, and the state protects the freedom to perform rituals of religions and beliefs in accordance with established customs, provided that this does not violate public order or contradict morals.” This provision was later repeated in the 1958 constitution (in Article 43), then in the 1964 Constitution (in Article 34), and was finally established in Article 46 of the existing constitution as: “the state guarantees freedom of belief and the freedom to practice religious rites”.

2- The Inadequacy of Relying on the Preparatory Work for the 1923 Constitution as a Basis for Limiting Religious Freedoms to “divinely revealed religions”

When referring to the text which documents the discussions that took place in the meetings of the preparatory work for the 1923 constitution regarding the articles on freedom of belief and freedom to practice religious rites, it appears that some members of the committees discussing constitutional articles - especially among

the Christian and Muslim clergy - were indeed keen on preserving the status quo and excluding new or “potential” religions and sects. However, there was no mention in these discussions of any direct effect of the application of the criterion of “divinely revealed”, or any other doctrinal/theological classification of religions, on the legal status of their followers. This is in contradiction to the interpretation of these discussions provided in the abovementioned ruling, which claimed that there was agreement within the constitution drafting committee to limit the freedom to the practice of rituals to the three “divinely revealed” religions. Thus, we do not find any direct reference to the criterion of “divinely revealed” as interpreted by the Constitutional Court in 1975.

A closer look shows that when discussing Article 12 of the 1923 Constitution, the committee for establishing general principles for the constitution had suggested that its text should be “freedom of religious belief is absolute; all residents of Egypt have the right to perform freely, publicly or not, the rites of any denomination, religion or belief as long as these rites do not contradict public order or public morals.” Sheikh Muhammad Bakhit Al-Mutai’i¹ requested that the article be amended because “in its present state it is not sanctioned by any religion, and because it leads to chaos and disorder.” Al-Mutai’i added: “I request that the text be limited to the recognized religions, whether they are divinely revealed or not, so that it is not permitted to create a new religion, such as someone claiming, for example, that he is the Mahdi and bringing a new religion.”²

Archbishop Youannis, the Bishop of Alexandria, echoed this opinion, saying: “The gentleman’s suggestion is useful, and we have recent evidence to support it. Sergi-

1- Muhammad Bakhit Al-Mutai’i was one of the more politically active scholars of Al-Azhar in his time, and he was the Grand Mufti of Egypt between 1914 and 1920, when he was dismissed from this position. He continued his political activity until the king appointed him as a member of the committee preparing the 1923 constitution. See: Jacob Skovgaard--Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dar Al-Ifta, Al-Sayed Omar* (Translator), Kuwait, Dar Nuhoodh for Research and Publishing, first edition, 2012, pp. 179-188.

2- *The Constitution: Comments on its Articles Including the Preparatory Work and Parliamentary Debates*, Part I, Cairo, Shura Council, 1940; p. 87.

us,³ who is known to you, left his religion, and began to create a new religion, and asked the government to authorize him to do so, but it refused, and this is evidence that it is not possible to authorize religions other than those recognized already.” For his part, Abdelaziz Fahmy Beik stated that “According to the present text, if the practicing of religious rituals causes public disorder, they can be prohibited, and if they do not cause public disorder, then there is no means to prohibit them.”⁴

During the discussion of splitting the article into two separate articles-so that Article 12 stipulates that “freedom of belief is absolute,” and Article 13 specifies that “all residents of Egypt have the right to perform freely, publicly and privately the rituals of any denomination, religion or belief as long as these rituals do not contradict public order or public morals”- Sheikh Bakhit asked for the removal of this paragraph “because it violates all religions that exist now in Egypt, and leads them not just to chaos, but to erasure.” This objection resulted in amending the text of the article to state that “the state protects the freedom to practice the rituals of religions and beliefs in accordance with the customs observed in the Egyptian territories, provided that this practice does not violate morals and does not contradict public order.”⁵

Therefore, these discussions concluded that the criteria determining religious freedoms in the country were official recognition, the customs observed in the Egyptian territories, and public order and morals. These criteria are of a legal and adminis-

3- Bishop Sergius was known as “the preacher of the 1919 revolution” as his presence in the revolution and its events was prominent, emphasizing the unity between Muslims and Copts in the face of the occupation, as he was constantly in revolution against and disagreement with church leaders due to financial and administrative problems, which resulted in his repeated exclusion and isolation or his “disrobing” by the Church, which was met by Sergius with rebellion and persistence in the practice of his priesthood without reference to the Church. See: On the occasion of the centenary of the 1919 Revolution, the grandson of Father Sergius, the preacher of the revolution, in a special conversation, Islamic Movements Gateway, March 6, 2014, <http://www.islamist-movements.com/show.aspx?id=13342>

Archbishop Youannis was generally hostile to all voices calling for financial, administrative and educational reform within the Coptic Church, and was a leader of the conservative Salafi movement among the Christian community opposing the reformers, among whom was Sergius, whose personal battles with Youannis continued through the press and within the church for many years. Youannis was very keen to confront the attempts of European missionaries to infiltrate the Coptic community in Egypt, seeking to tighten the church’s control over the beliefs of the Coptic community. For more, see: Tariq al-Bishri, Muslims and Copts in the context of the national community, Cairo, The Egyptian General Book Organization, 1980, pp. 438-441.

4- The Constitution: Comments on its Articles Including the Preparatory Work and Parliamentary Debates, Part I, Cairo, Shura Council, 1940; p. 87.

5- Ibid, p. 88

trative nature, although they too are the subject of legal and academic debate and controversy. Still, none of them is a static criterion that cannot be modernized and renewed like the criterion of “divinely revealed”. Customs can be changed and updated, just as the Egyptian state can recognize any religious group and grant it legal status. Similarly, public order and public morals are standards that can be discussed and their borders can be expanded or narrowed according to different historical, social, and political contexts. Thus, it becomes clear that the criterion of “divinely revealed” with its doctrinal nature, was excluded from the discussion as a criterion for determining the religious practices permitted in the country.

In a related context, the preparatory work for the same constitution witnessed a discussion of what was meant by the term “religion” in the constitutional texts. These ponderings included some important interventions that confirm the analysis of the aforementioned discussions, that the criterion of “divinely revealed” is not one of the determinants of legal recognition of religions in Egypt.

Specifically, when discussing Article (13) of the draft constitution - submitted by committee establishing the constitutional principles - which stipulated that “An Egyptian national may not invoke the provisions of his religion to get rid of the public duties imposed on him as a patriot or as a soldier”⁶ Al-Azhar objected through an official letter from Sheikh Muhammad Abu Al-Fadl, Sheikh of Al-Azhar, to the head of the constitution drafting committee, in which he expressed the objection of Azhari scholars to the text because it reflected disregard for religion⁷. As the Sheikh of Al-Azhar explained to some committee members, the article appeared to state that there is a contradiction between national duties and religious duties, and that

6- This article was added later, and the text of the third article of the final text of the constitution was considered sufficient; The article states that: “Egyptians are equal before the law. They all enjoy the same civil and political rights, and owe the same public duties, without discrimination between them in this on the grounds of origin, language or religion. To them alone are entrusted public functions, whether civil or military...” Ibid, pp. 42 and 43.

7- The text of the speech: “We are honored to tell your excellency that a group of scholars came to us and said that Article (13) of the draft constitution which says “An Egyptian national may not invoke the provisions of his religion to get rid of the public duties imposed on him as a patriot or as a soldier”; they said that the article on the whole, is religiously inappropriate, even though the religion of the Egyptian government is Islam. I think, Your Excellency, the Pasha, that if this text was amended in a manner that defies the illusion that religion is not taken into account, it would be best, and your Excellency has the highest opinion...” See Muhammad Al-Sharif, “On the Sidelines of the Constitution,” Cairo, Al-Etimad Press, 1938, p. 35.

in the event of this contradiction occurring, the priority is to be given to national duties over religious duties⁸.

Discussing Al-Azhar’s objection, Abdel-Aziz Fahmy Bey said, “If our country was limited to Muslims and Islam was the only religion in it, we would defer to Islam in all our national affairs. However, our nation includes Muslims, Christians, and Jews; Buddhists, Brahmins and non-religious people could also be Egyptian; and all of them are equal in the eyes of the law because we have decided to uphold the freedom of religion. Care will be taken that all governmental affairs and regulations conform as much as possible to the official religion, which is Islam. If we do this and observe the religion of the majority in government regulations, there will inevitably be a conflict between these regulations and the laws of other religions. Is it correct for someone who adheres to one of these other religions to argue that one of these regulations contradicts the laws of their religion? And if they make such a protest, do we accept it?”

Two of the members of the committee - Ali Maher Bey and al-Sayyid Abdul Hamid Al-Bakri - wanted the article to be amended to state that “an Egyptian citizen cannot invoke any reason or excuse to be exempt from public duties, etc.”. They justified this by stating that “some sects do not profess a religion, but rather a philosophical belief, and there is nothing in the text that prevents them from invoking this belief.” Sheikh Bakhit Al-Mutai’i objected to that amendment, saying: “What is meant by religion is not only the divinely revealed religions but everything that a person professes to believe.” The proposal of Ali Maher and Abdul Hamid Al-Bakri was voted on and rejected by the majority of the committee.⁹

We conclude from this reading of the primary sources that the Egyptian courts’ reliance on the preparatory work of the 1923 constitution in their rulings limiting the state’s guarantee of religious freedom to the followers of “divinely revealed religions” is not supported by evidence. It is clear in the documented texts of the preparatory work that the committee clearly excluded the criterion of “divinely revealed religions” when discussing articles related to religious freedoms and rights, and emphasized instead other more flexible criteria as explained above.

8- Ibid.

9- Ibid, p. 35-38

II. The Constitutional Adoption of the Term “divinely revealed religions” in the 2012 and the 2014 Constitutions

In the aftermath of the January 25 revolution of 2011 and under the administration of former President Mohamed Morsi of the Muslim Brotherhood, a new Egyptian constitution was written in 2012 by the Constituent Assembly elected by the People's Assembly and the Shura Council. Parties representing the currents of political Islam held the majority in the two chambers of Parliament, and then in the Committee of the Hundred representing the Constituent Assembly charged with drafting the constitution. The process of writing the constitution went through many crises and sparked controversy and sharp political polarization, in light of accusations against Islamic political parties of asserting control over the constitution and failing to achieve the necessary degree of consensus between various political forces. The matter came to a head with the withdrawal of most representatives of secular political groups from the Constituent Assembly, including Amr Moussa, Wahid Abdel Mageed, Fouad Badrawi, Gaber Nassar, Muhammad Anwar Esmat El-Sadat, Manal El-Tibi, and others, in addition to the withdrawal of the representatives of all Egyptian churches. The advisory committee appointed by former President Mohamed Morsi, which included public figures such as Ahmed Kamal Abul-Magd, Heba Raouf Ezzat, Mohamed Al-Saeed Idris, and others also withdrew, accusing the drafting committee of ignoring their proposals. Nevertheless, the draft constitution was passed to a popular vote ¹⁰.

In the preparatory discussions for this constitution, the members of the Committee on Rights and Freedoms who were representing religious institutions and political Islamic groups, including the representative of the Orthodox Church, Edward Ghaleb - who was also the rapporteur of the committee- and the representative of Al-Azhar, Chancellor Mohamed Abdel Salam, all preferred to include the term “divinely revealed religions” and to limit the freedom to practice rituals to the followers of these religions only. This was in addition to the statement by leaders of the Freedom and Justice Party saying that they did not recognize the Baha'i faith as a religion and that the new constitution would not allow its adherents to freely

10- “Those who remain and those who withdrew from the Egyptian Constitutional drafting committee,” Al Arabiya, November 21, 2012

practice their rituals. On the other hand, only two members of the committee objected to the text, namely the representative of the Catholic Church, Bishop Youhanna Qalta, and the human rights activist Manal Al-Tibi¹¹. In an interview with EIPR researchers, Manal Al-Tibi confirmed that Bishop Qalta and herself were the only two voices opposing the text within the Committee on Rights and Freedoms. Al-Tibi expressed bewilderment at the position of Priest Edward Ghaleb, who was in favor of including the term “divinely revealed religions,” and she expressed that he was “seeking to meet the demands of the Brotherhood in a suspicious manner,” according to her statement¹².

Those insisting on the constitutional provision which would restrict the freedom to practice rituals, as well as the right to adjudicate by religious laws in personal status matters, to followers of divinely revealed religions offered different justifications. Edward Ghaleb believed that the time had not yet come for absolute religious pluralism in Egypt; especially since this could result in the appearance of Satanists demanding to document their official identification papers according to their religion; he also thought that Bahais must practice their rituals in homes and away from the public sphere, until God authorizes otherwise, as he put it¹³. On his part, Chancellor Muhammad Abd Al-Salam, the representative of Al-Azhar, justified his position by saying that “the Baha’i faith is not a divinely revealed religion.” Ali Abdel-Fattah, a leader in the Freedom and Justice Party, argued that the Baha’i faith is not a religion at all, and that it is not among the officially recognized religions in Egypt, which are the three divinely revealed religions, stressing that “there is no intention to recognize in the new constitution any right of Baha’is or adherents of other non-divinely revealed beliefs to adjudicate according to their laws in personal status matters.... the only thing that may be allowed is to practice those doctrines out of the public

11- The Rights Committee of the Constituent Assembly finishes discussing half of the articles on freedoms”, Al-Shorouk, July 4, 2012. https://www.shorouknews.com/news/view.aspx?cdate=04072012&id=7ea7d343-6b03-47b4-8377-b325cbb714ad&fb_comment_id=10150921294646317_22824925

12- An interview with Ms. Manal Al-Tibi, member of the Constituent Assembly of the 2012 Constitution, via text, February 9 2020

13- “Chancellor Edward Ghaleb, Rapporteur of the Freedoms Committee of the Constituent Assembly: I agree with specifying “divinely revealed religions” in the constitution,” Al-Yom al-Sabea, September 6, 2012. <https://bit.ly/3Izww1k>

sphere and without any attempt to proselytize”¹⁴. It is unfortunate that the minutes available for the plenary sessions of the Constituent Assembly of the 2012 Constitution do not clearly show the weight of and the circumstances surrounding the discussions around including the term “divinely revealed religions” and limiting religious freedoms to their followers for the first time in an Egyptian constitution. This was compounded by the fact that the committee documenting the preparatory work was content with documenting only the discussions of the plenary sessions, without documenting the discussions of the sub-committees¹⁵, despite the fact that the more detailed and serious discussions of the various articles took place in the sub-committees, unlike the plenary sessions, in which the discussion lacked order and elaboration or detailed debate of each individual article.

Despite this, sporadic comments were documented in the minutes of the plenary sessions on the subject of divinely revealed religions and the limits of religious freedom. Reference to these comments can clarify the different directions the discussions took and the fault lines of disagreement on this issue among the members of the constituent assembly. Among these comments was an intervention by Muhammad al-Fiqi, in which he said:

“The last comment regarding blasphemy, the article that we want to put regarding blasphemy is that if we confirm, God willing, in the second article of the constitution, that Islamic Sharia is the main source of laws, this virtually includes criminalization of any defamation of religions, because our Islamic Sharia includes among its main rules not blaspheming any divinely revealed religions, I demand this matter...”¹⁶

In another intervention, Shaaban Abdel Alim, a representative of the Salafi Al-Nour Party, criticizing some of the committee members’ statements in the media stated that: “I see that the length of time has led to some people devoting themselves to television interviews, and sometimes speaking falsehood about the constituent

14- “Baha’is are victims across political eras,” Al-Akhbar, 20 July 2012. <https://al-akhbar.com/Arab/72805>

15- This was confirmed by human rights activist Manal Al-Tibi, a member of the Constituent Assembly of the Constitution, in her interview with the researcher via text, February 9, 2020

16- Work Documentation Committee, Constituent Assembly for Drafting the Constitution, thirteenth meeting, p.387.

assembly when addressing the issue of freedoms. Instead of showing people the beauty present in all the articles, they follow whoever is in front of them on the channel, agreeing that “Freedom of belief is available to every human.” That is true, then comes the issue of places of worship: “the state guarantees places of worship for divinely revealed religions,” and they say: what about Indians and Hindus and Satanists? They want to turn the country into chaos and turn beauty into the opposite of beauty.”¹⁷

In one of his intercessions, Dr. Daoud Al-Baz called on the Committee on Rights and Freedoms to add an article decreeing that “observing public order and respecting public morals and the provisions of divinely revealed laws is a duty on the residents of the nation”¹⁸

The term “divinely revealed religions” was also repeatedly mentioned in the preparatory discussions, but in a different context from that of the text of articles and freedom of belief. This term came up during discussions about Islamic Sharia, its laws and principles, and what it means to apply them according to the prominent Sharia scholars present in the committee, especially Hassan Al-Shafi’i and Nasr Farid Wasil. Some of these interventions aimed at emphasizing the great extent of doctrinal and legislative similarity between, Christianity and Islam, and the cooperation that this entails between the followers of the two religions, since they are both divinely revealed religions. Dr. Nasr Farid Wasel elaborated that, “The meaning of the word “to get to know each other” is not simply about acquaintance, but rather cooperation. So that there is cooperation among you in all knowledges and sciences: political, economic, agricultural and scientific. Here God states a directive, as if we are commanded to cooperate, get acquainted and deal with each other at a global level... And this is not the message of Islam that was brought by our Prophet Muhammad, peace and blessings be upon him, alone, rather all the divinely revealed messages that were received by the prophets share the same content, but the debate is only in the legislative field according to what is appropriate to the time and place... There is no conflict between the divinely revealed messages in the areas of

17- Ibid., p. 382

18- Work Documentation Committee, Constituent Assembly for Drafting the Constitution, eleventh meeting, p. 295

metaphysics and morality. There is no *ijtihad* in creeds and no *ijtihad* in the arena of morals, rather *ijtihad* is used in practical rulings”¹⁹.

On the 18th of September 2012, Dr. Hassan Al-Shafei, representing Al-Azhar in the constituent assembly for drafting the constitution, presented a research paper he had authored during his opening statement at the thirteenth meeting of the plenary meetings of the constituent assembly. The paper dealt with the nature of Islamic Sharia and how to benefit from it in discussions of the constitution. In his introduction, Al-Shafei emphasized that the rights of non-Muslim Egyptians are safeguarded and respected. He elaborated that «this is due to the Egyptian historical experience, which our shared cultural heritage, although at the same time it represents a religious obligation for Muslims.» He also added: “..and it is known to you that the scholars of Sharia see agreement among all of the divinely revealed laws in much of their substance, especially in regards to doctrine, ethics and the foundations of virtues, and they agree in some *scientific [practical] rulings, but not in all rulings.”²⁰.

At the seventy-fourth meeting, Article 43 was presented in its final formulation, which states that “The freedom of belief is inviolable. The state guarantees the freedom to practice religious rites and to establish places of worship for the divinely revealed religions, as regulated by law.” The article was passed with a majority vote, with the objection of only five members²¹. The minutes of the plenary sessions did not record the identity of the members who voted against this article or their reasons²².

19- Ibid., thirteenth meeting, p. 381

20- Ibid., p. 344-345

21- Ibid., 74th meeting, p. 1447

22- We also looked at the television broadcast video of the session in which this article was voted on, and we verified that there was no discussion about it, and that the five objecting members did not express their justification for their objection, neither was the identity of the objecting members clear in the video. The video can be viewed via the following link: <https://www.youtube.com/watch?v=XrUZelENnVc>

III: Including the Term “Divinely Revealed Religions” in the 2014 Constitution Despite Objections

The controversy caused by the articles related to freedom of belief, and particularly the use of the term “divinely revealed religions” in these articles, was noticeable during the preparatory discussions for the 2014 Constitution. Many members expressed their objection to restricting recognition of this right to followers of divinely revealed religions. Others expressed their rejection of this position in principle, while agreeing to it by virtue of the circumstances of the de facto situation, and to avoid creating conflict. On the other hand, some parties representing religious institutions, especially Al-Azhar, as well as some voices representing conservative forces vehemently defended the term “divinely revealed religions” and argued for the necessity of stipulating it and limiting official recognition to the followers of these religions in the Egyptian constitution.

1- Controversy over Article Three of the Constitution in the deliberations of the Committee of Ten Experts

Before reviewing the details of the discussions of the Committee of the 50 that drafted the 2014 constitution, it is worth noting some important discussions that took place in the Committee of Ten Experts - a committee established by a republican decision by interim President Adly Mansour in 2013 to propose the major amendments to the 2012 constitution before submitting them to the Committee of the 50 entrusted with preparing the final draft of the constitution. The second meeting of this committee witnessed controversy over Article 3 of the constitution, which stipulates that the principles of the religious laws of Christian and Jewish Egyptians are the main source of legislation regarding their personal status affairs and the selection of their spiritual leaders. Counselor Mohamed Mahboub suggested amending the article to state that “the principles of the religious laws of Christian and other [non-Muslim] Egyptians are the main source of legislation regarding their personal status affairs and the selection of their spiritual leaders.” He argued that “if there are other situations for others, their own laws must be the source of their legislations, so that there is consistency with the article which addresses free-

dom of belief and the freedom to practice religious rituals, thus including a broader understanding of religious freedom...”²³.

Counselor Muhammad al-Agati, Vice-President of the State Council, responded by saying, “Of course, the recognized religions are Islam, Christianity, and Judaism, and of course there are other sects. The Baha’is and the Shiites came to us once wanting to put their religion in their national ID, and we refused because they are not religions.” al-Agati elaborated that the wording of this article had been proposed by the Church during the drafting of the 2012 constitution and that its purpose was to reassure Christians even though this was already practiced without being constitutionally mandated. Al-Agati requested that the article be kept as is, without amendment in the new constitution²⁴.

Counselor Ali Awad, responding to the amendment proposal, commented that: “I am afraid that it will cause confusion among people that this right would include Buddhists and such things. And so please, if the majority has settled that the text remains as it is, we will satisfy all parties...” At the end of the discussion, the members voted unanimously in favor of keeping the text as it was²⁵.

2- Controversy Over the Term “Divinely Revealed Religions” in the deliberations of the Committee of the Fifty

At the convening of the thirteenth meeting of the Committee of the Fifty on October 27, 2013, the members were presented with Article No. 47 as formulated in the report of the Committee of the Ten Experts. The article stated that “the freedom of belief is absolute and the state guarantees the right to practice religious rites (and the law organizes establishing places of worship) (for followers of heavenly religions)”²⁶. Below, we review the most prominent threads of the controversy which took place in this committee

23- The second meeting of the Committee of Ten Experts to prepare the final draft of the constitutional amendments, July 23, 2013. P. 23-24

24- Ibid., p. 25-26

25- Ibid., p. 26-27

26- Thirteenth Meeting of the Committee of the Fifty to prepare the final draft of the constitutional amendments, October 27, 2013. P. 55

regarding freedom of belief and its relationship to the term “divinely revealed religions.”

A. Distinguishing Between Inner Faith and Public Practice of Rites

The majority of the committee members agreed that the article should state that freedom of belief is absolute; however, some objections to this text were expressed during the discussion. Dr. Muhammad Ibrahim Mansour, a representative of the Nour Party, objected to unqualified freedom of belief and suggested instead that the article stipulate, as was the case in the 2012 constitution, that freedom of belief is safeguarded or guaranteed, as long as it does not violate the foundations of the state and society. Professor Rifaat Dagher, representing the Farmers’ Syndicate, also objected, saying: “Do we understand belief in its true meaning, pertaining to the divinely revealed religions? How do we know that other religions and beliefs such as the Baha’i faith and others will not start appearing? I request that we specify that “freedom of belief in divinely revealed religions is absolute” so that absolute freedom is limited to the divinely revealed religions...”²⁷.

Nevertheless, the discussions resulted in consensus among the majority of the members in recognizing the distinction between, on the one hand, belief, which is a matter of the heart, concerning the relationship between a believer and his God, and, on the other hand, practicing the rites related to this belief, especially in the public sphere. Belief alone is the domain of absolute freedom, while the public practice of rituals is subject to restrictions and relative freedom²⁸.

Chancellor Mohamed Abdel Salam and Dr. Abdullah Al-Naggar, representing Al-Azhar in the committee, explained that the practice of religious rites is a field of absolute freedom as long as it takes place in the private sphere, and as long as the person practices their rites and rituals at home. They added that limiting the practice of rites and establishing places of worship to followers of the divinely revealed religions relates to practices in the public sphere only and not in the private sphere. Abd al-Salam added that he had no objection to adding a text such as “Individuals may practice religious rites in their private lives”²⁹.

27- Ibid., p.70

28- Ibid., p.55-100

29- Ibid., p. 76, p.83

B. Practicing Rites of Non-Divinely Revealed Religions in Tourist Areas

On the other hand, Al-Azhar representative, Chancellor Mohamed Abdel Salam, declared his categorical rejection of the principle of allowing foreign tourists to practice rites of non-divinely revealed religions at archaeological sites which fall within the scope of the public domain. That was occasioned by the comment of Mussad Abu Fajr, who was representing the Bedouins of Sinai in the committee, referring to foreign tourists who were sun worshipers - as he described them - who come to Saint Catherine's Monastery to practice their religious rites there³⁰. It is worth mentioning in this regard that some tourist groups come to Egypt to visit Pharaonic monuments and practice certain rituals at these sites. Egyptian newspapers report the attempts and efforts of Egyptian tourism police and antiquities inspectors to prevent these ritual practices: antiquities inspectors accompany tourist groups on private visits, and tourism police issue citations against tourists who are caught while performing ritual practices³¹.

C. The Debate Around the Criterion of “Divinely Revealed” and the Practicability of Stipulating it in the Constitution

Many debates erupted among committee members regarding the second part of the article, which is related to the freedom to practice rituals and the appearance of these practices in the public domain, through the practice of rituals in public places or building places of worship. Rev. Safwat Al-Bayadi, representing the Evangelical community, abolishing the term “divinely revealed” religions and not limiting the right to practice rituals and establish places of worship to their followers. He suggested that the article instead state that “the freedom of belief is absolute, and the state guarantees the freedom to practice religious rites and establish places of worship in accordance with the law, and the previous laws and regulations restricting the freedom to practice rites and establish places of worship shall be repealed”³².

30- Ibid., p. 85

31- “The secret behind foreigners worshipping Khufu and Sekhment: In December, strange rituals, white clothes to atone for sins, some believe they cure disease and infertility, taking nude photos and the worst pornographic videos.” Vetogate, December 12 2018. <https://www.vetogate.com/3377155>

32- Thirteenth Meeting of the Committee of the Fifty to prepare the final draft of the constitutional amendments, October 27, 2013. P. 55

This view was also adopted by the representative of the Coptic Catholics, Bishop Antonius Aziz Mina, who said that he was with the unrestricted freedom to establish places of worship and to practice rituals, without limiting this freedom to followers of the divinely revealed religions, because “neither Islam, nor Christianity, nor Judaism are afraid for their religion, and the religion will not be destroyed, nor are we the ones who preserve it...” stressing that no group in society should be deprived of the practice of their rituals, even if it is one person. Yet at the same time, the bishop emphasized that this topic is massive, and that he does not favor broaching it in this context, and that he is particularly concerned with the problems of and legal restrictions on building churches among the Copts in Egypt. He suggested amending the text so that it would state “the freedom of belief is absolute, and the freedom to practice religious rites and establish places of worship – whether or not you specify for divinely revealed religions does not concern me - is a right regulated by law, and previous laws restricting this right are repealed”³³.

Bishop Bola, representing the Orthodox Church, emphasized his support for stipulating the freedom of belief, while he was not interested in contributing to the debate on the term “divinely revealed religions.” His intervention focused instead on critiquing the legal framework regulating church building, which is based on the Hatt-i humayun dating back to the Ottoman era. Chancellor Mohamed Abdel Salam, representative of Al-Azhar, restated Al-Azhar’s proposal to amend the article to stipulate that “the freedom of belief is absolute, and the state guarantees the freedom to practice religious rites and establish places of worship for the followers of divinely revealed religions”³⁴.

The poet Sayed Higab, a member of the Supreme Council of Culture, asked about the Shari’a stipulation and the Prophet’s Sunnah in dealing with non-Muslims who are not followers of divinely revealed religions, saying: “I wish that we would ask our master scholars about the state of Medina, whether there were only the followers of the divinely revealed religions, or whether there were Sabians and polytheists, and so on. And how did the Messenger of God, peace and blessings be upon him, deal with them in their worldly matters? Because I imagine that based on the

33- Ibid., p. 63

34- Ibid., p. 66

answer to this question, either we adhere to the unqualified formulation which is absolute freedom of belief and the freedom to practice religious rites is guaranteed and the state facilitates the establishment of places of worship in the manner regulated by law; but if the position of the Prophet in the state of Medina was restrictive towards non-followers of divinely revealed religions, then we must adopt the narrower formulation, which is the freedom to practice religious rites for followers of monotheistic religions..”³⁵

Amr Moussa, the head of the committee, asked Dr. Shawki Allam, the Grand Mufti of the Republic, to answer the previous question. The Mufti gave a vague and unclear answer, saying: “I support what Al-Azhar offered in that freedom of belief is absolute and the state guarantees the freedom to practice religious rites, knowing that religious rites are only practiced through places of worship; but if the text needs to stress places of worship, this is fine because the text itself is the guarantor. Practicing rituals requires a place to practice them, and when the talk about the followers of non-divinely revealed religions dissipates, as long as we are unanimous on the concept of the divinely revealed religions and our Christian and Jewish brothers and so on, let’s actually talk about their rights in a clear and authentic way not to deal with them with rhetorical statements and so on. The idea of facilitating religious freedom, establishing places of worship, discussing transitional provisions, canceling the Hatt-i humayun, etc., and if there would be a directive for there to be a law that provides for that, then I am completely with it. Thank you”³⁶.

In another comment during the same meeting, Shawky Allam clarified that the state must preserve its basic makeup and its specificities and set restrictions that preserve its uniqueness and basic foundations. In Egypt, these restrictions are represented in the text limiting the freedom to practice rites to the divinely revealed religions³⁷.

Film director Khaled Youssef stated that he would like to record his position as a supporter of absolute freedom of belief, and not limiting the right to the divinely revealed religions or others. However, he continued that he supports the vote in

35- Ibid., p.68-69

36- Ibid., p.71

37- Ibid., p.91

favor of Al-Azhar’s proposal that includes the term “divinely revealed religions” due to the circumstances on the ground, and in order to avoid stirring controversy and to reach consensus³⁸.

Counselor Mohamed Abdel Salam announced Al-Azhar’s agreement with the proposal made by Anba Antonius Aziz Mina, representative of the Catholic Church, which was that the article would stipulate that “freedom of belief is absolute, and the freedom of practicing religious rites and to establish places of worship for followers of divinely revealed religions is a right regulated by law.” Bishop Bola, on behalf of the Orthodox Church, defended this formulation and argued for bypassing the discussion about the conditions of non-followers of divinely revealed religions, saying: “People who are thinking of other religions, please think about them in an article other than this article of ours, which is the article concerned with places of worship, so that you do not hold us back if you will”³⁹.

Despite the continuation of discussions and deliberations regarding this article, this proposed formulation agreed upon by the churches and Al-Azhar, is what was approved and enshrined in the final version of the constitution.

38- Ibid., p.72

39- Ibid., p.79, p.81

IV: Conclusion

At the close of this paper, it is worth noting some important conclusions about the controversy over the term “divinely revealed religions” in the preparatory discussions for important constitutions. We can deduce that the judicial rulings in question are based on an ineffective reading of the preparatory work for the 1923 Constitution, wrongly concluding that there was a consensus reached by the committee drafting that constitution to limit recognition and religious freedoms to divinely revealed religions exclusively, and that this consensus is the constitutional foundation on which all constitutional articles relating to religious freedoms in subsequent constitutions are based, even if they do not expressly stipulate the limitation of religious freedoms to followers of divinely revealed religions.

In contrast to this ill-informed reading of the preparatory work for the 1923 Constitution, this paper reveals the absence of that imaginary consensus among the members of the committee preparing the 1923 constitution regarding using the criterion of the “divinely revealed” nature of religions to determine the ceiling of religious freedoms. Even conservative views at the time that called for limiting the ceiling of religious freedoms did not call for the use of the criterion of “divinely revealed” to classify religions and define religious freedoms based on this classification. Rather, the criteria agreed upon in delimiting religious freedoms were criteria like “official recognition,” “the customs observed in the Egyptian lands,” and “public order and morals” which are legal and administrative standards that carry some flexibility and differ significantly from the doctrinaire standard of classifying religions into divinely revealed or non-divinely revealed.

The exclusionary usage of the term “divinely revealed religions” was constitutionalized in 2012 in the context of the hegemony of Islamic political groups in the constitution drafting committee. The 2014 constitution also continued to retain the article stipulating the exclusionary use of the term divinely revealed religions despite the weak presence of Islamic groups within the Committee of the Fifty, and despite the objection of many voices within the committee to retaining this provision in the new constitution. Meanwhile, Muslim religious institutions defended this article with the support of the Salafi Al-Nour Party and some secular voices that saw the political context as unsuitable for engaging in a battle for religious liberties for unrecognized religions.