

A Comparative Study Between the Tunisian and Omani Personal Status Law



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Abstract

This study examines the influence of traditional jurisprudence versus modern perspectives on Tunisian and Omani personal status laws. It highlights legislative differences in marriage, custody, and divorce provisions. The first section addresses marriage, comparing its components in both legal systems. The second section discusses custody, its conditions, and provisions. The third section explores divorce, its types, and conditions under each framework. The study finds that Tunisia's Personal Status Code reflects a modern approach, not a break from religion, but a progressive reinterpretation. In contrast, Oman adheres largely to traditional jurisprudence, maintaining a conservative stance. Ultimately, social, historical, and political contexts shape each country's legislative path.

Keywords

Marriage;
Custody;
Divorce;
Personal Status Law;
Islamic Jurisprudence.

الكلمات المفتاحية

زواج؛
حضانة؛
طلاق؛
قانون الأحوال الشخصية؛
فقه إسلامي.

دراسة مقارنة بين قانون الأحوال الشخصية التونسي والعُماني ملخص

تهدف هذه الدراسة بالأساس إلى بيان مدى تأثير كل من المشرعين التونسي والعُماني في مجال قانون الأحوال الشخصية بالجانب الفقهي التقليدي وبالجانب الحداثي. وبيان الفروقات والاختلافات بين المشرعين فيما يتعلق بأحكام الزواج والحضانة والطلاق. ويسعى إلى تحديد الانتلاقات والاختلافات بين المشرعين فيما يتعلق بأحكام الزواج والحضانة والطلاق. تناولت الدراسة في قسمها الأول الزواج واختلاف مكوناته بين القانونين التونسي والعُماني. أما المبحث الثاني فيتناول الحضانة ويناقش شروطها وأحكامها في كلا الإطارين القانونيين. وأخيراً، تناول المبحث الثالث الطلاق وأنواعه وشروطه في كلا التشريعين. وفي نهاية المطاف، تخلصت الدراسة إلى أنه بينما اعتمد المشرع التونسي مقاربة حديثة بإصدار مجلة الأحوال الشخصية، فإن ذلك لا يعني أن المشرع التونسي نهج منهجاً تغريبياً كما هو متعارف عليه، بل قام بتفسير الخطاب الديني بشكل تقدمي. وفي المقابل، تمسك المشرع العُماني إلى حد كبير بالفقه التقليدي في معظم أحكامه، وهو ما يعكس نهجاً محافظاً. في الختام، تؤثر السياقات الاجتماعية والتاريخية على المسار التشريعي الذي تتخذه كل دولة.

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Doi:

1. Introduction:

The codification of family laws in the Islamic world has evolved significantly over centuries, transitioning from religious court rulings with no formal codification to the Ottoman Empire's enactment of the Personal Status Law in 1917, influenced by the Hanafi school⁽¹⁾.

This event sparked a wave of legal reforms across the Arab world, starting with Egypt and extending to Tunisia, which adopted the Personal Status Code in 1956. This legislative milestone aimed at modernizing family structures and societal norms, guided by scholars like Sheikh Muhammad al-Tahir ibn Ashur. Women's emancipation in the Arab world has historical roots dating back to the 19th century. Reformists such as Mohamed Abdu and Jamal al-Din Al-Afghani recognized that the socio-economic lag in Arab Muslim countries was partly due to women's marginalized status.⁽²⁾

They advocated for reforms to challenge customary norms that placed women in inferior positions.

Despite these reform efforts, women in the Middle East still struggle to enjoy their rights as citizens. They are underrepresented in the business sector and in prominent positions in politics; in many nations, they are nonexistent in the judiciary altogether. The most obvious place where women experience discrimination based on their gender is in personal-status laws, which govern child custody, marriage, and divorce.⁽³⁾

While Tunisia led with proactive reforms, Oman's journey towards codification was slower, culminating in the establishment of the Omani Personal Status Law in 1997, influenced by Ibadi jurisprudence. The assumption of power by Sultan Qaboos marked a pivotal moment in empowering Omani women and safeguarding their rights as wives and daughters. This period, colloquially referred to by Omanis as the 'Renaissance,' symbolizes the extensive progress witnessed across all sectors during his reign, particularly in enhancing women's social status.⁽⁴⁾ This article aims to explore the historical development and significance of family law codification in the Islamic world, highlighting Tunisia's pioneering role and contrasting it with Oman's more recent reforms.

By contextualizing these developments within broader socio-political and religious frameworks, the article seeks to enhance understanding of the evolution of family laws in Islamic societies and their role in addressing gender disparities and promoting social equality. This study intends to bridge the gap between historical reforms and current gender-based challenges, offering new insights into the ongoing impacts of personal-status laws on women's rights.

Research problem:

What are the points of similarity and difference between Tunisian and Omani personal status laws regarding marriage, custody, and divorce? To what extent are the Tunisian and Omani legislators influenced by Islamic jurisprudence and modern approaches when issuing their personal status laws?

The aim of the study:

This study aims primarily to highlight the main differences between the Tunisian Personal Status Law and the Omani Personal Status Law. Explaining the background of each of them and the extent to which they were influenced by the modernist movement that affected personal status law since the twentieth century.

Search plan:

- The Marriage
- The Custody
- The divorce

2. The Marriage:

The Tunisian legislator did not determine marriage as a legal concept but established elements for the marriage contract, which include the consent of the couple, *the dowry*, and the presence of two honorable witnesses⁽⁵⁾. *The dowry* must be substantial in value and paid for the benefit of the woman. The presence of two witnesses at least is required to witness the marriage registration, especially if one of the couples has set conditions for marriage. The most important element among these is the consent and agreement of both spouses. The legislator considered the consent of the woman as an integral part of the contract's validity. Without it, the contract is considered invalid. This represents a legislative revolution, as it allows women to accept or refuse marriage without the intervention or coercion of her guardian, contrasting with Tunisian society before the Personal Status Code. The Code diverged from traditional practices by making a woman's consent essential for marriage, contrary to the views of many Maliki jurists. This reflects the legislator's intention to empower women and achieve equality in family formation.

Furthermore, the marriage contract must be registered before official authorities to be valid, distinguishing civil marriages from religious and customary ones⁽⁶⁾. In addition to the principle of *Qiwamah* existing in Tunisian law, since

1993, with the abolition of the wife's obligation to obey her husband, many researchers believe that this principle has been emptied of its essence⁽⁷⁾. The Tunisian legislator equated the authority of both the guardian and the mother in requiring their full consent for the marriage of a minor. Unlike most other Arab and Islamic legislations, the Tunisian legislator did not require the *guardian (wali)* in concluding the marriage contract⁽⁸⁾. This stands in contrast to the opinions of Islamic jurists, including the Maliki school, who consider marriage without a guardian invalid.

A notable feature of the Tunisian Personal Status Law is its prohibition of *polygamy*. The law imposes penalties of imprisonment and fines on any man who marries another woman before dissolving his previous marriage⁽⁹⁾. The practice of *polygamy* in Muslim countries varies significantly, with Tunisia adopting progressive reforms limiting *polygamy*, while other countries such as Saudi Arabia and Indonesia maintain traditional practices⁽¹⁰⁾. While some argue that Tunisia's approach differs from Sharia law⁽¹¹⁾, the Tunisian Personal Status Law reflects a modern and renewed perspective on religion. This law embodies the tolerant and moderate Tunisian societal view of Islam and was influenced by a fatwa from scholars of *Zitouna Mosque*. The law integrates Islamic jurisprudence, balancing *Maliki and Hanafi* viewpoints⁽¹²⁾, and has garnered support from religious scholars such as Sheikh Muhammad al-Tahir ibn Ashur, who endorsed the prohibition of *polygamy* in his work, and Muhammad Rashid Rida, who viewed *polygamy* as detrimental to family structure. In addition to considering the views of Taher Haddad, a graduate of the *Zitouna Mosque*, in his book *Imra' tu-n f l-Šarya wa-l-mujtama*, he argues that the concept of *polygamy* existed before the emergence of the Islam, initially allowing up to four wives. It then evolved to require justice and equality among them. He pointed out the impossibility of fulfilling the condition of justice among them, no matter how much effort is exerted. He emphasized that one wife is the norm and the primary choice. Thus, Islam prohibited *polygamy* and views the matter as a gradual progression in legislation.⁽¹³⁾

Al-Haddad consistently emphasized that Islam was not responsible for the backwardness and decline that Tunisia, especially women, experienced in his time. Instead, he attributed it to Clergy who, through incorrect and traditional interpretations, had obscured the true meaning of God's word. This provides us with an insight into the value of Islam and faith in God for Al-Haddad, and his reformist vision in this regard⁽¹⁴⁾. Contrary to popular belief today, the Personal Status Code is fundamentally Islamic in its reference, deriving most of its provisions from Islamic law. Even regarding the revolutionary texts related to marriage (such as the prohibition of *polygamy*) and divorce, Bourguiba justified them within the religious discourse rather than outside it. He considered these revolutionary texts as forms of *ijtihad* (legal reasoning) in religious matters that did not contradict Islam. Regardless of whether one agrees with the validity of these *ijtihad*s or not, these provisions present themselves within the framework of religious logic rather than outside it. The assertion that the Personal Status Code is a product of modernity is not an innocent claim, as its purpose is to sever the Islamic reference in applying the code and replace it with a universal reference. Thus, the aim of this research is to affirm the Islamic reference of the code so that the common ground among all Tunisians is the Islamic reference of the code⁽¹⁵⁾.

Unlike the Tunisian legislature, the Omani legislature defines marriage in the Personal Status Law as a religious contract between a man and a woman aimed at establishing a stable family under the husband's care⁽¹⁶⁾. Both Omani and Tunisian laws state that the minimum legal age for marriage at eighteen years⁽¹⁷⁾, but both allow for the marriage of minors with the guardian's permission. In Omani law, the guardian's permission is essential, and if the guardian refuses without a legal excuse, guardianship is transferred to the judge⁽¹⁸⁾. Some jurists argue that the legislator followed the *fiqh* perspective that requires a woman's guardian to handle her marriage contract. They reason that since women typically do not attend male gatherings, they lack the experience needed to make decisions on matters of honor. By nature, women possess modesty, which is a noble trait. Thus, the requirement of a guardian is not to undermine women but to protect their interests and those of the family⁽¹⁹⁾. Conversely, the Tunisian law does not require the guardian's consent for marriage, allowing women to marry independently.

The Omani Personal Status Law identifies four main elements for a valid marriage contract: the guardian, *the dowry*, the witnesses, and the offer and acceptance. While Omani and Tunisian laws agree on the dowry and witnesses, they differ regarding the guardian. The Omani law considers the guardian as pillar of the marriage contract, in line with the Maliki and Shafi'i schools. This approach aligns with Omani societal norms but might have been more appropriate as a condition rather than a pillar.⁽²⁰⁾

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was incorporated into national legislation when the Sultanate of Oman acceded to it in 2005⁽²¹⁾. Oman, guided by its customary norms, traditions, and Islamic Sharia, consistently upholds these principles in its legislation, ensuring they align with its societal values, including considerations of marriage suitability.

Under Omani law, marriage suitability is influenced by religious principles and customary norms, allowing guardians to intervene based on tribal and suitability considerations. Article 19 mandates that the guardian must include the woman's consent⁽²²⁾ when drafting the marriage contract. Despite this commitment to CEDAW, Oman has reservations regarding certain provisions that may contradict its foundational legal principles. Specifically, Oman

objected to Articles 9, 15(4), 16, and 29(1) of the Convention, which address adoption, marriage and family relations, and dispute resolution. These reservations underscore Oman's stance on prioritizing its national laws, which are rooted in Islamic Sharia and local customs, while still affirming its commitment to international standards of gender equality.⁽²³⁾

In contrast, the Tunisian Personal Status Law seeks to modernize family structure by minimizing the role of the guardian and promoting women's autonomy⁽²⁴⁾. It emphasizes civil marriage registration, distinct from religious and customary marriages, and aims to reduce the influence of familial kinship in marriage arrangements.⁽²⁵⁾ The Tunisian law also prohibits *polygamy* and considers triple divorce a permanent impediment to marriage, differing from the Omani approach which permits *polygamy*, but nonetheless, the Omani legislator has sought to protect the rights of the first wife. She can deny her husband to marry another woman but it should be written in the marriage contract. However, if her husband violates that condition and marry another woman, she can then request the dissolution of the marriage contract⁽²⁶⁾. In order to understand why Tunisia became an Arab outlier in the sphere of democratization and women's rights, numerous scholars have studied the history of institutionalizing more equitable gender relations in family laws. As stated by Mounira Maya Charrad, the 1956 Tunisian Code of Personal Status was "part of a larger state building program that aimed at marginalizing patriarchal kin-based communities in local areas and at developing a modern centralized state."⁽²⁷⁾ This significant change made divorce more equitable for women and outlawed polygamy.

Both Omani and Tunisian laws address the consequences of a void marriage, such as the woman's right to the dowry and lineage proof, but the Omani law includes additional financial support for women unaware of the contract's invalidity.

3. The Custody:

Custody in the law refers to determining the party responsible for overseeing and caring for the child. The designation of the custodian is made by a decision from the judge, and it may fall on one of the parents, either the father or the mother, in the case of divorce. The judge may also choose someone else whom they deem suitable to care for the child. The Tunisian Personal Status Law has dedicated an entire section to custody, its provisions, and conditions. The legislator defined custody as the protection of the child in his residence and the responsibility for his upbringing⁽²⁸⁾. If the marriage ends, custody can be awarded to one of the parents or another guardian. In determining custody, the judge must consider the best interests of the children. If custody is awarded to the mother, she enjoys guardianship powers regarding the children's travel, education, and financial accounts. The judge can also assign guardianship responsibilities to the custodial mother if the father is unable to fulfill them, neglects his duties, is absent, or for any reason that harms the children's interests⁽²⁹⁾.

Moreover, the law has established a set of conditions that must be met by the custodian, as specified in Article 58. The custodian must be responsible, trustworthy, capable of taking care of the child, and free from contagious diseases. If the custodian is a male, he must have a female caretaker, such as the presence of a sister or mother to take care of the child. Additionally, the custodian must be a close relative (*mahram*) to the child if the child is a female. If the custodian is a female, she must be free from a husband who has consummated the marriage with her, unless the judge decides otherwise, regarding the best interest of the child.

One of the factors that may prevent or nullify custody for the custodial woman is if the child's biological father is of a different religion. In this case, her custody is not valid unless the child is under the age of five or there is no fear that the child will be influenced by and adapt to a religion other than that of his father. For example, if the father is Muslim, then the child will adopt his father's religion. If a judge appoints a custodial woman whose religion is not Islam, her custody is not valid if the child is over five years old. However, the provisions of Article 59 do not apply to the mother if she is the custodian. So, if the mother is Christian and the father is Muslim, and the judge rules custody to her, the difference in religion does not affect her status as the mother of the child, and custody does not fall from her⁽³⁰⁾.

The Tunisian legislator has granted broad authority to mothers regarding child custody, allowing a mother to prevent the father from taking the children out of the country without her consent, even if she does not have official custody of them. This reflects a strong focus on protecting the interests of children and ensuring their rights. Unless it is not in the best interests of the children otherwise⁽³¹⁾.

After the amendment of article 67 on July 12, 1993, Tunisian law abolished the duration of custody and did not specify its end time, instead placing it under the authority of the judge who considers the best interest of the fostered. This direction taken by Tunisian legislators draws attention to the fact that the criteria adopted by jurists are not precise, lacking other standards such as the level of sensitivity, the pursuit of stability, and the extent of the ward's feeling of security with their guardian, among other influences that weigh in their best interest.⁽³²⁾ The guardian spends on the foster child, and if the child does not have any money, then the guardian spends on the child from the father's money. If the guardian does not have a residence, it is the father's responsibility to provide accommodation for them along with the custodian. Furthermore, article 65

states that "the guardian shall not receive a fee except for services related to the custodian's affairs such as cooking, laundry, and similar tasks, according to custom".

The Omani legislator has dedicated the second chapter of the Personal Status Law to custody, its provisions, and conditions. It defines it as safeguarding, nurturing, and caring for the child⁽³³⁾, in a manner that does not conflict with the guardian's right to guardianship over the person⁽³⁴⁾ and sets conditions that must be met by the custodian, which are as follows: Mental capacity is a prerequisite for guardianship, as custody is a form of guardianship.

The custodian must be of sound mind, an adult, responsible, morally upright, free from contagious diseases, and capable of raising and caring for the child⁽³⁵⁾. Furthermore, the Omani legislator has imposed similar additional conditions as its Tunisian counterpart. If the custodian is female, she must not have a foreign husband to the child unless he entered the marriage with her. Conversely, if the custodian is male, he must have a suitable female assistant to help him in raising the child, and he must be a close relative (*mahram*) to the child if the child is female⁽³⁶⁾.

Unlike the Tunisian legislator, who deems custody relinquished by the custodial woman if her religion differs from that of the child's father upon the child reaching the age of five, the Omani legislator considers custody to be terminated once the child reaches the age of seven unless the judge determines otherwise for the best interest of the child. Custody is initially the responsibility of both parents if the marital relationship exists between them. If they separate, custody goes to the mother first, then to the father, then to the maternal grandmother, then to the closest relatives of the child according to a specified order.

The Omani legislator did not adopt the same approach as the Tunisian legislator. In case the judge appoints a custodian, and the custodial rights are not accepted, the judge selects someone suitable from the child's relatives or others, or one of the qualified institutions for this purpose. This is unlike Tunisian law, which obliges the custodian to accept custody if it is refused, and in the absence of anyone else suitable⁽³⁷⁾.

The Omani legislator has prohibited traveling with the ward outside the country without the consent of his guardian, as stated in Article 134: "The custodian is not allowed to travel with the ward outside the country without the consent of his guardian, and if the guardian refuses, the matter shall be referred to the judge." This restriction requires the custodian to obtain the guardian's consent for traveling with the ward. This contrasts with Tunisian law, which does not require the guardian's consent but invalidates custody if the custodian's travel with the ward makes it impossible for the father to fulfill his duties towards the ward.

On the other hand, the Tunisian legislator also prohibits the father from traveling with the ward outside the mother's place of residence if custody is with her. These differences between Omani and Tunisian legislators likely stem from the Tunisian law's provision allowing the transfer of guardianship to the mother, enabling the custodial mother to act as both custodian and guardian for the ward, aiming to achieve equality between men and women. The Omani law does not address the scenario of the father traveling with the ward if he has custody. It specifies that custody transfers to the father after the mother. Therefore, if custody is with the father and he is the guardian, he likely has the legal authority to make decisions for the ward, including travel arrangements. However, such decisions should consider the rights of the mother, particularly her right to see, visit, and accompany the ward.⁽²⁸⁾

4. The Divorce:

Divorce is the end of a valid marriage between a man and a woman⁽³⁹⁾. Marriage terminates in two ways: either by death, a natural means, or by divorce granted by the court, a legal judicial process. If the spouses find it impossible to continue the marital relationship, they may resort to terminating it by mutual agreement or by one seeking divorce unilaterally, initiating the divorce proceedings. Divorce is seen as a necessity dictated by human nature and required for social reform.⁽⁴⁰⁾ In Islamic jurisprudence, divorce is the dissolution of a valid marital bond initiated by the husband through specific wording or actions. The Tunisian legislator has undertaken significant reforms in regulating divorce provisions, aiming to emancipate women and modernize family structures. Divorce is defined as the dissolution of the marriage contract, exclusively within the jurisdiction of the court. It can only be ruled upon in three circumstances: by mutual consent of the spouses, upon the request of one spouse due to harm inflicted by the other, or by the desire of either spouse to end the marriage⁽⁴¹⁾. The petitioner seeking divorce based on harm must prove the occurrence of harm before the judge. This legislative definition may be considered incomplete, as dissolution of the marriage contract can also occur due to annulment, death, or disappearance. The Islamic jurisprudential background behind divorce rulings in the Personal Status Code is evident, as divorce is considered an exceptional institution allowed by Islamic legislation. Article 23 of the Code states, "Each spouse must treat the other with kindness, maintain good conduct, and avoid causing harm," emphasizing the obligation to treat each other well and uphold good manners, principles derived from Islamic law.

Furthermore, the obligation to treat others with kindness is outlined in Article 202 of Sheikh Al-Ja'iti's regulations, applicable in both *Maliki* and *Hanafi* schools⁽⁴²⁾. The Tunisian legislator's modern approach introduced two key aspects to divorce: judicial oversight and equality between spouses. Prior to the Personal Status Code, divorce in Tunisia was dominated by men, often disregarding women's rights and children's welfare. The Code sought to limit

male authority and ensure that divorce proceedings are conducted with care, incorporating judicial supervision to protect women's rights.

The Minister of Justice's memorandum stressed stricter divorce provisions to safeguard women from irresponsible behavior by husbands. This ensures that divorce is subject to specific conditions and judicial oversight, aligning with Islamic principles to uphold marriage sanctity. The creation of divorce courts aims to prevent arbitrary divorces by assessing the husband's intent, while granting women the right to divorce reflects equality and justice in Islam.

In Omani law, separation can occur through divorce, *khul* (in which the wife releases herself from the marriage tie by paying consideration to the husband⁽⁴³⁾, judicial decree, or death. Divorce can be verbal, written, or conveyed through an understood gesture⁽⁴⁴⁾). The Omani system acknowledges verbal divorce by the husband as valid even outside of court. Additionally, if the husband grants his wife the authority to manage her own affairs, she can initiate divorce independently⁽⁴⁵⁾. Conditional divorce is also recognized, where the husband specifies a condition that, when met by the wife, leads to divorce.

The Omani legislator does not recognize divorce through an oath, as specified in Article 86. Omani law differentiates between revocable divorce, which allows reconciliation before the end of the *waiting period* (*Iddah*), and irrevocable divorce, which requires a new marriage contract and *dowry* afterward. Both Omani and Tunisian laws agree that a woman divorced before consummation and with a stipulated *dowry* is entitled to half of it. While Omani law provides a *mut'ah* (compensation) for women without a stipulated *dowry*, Tunisian law does not explicitly mention *mut'ah* but provides similar financial compensation to address emotional distress from divorce. This compensation in Tunisian law serves the same purpose as *mut'ah*, despite the different terminology. Divorce in Tunisia can occur by mutual consent, at one spouse's request, or on the grounds of harm.

The Omani legislator, influenced by Islamic jurisprudence, has established three legal institutions of divorce: (1) divorce initiated by the husband, (2) *khula* (divorce at the wife's request), which requires the wife to pay compensation to the husband⁽⁴⁶⁾, and (3) *tatliq* (judicial divorce). The legislator has set conditions for *khula*, including the wife's eligibility, the husband's consent, and the compensation amount.

In Omani law, *tatliq* is a judicially decreed divorce that either spouse can request and encompasses various types. First, outlined in Article 98, involves divorce due to a defect in either spouse. This defect can be mental or physical and must make continuing the marriage impossible or result in a recovery period expected to exceed one year. If recovery is anticipated within a year, the court allows the affected spouse a one-year period before finalizing the divorce.

Second, divorce due to non-payment of the immediate *dowry* occurs when the husband fails to pay the agreed *dowry* (صداق) after the marriage contract. The wife has the right to abstain from moving into the husband's home and to request a divorce from the judge if the *dowry* remains unpaid. The judge will grant the divorce if: 1) The husband lacks visible wealth to pay the dowry, or 2) The husband is insolvent or missing, and the deadline for payment has passed. The divorce is not granted if the wife has already entered the marriage; the debt remains the husband's responsibility⁽⁴⁷⁾.

Third, divorce due to harm and discord: Omani law defines "harm" as a situation where the marital relationship becomes untenable due to severe issues caused by one spouse, making it impossible to continue the marriage. To seek divorce on these grounds, the affected spouse must present evidence of this harm in court. Before ruling on the divorce, the judge is required to attempt reconciliation. This involves appointing two mediators—one from each spouse's family—to investigate the issues and propose solutions. If reconciliation efforts fail, the judge will then grant the divorce⁽⁴⁸⁾.

Fourth, divorce due to non-provision under Omani law permits a wife to seek divorce if her husband fails to provide the necessary financial support as stipulated by their marriage obligations. This failure can severely impact the wife's standard of living, causing significant hardship. According to Article 109, a wife may request a divorce if her husband either refuses to provide maintenance or if it becomes impossible to obtain maintenance from him, particularly when he does not have visible assets. However, if the husband's insolvency is not clearly proven, the wife can only pursue divorce after a judge allows a period of grace for the husband to meet his financial obligations. The wife is not entitled to seek divorce on grounds of insolvency if she was aware of and accepted the husband's financial situation prior to marriage⁽⁴⁹⁾. Furthermore, a wealthy wife cannot use her husband's insolvency as a reason for divorce. These provisions aim to balance the enforcement of financial responsibilities while providing a legal avenue for relief in cases of severe financial neglect.

Fifth, divorce due to absence allows a wife to seek divorce if her husband's whereabouts are known but he fails to maintain or support her. She must notify him to either live with her, return her to him, or grant her a divorce, with a notice period ranging from four months to one year. For cases where the husband's location is unknown, the wife may seek divorce due to harm after a minimum of one year from his disappearance. Additionally, if a husband is sentenced

to imprisonment for at least three years, the wife can request a divorce, but only after he has been imprisoned for a minimum of one year.

Sixth, divorce due to *Ila* and *Zihar*: In the case of *Ila*, if a husband swears not to have sexual relations with his wife and no consummation occurs for four months, the marriage is irrevocably dissolved after this period⁽⁵⁰⁾. If the husband resumes relations within the four months, the *Ila* oath is nullified, and the marriage remains intact. *Zihar* involves a husband likening his wife to a prohibited female relative, which makes the marriage unlawful. The wife can withdraw from him until he performs penance. If the husband fails to make amends, the wife has the right to seek judicial divorce⁽⁵¹⁾.

Thus, it becomes clear that the Omani legislator was influenced by Islamic jurisprudence, so he borrowed the institution of al *kula* and divorce (*tatliq*) from Islamic jurisprudence, and the law was detailed for all cases of insolvency, allegiance, *zihar*, etc. Unlike the Tunisian law, whose provisions were brief and concise. It can be said that divorce for *zihar* and allegiance insolvency loss and absence all fall under the provisions of divorce due to harm in Tunisian law.

5. Conclusion:

This comparative study between Tunisian and Omani personal status laws uncovers notable differences in their approaches to marriage, custody, and divorce, reflecting their unique socio-cultural and political contexts. Tunisian law, which prohibits polygamy and emphasizes women's consent, represents a modern stance geared toward gender equality. Conversely, Omani law, influenced by traditional *Ibadi* jurisprudence and customary norms⁽⁵²⁾, integrates both civil and Islamic principles, creating a comprehensive family law framework. These differences illustrate how legislative frameworks are both shaped by and shape societal norms and historical factors, with significant implications for women's rights and status⁽⁵³⁾. Personal status laws, deeply rooted in community values, are challenging to implement externally due to resistance if they conflict with existing customs.⁽⁵⁴⁾ The study is limited by its focus on legal texts alone, without addressing practical implementation or societal attitudes. Despite this, it advances understanding of the interplay between tradition and modernity in Islamic personal status laws. Future research should broaden the comparative analysis to include other countries and incorporate qualitative data to better assess the practical effects and societal reception of these laws.

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