

## **Personal Status Law in the United Arab Emirates. Muslim and non-Muslim rights from a historical and social perspective**

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### **1. Introduction**

The United Arab Emirates (UAE) are situated near the Persian Gulf in the North Eastern part of the Arabian Peninsula. Established in 1971 by the late Sheikh Zayed Al Nahyan, the UAE form a federation of seven Emirates consisting of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Ras Al Khaimah, and Fujairah.<sup>2</sup> The UAE is a peaceful country with a deeply religious Sunni Emirati population, where the all – embracing system of Islam has been harmonised with elements of the tribal society and local customs. Islam was declared the official state’s religion and Islamic Sharia has gained a prominent position as the main source of legislation in the country’s Constitution.<sup>3</sup> Since the commercial exploitation of oil by Petroleum Developments Trucial States in the 1970’s the individual Emirates were transformed into wealthy rentier States ‘overnight.’ At the same time, the demographic landscape of the country underwent significant changes as well. According to the latest available demographic figures, the UAE’s population has grown from an esteemed number of 200,000 inhabitants in the 1970’s towards a flexible number of approximately 9,856,612 inhabitants in July 2021.<sup>4</sup> The population of today’s UAE encloses 200 different nationalities and various religious groups, whereof foreign residents make up 85 % of the total population. This heterogeneity leaves an intense pressure on the hegemonic and Islamic character of the indigenous society.

In this article the current 2005 Personal Status Laws of the UAE will be explored from a historical and social perspective. Special reference will be given to the rights of Muslims and Non-Muslims residents in the country. To come to an understanding of UAE’s legal system and the Personal Status Law of 2005 in particular the legal history of the Gulf and the UAE will be depicted. This is followed by an overview of the social developments in demographic figures. Then the present functioning of the UAE’s legal system will be described with emphasis to the codification process of the Personal Status Laws in 2005. And finally examples of legal practices and developments will lead to some concluding remarks.

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<sup>2</sup> The Emirate of Ras Al Khaimah had officially joined the federation on the 11<sup>th</sup> of February 1972.

<sup>3</sup> Article 7 of the UAE Provisional Constitution of 1971.

<sup>4</sup> Available at: <https://www.cia.gov/the-world-factbook/countries/ united-arab-emirates/#people-and-society> accessed 28<sup>th</sup> May, 2022.

## 2. History of the Gulf sheikhdoms

### 2.1 Islam and tribal hierarchy as legal references in the Gulf communities

Historically, the Gulf waters encompassing the Persian Gulf, the Gulf of Oman, and the Strait of Hormuz had influenced and dominated the local trade routes and early coastal settlements of the local inhabitants. Famous seaports were those of Sohar (Oman) and Julphar (Ras Al Khaimah) and the ports of Basra (Iraq) and Siraf (Iran), where last stops were made from ships coming from the Far East and India through the spice routes and deeper into the Arabian peninsula by the Silk routes. Other important trades were established by the continental silk routes through Central Asia and their corresponding sea routes. Not only trade, but also religious and cultural ideas and practices found their way through the Gulf waters. Between the fourth and seventh century A.D. Zoroastrian religious beliefs from the Persian Sassanid Empire had predominated and controlled the North Eastern region of historical Oman (which refers to the current modern States of the Sultanate of Oman, South Qatar to the Indian Ocean and the UAE. Also, the existence of early Christianity in the fourth and fifth century A.D. can be derived from the presence of Nestorian churches spread near the coastline of Abu Dhabi. Recent excavations have revealed the existence of a monastic complex on the island of Sir Bani Yas. With the advent of Islam in 630 A.D. in the Gulf region and historical Oman all pre- Islamic religious communities seemed to have disappeared or merged into the new religion. Islam was accepted by the Arab tribes' whole heartedly and the region became part of the new Eastern Province of the Islamic Empire and served as a gateway through the ports of Ras Al Khaimah to the conquest of Persian territory. As being part of the all expanding Islamic territory (*Dar Al Islam*) law and governance was established based upon the *Quran* and the *Sunnah* of the Prophet Muhammad (PBUH), and the general law practices of the all-encompassing Sharia. From now onwards Islam would be one of the most significant and dominant factors shaping the political, social and religious lives of the tribal communities.<sup>5</sup>

A second factor of great importance influencing daily life was the traditional tribal society. After Islam, the inhabitants of the Gulf coast vowed their loyalty and pledges to their tribal leader *sheikh*, who would make provisions for their clan, protect them, and take care of their needs. Great tribes of influences who ruled both these territories were the Bani Yas, the present rulers of the Emirate of Abu Dhabi, and a sub- clan of this tribe, the Al Maktoum, in the Emirate of Dubai. In Sharjah and Ras Al Khaimah, the Qawasim tribe, who were originally more a maritime tribe dominating both coastlines of the Persian Gulf and the sea routes to India, ruled.

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<sup>5</sup> Al- Abed, I. & P. Hellyer (2001), *United Arab Emirates: A new Perspective*, Gloucestershire: Bookcraft UK, p.78- 81.

The Gulf sheikhdoms were governed by a single *sheikh* who had been selected by the acceptance of the family elders based upon tribal structures and conform patriarchal traditions. The rule of the sheikhdom was accustomed to be passed on from father to son. The administrative system of the tribal society was observed to be non-existent. There was no written or unwritten constitution to define the work of the ruler. The ruler of the sheikhdom had in a legal sense exclusive legislative, executive and judicial authority. Only Islamic Sharia was capable to restrict the ruler's authority.<sup>6</sup> Nevertheless, each sheikhdom had its own organs of consultation and advice. The *amiri diwan* for example, a forum of appointed counsellors was responsible for the application of the ruler's policies and instruments, but at the same time functioned as a consultative organ for the ruler. Its members were represented by a section of the princes of the sheikhdom, members of leading tribes, prominent families, merchants and religious leaders. In the daily *majlis*, which functioned as the more traditional forum taking place in the ruler's residence, the representative groups of the *amiri diwan* assembled and exhibited their general interests to the ruler. But since the institution of the *majlis* was of an informal and flexible nature, it was also used to hear the grievances and requests of the local inhabitants of the sheikhdom, and to settle disputes among themselves during the ruler's visits throughout the sheikhdom.<sup>7</sup>

## 2.2 Administrating justice within the sheikhdoms

Nevertheless, in most cases legal disputes regarding personal status issues such as marriage, divorce, guardianship, and inheritance questions were preferred to be dealt internally with in the 'closed' tribal community, rather than to be externally exposed and submitted to the ruler of the sheikhdom. Most cases were handled by tribesmen themselves or by the family heads or tribal leaders with knowledge of customary law *urf*. The chief of each tribe generally settled disputes between the members of his tribe. An important factor in the seeking for justice was a fair judgment and acceptance of the verdict by both the parties. Verdicts were most of all established by compromises made on both sides. The decisions made by the chief of the tribe were based upon Bedouin desert tradition, customary law *urf*, and the Sharia.<sup>8</sup>

The legal principles used in the process of reaching a verdict by the ruler encompassed customary law *urf*, the qualities of common sense and impartiality, and Sharia elements. Islam played an important role in finalising a verdict since all parties were Muslims. Although not all verdicts were based upon Sharia elements, most rulers appointed out of religious motives a local judge called *qadi*. The *qadi* was not formally trained, but a learned man or *mutawwa*, who had studied the *Quran* and Sharia and had

<sup>6</sup> Al Muhairi, B. S. A. (1996), 'The development of the UAE legal system and unification with the judicial system', in *ALQ* 11(2), p. 121.

<sup>7</sup> Anthony, J. D. (1975), *Arab States of the Lower Gulf; People, Politics, Petroleum*, Washington D.C.: The Middle East Institute, p. 124.

<sup>8</sup> Heard- Bey, F. (1982), *From Trucial States to United Arab Emirates: A Society in Transition*, London/ New York: Longman, p. 121- 122 and 132- 133.

knowledge of a limited number of written sources in the sheikdom. In the *majlis* of the ruler, the *qadi* would be consulted, next to others who could present their visions regarding a certain matter. The homogeneity of Islamic jurisprudence was not affected by the verdicts taken. Three out of the four *madhhabs* were adhered to by the tribal community. These were the Hanbali, Maliki and Shafi'i *madhhabs*, which differed in minor rules concerning certain legal interpretations. Every sheikdom had its own *madhhab*, which was followed, according to the tribe it belonged to. The tribes under the authority of the Qawasim, who were strongly influenced by the Wahhabi movement, were followers of the Hanbali *madhhab*. The Bani Yas tribe and the tribes from the Persian coasts were followers of the Maliki and Shafi'i *madhhabs*. Since the *qadi* had limited knowledge about Islamic jurisprudence and other written sources, arguments about the details and minor differences between the *madhhabs* never formed part of the jurisdiction in the tribal society.<sup>9</sup>

The ruler of each sheikdom established Sharia Courts. These courts were based on the universally accepted Sharia rules practiced within the Islamic communities.<sup>10</sup> The ruler would appoint the Sharia judges and he had the sole authority and legal competency to decide to which particular judge litigants had to proceed. The Sharia judges applied substantive rules of Sharia, but wouldn't follow a specific and uniform judicial litigation process during trial. The judges conducted the litigation procedure in their own personal way, which could lead to a variety in rules that differed from Sharia Courts to Courts. The jurisdiction in the Sharia Courts covered criminal and personal status related matters, financial rights and debts and property related conflicts. In this court system both parties were entitled to reject the decision taken by the Sharia judge. If that occurred the case would be taken from the Sharia Court to the ruler of the sheikdom. He then would appoint a second Sharia judge to whom the case would be referred to. This judge could be from the same sheikdom or from outside the area. If the second judgment was not accepted by the concerned parties, they were entitled by the ruler to refer their dispute to the religious authorities of different centres based in Egypt, Mecca or Qatar.<sup>11</sup>

### 3. British Trucial States

#### 3.1 The forming of the Trucial States

Another aspect of the formation of the legal history of the present UAE can be found in its encounters with the British Empire in the nineteenth century. Reasons for British presence in this part of the world can be found in the strategic positioning of the Gulf between Europe and the passage to the Far East. To guard their safe passage to the crown jewel of the British Empire India -also known as the British Raj-, the British East Indian Company had several clashes with other sea fleets, which eventually led

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<sup>9</sup> Heard- Bey, F. (1982), *From Trucial States to United Arab Emirates: A Society in Transition*, London/ New York: Longman, p. 121- 122 and 132- 133.

<sup>10</sup> Such as practised in the religious centres of Mecca, Egypt and Qatar.

<sup>11</sup> Al Muhairi 1996, p. 123- 124.

to several British maritime eliminating expeditions. Several British peace treaties with each of the individual sheikhdoms of the Gulf were signed such as the Treaty of Peace in 1820, the Maritime Truce in 1835, and the Treaty of Peace in 1853. From now onwards the Gulf sheikhdoms would be called the Trucial States. Due to the fact that several Western, but also regional powers had also shown remarkable interests in the Gulf sheikhdoms forced Britain to safeguard its position within the region by creating 'Protectorates' in the Gulf.<sup>12</sup>

This was reached through the endorsement of the Protectorate Agreements of 1892, which would form the pillar of British presence in the region. In these exclusive agreements the Gulf sheikhdoms would be consolidated within the British Empire. For the first time in the history of the Gulf the territorial boundaries of each sheikhdom were established. Secondly, their territorial sovereignty could not be yielded to other foreign powers without British consent. The rulers of each sheikhdom agreed that neither they nor their successors would cede, sell, mortgage or on any account give for occupation their territory. The British Empire in return would be held responsible for the foreign policy of the Trucial States and for assuring their protection. This mandate was exercised by the British East Indian Company at first and later replaced by the British government of India itself through the governing system of British Political Residencies headed by a Political Resident. Despite British regional domination, each Trucial sheikhdom retained, nonetheless, its own self-determination, its autonomous status, its independent authority and legal administration.<sup>13</sup>

### **3.2 British extra- territorial jurisdiction established in 1946**

Next to strategic and political factors, Britain's presence in the Gulf was shaped by economic motives. Oil discoveries in neighbouring countries bore the hope that the entire region including the Trucial States would hold large oil quantities underneath its surface. British oil concessions were granted in Abu Dhabi and the search for oil intensified in 1939. Due to these economic developments the British administration brought their own personnel into the area, who most of the time were British nationals or British subjects from the Indian subcontinent? Due to the operations of British aircrafts and ships, their passengers, crew members, merchants and civil officers, the inflow of other nationalities caused by these new foreign connections increased. Therefore, the policy to uphold an informal British Empire along the Gulf coast would gradually make place for a more proactive British approach and presence through direct British influence and rule. An example of vigorous British rule in the Trucial States was the establishment of British extra-territorial jurisdiction in 1946.

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<sup>12</sup> Al- Baharna, H. M. (1998), *British Extra- Territorial jurisdiction in the Gulf 1913-1971; An Analysis of the System of British Courts in the Territories of the British Protected States of the Gulf during the Pre-Independence*

*Era*, Slough: Archive Editions Ltd, p. 8- 9 and Al Fahim, M. A. J. (2013), *From Rags to Riches; A Story of Abu Dhabi*, Abu Dhabi: Makarem G Trading and Real Estate LLC, p. 33- 35.

<sup>13</sup> Zahlan, R. S. (1979), *The Creation of Qatar*, London: Croom Helm Ltd, p. 13 and Al Muhairi 1996, p. 121.

British extra-territorial jurisdiction found its judicial basis upon the authority of the Foreign Jurisdiction Acts of 1890, the Trucial States Orders in Council, the Queen's Regulations and other legislations. Preparations for establishing British extra- territorial jurisdiction was enhanced by the British Political Resident proposing that Britain should be given jurisdiction over British subjects, British protected persons and non- Muslim foreigners in the Trucial States. The rulers of the Trucial States granted the British Government the right to establish extra- territorial jurisdiction by ceding their jurisdiction over British subjects and other foreigners to the British authorities within the territories of the Trucial States. Thereto, the Trucial States Order in Council was issued in 1946, establishing established British extra- territorial jurisdiction in the Gulf. In the Trucial States Orders in Council, British jurisdiction was extended to all British subjects and persons under British protection in the sheikhdoms.<sup>14</sup> Under persons under British protection former British subjects were included, such as Indians, Pakistani, and Bengali workers. This in accordance with the British Nationality Act of 1948. Furthermore, British jurisdiction was extended to British property, ships and aircrafts.<sup>15</sup>

However not all residents of the Trucial States were subjected to this Order in Council. It was evident that the local tribal population, who were subjects of the Trucial sheikhdoms were exempted, but other groups of persons were also kept out. In the Queen's Regulation in Article 77 of the Order certain persons were excluded from British extra-territorial jurisdiction: ' (a) persons who are nationals of Afghanistan, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, Muscat and Oman, Saudi Arabia, the Somali Republic, Sudan, Tunisia, the United Arab Republic of Yemen, or subjects of the Rulers of Bahrain, Kuwait or Qatar. (b) Stateless persons of Palestinian origin.' These groups remained under the jurisdiction of the sheikhdom they were residents of and were subjected to Islamic and Sharia Courts of the local ruler, which would now be referred to as the Ruler's Court.

### **3.3 British Courts and Personal Status Law in the Trucial States**

With the establishment of British extra- territorial jurisdiction in 1946 a dual legal system came into existence within the Trucial States, with a British and local Sharia court system operating side by side. The British Courts that exercised British jurisdiction within the Trucial States' territory can be distinguished in Article 14 of the Trucial States Order of 1959 as: ' 1) the Court for the Trucial States. 2) the Chief Court for the Persian Gulf. 3) the Full Court for the Persian Gulf. 4) the Joint Court and the Joined Court of Appeal. The Court for the Trucial States operated as a court of first instance. The Chief Court for the Persian Gulf had a dual function and exercised original and appellate jurisdiction in criminal and civil cases. The Chief Court for the Trucial States could also function as the Chief Court for other Gulf nations. The Full Court for the Persian Gulf was an appellate court, which heard

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<sup>14</sup> See Article 8 of Orders in Council of 1949, 1953 and 1956.

<sup>15</sup> Al Muhairi 1996, p. 125.

cases from the Court for the Trucial States and the Chief Court. Jurisdiction was given in both civil and criminal matters. The Joint Court was to hear mixed cases, meaning cases involving persons falling both within the scope of the Orders in Council and the local Islamic jurisdiction of the sheikhdoms.<sup>16</sup>

Principles of British and British Indian legislation prevailed in the decisions made by the British Courts in exercising its civil jurisdiction. The civil jurisdiction covered matrimonial relations, probate and succession, torts and contracts among other things. Because of the significant increase in British personnel from former British India in the Gulf, new law enactments concerning family law related issues were introduced in the Trucial States. This phenomenon took place not only in the Trucial States, but also in the wider Gulf region, since the British Indian communities had grown there considerably in size as well. In cases of matrimonial matters, the Indian Enactments such as the Indian Divorce Act 1869 ( related to divorce and nullity of marriages), the Indian Christian Marriage Act 1872, and the Births, Deaths and Marriage Registration Act 1886 were applied to all persons subject to the Orders in Council. The Indian Matrimonial Enactments were executed unless the case involved a point of Muslim law. These particular cases involving marriage, dower, divorce, matrimonial relations, maintenance, and custody of children were either referred by the British Courts -after reaching conciliation- or either by request of one of the parties involved- to the *qadi*'s of the Sharia Court. Nevertheless it was eventually the British judge who decided whether or not cases were to be referred to the *qadi*'s of the Sharia court.<sup>17</sup>

#### **4. The UAE as a nation state in 1971**

##### **4.1 The UAE Constitution**

On the second of December 1971 the UAE was declared a sovereign nation state by formally signing the instruments of terminating the treaties between the Trucial States and Great Britain.<sup>18</sup> As British extra-territorial jurisdiction was officially terminated, the dual legal system within the Trucial States ended. As British legal influence in the sheikhdoms had left the local legal administrative system intact, the UAE choose to break with the former British traditions and Common Law based legislation. The UAE would follow its neighbouring countries in enhancing its Islamic nature and Arab nationalism. The Kuwaiti Constitution based upon Continental Law was the inspiration for the Provisional Constitution of 1971, wherein Article 7 Islam was declared the official religion of the nation and wherein Sharia Law would be a main source of legislation.<sup>19</sup>

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<sup>16</sup> Al- Baharna 1998, p. 63- 65 and p. 110

<sup>17</sup> Al- Baharna 1998, p. 92- 96.

<sup>18</sup> This was achieved by the signing of the Trucial States Termination of Jurisdiction regulation 1972.

<sup>19</sup> The Provisional Constitution reached a permanent status in 1996. From then onwards it was regarded as the Constitution.

The Constitution incorporated many principles of Western constitutions relating to individual rights and obligations and blended this with the local Islamic culture.<sup>20</sup> Since a uniform legal system was established for enhancing rights distinctions between local residents, British subjects and foreigners of Muslim and non-Muslim background regarding their law or legal status would no longer be made. Article 25 of the Constitution institutes equality: ‘All persons shall be equal before the law. No discrimination shall be practised between citizens of the Union by reason of race, nationality, religious belief or social position.’ While Article 32 expresses freedom of religion: ‘The freedom to hold religious ceremonies in accordance with established custom shall be safeguarded, provided such ceremonies are consistent with public order and with public morals.’ If and how these legally established norms of the Constitution are upheld in the legal reality of the UAE’s law enforcement will be seen in UAE’s legal practice. One of the latest new federal laws in support of Article 25 is the Federal decree Law No. 2 of 2015 on Combatting Discrimination and Hatred, which aims to protect everyone in the UAE. The law intends to provide a solid legislative ground for the environment of tolerance, co-existence and acceptance. It aims to fight discrimination against individuals or groups based on religion, caste, doctrine, race, colour or ethnic origin.

#### **4.2 The relation between federal and local laws in enhancing rights and laws**

Even after independence the individual Emirates maintained their autonomous status within the federation and were still able to promulgate their own laws and upheld their own court system as under British rule. To enhance federal legislation and a federal uniform court system the UAE Constitution provided in provisions that could be used as a tool for creating a national identity and a uniform legal system.<sup>21</sup> The Federal Courts of First Instance, the Federal Courts of Appeal and the Federal Supreme Court were established in 1978. However due to the autonomous status of the Emirates, Ras Al Khaimah and Dubai choose to maintain their own legal status within the federation, while the five Emirates of Abu Dhabi, Sharjah, Ajman, Fujairah and Umm Al-Quwain transferred their judiciary to the federal authority.<sup>22</sup>

To enhance its own legal status and boost its economic trade relations Dubai established financial free zones.<sup>23</sup> Within the free zones federal civil and commercial laws were exempted from enforcement. Beside the already existing Dubai Courts, the Emirate created its own legal and regulatory framework such as the Dubai International Finance Centre (DIFC) where a foreign jurisdiction based on British Common Law was constituted (or reintroduced). The smaller Emirates maintained their Sharia Courts leading to a diversity in legal local enforcements and also in the delay of promulgating uniform federal

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<sup>20</sup> Khalifa, A. M. (1979), *The United Arab Emirates: Unity in Fragmentation*, London: Croom Helm Ltd, p. 37-38.

<sup>21</sup> For more information see Article 150 of the Constitution.

<sup>22</sup> Al Muhairi 1996, p. 156- 157.

<sup>23</sup> Based upon Federal Law no. 8/ 2004.



legislation. One of the pillars of establishing a national identity was the ‘Islamisation of laws projects’ facilitated by the federal government. But because of factors such as the preservation of the individual Emirates’ rights and laws, and not coming to definite terms and wordings of the texts of draft laws, the promulgation of new federal laws in these projects faced delays. One of these laws was the Muslim Personal Status Law.

## **5. The Codification of UAE’s Personal Status Laws in 2005**

### **5.1 Status of Muslim family law before 2005**

Personal Status Laws in most Gulf States remained uncoded for a long period of time in the twentieth century and even the twenty- first century. As the codification reform process of Muslim family law in Muslim States was initiated by Turkey in the 1920’s, a second codification wave occurred in the mid 1950’s after many Arab States (e.g. Jordan, Tunisia, Morocco, Syria, Iraq) reached their independence. The Gulf States’ codification of Personal Status Laws is considered to be part of the third wave of this reform process. In the 1970’s most Gulf States emerged. In the same period neighbouring countries surrounding the Gulf region such as Iran and Pakistan witnessed the Islamisation of their legislation including the Muslim family law. The Gulf States enhanced the process of legal reforms and codification thoroughly. Kuwait’s codification of its Personal Status Laws was the first in the region in 1984. Almost three decades later the UAE (2005), Qatar (2006) and Bahrain (2009) followed, the latter only for the Sunni section of Bahraini society. This left only Saudi Arabia without a codified Personal Status Law among the Gulf States.<sup>24</sup>

The current uncoded status of Muslim family law in Saudi Arabia resembles the situation of the other Gulf States prior to the completion of their codification processes. As British extra- territorial jurisdiction did not have a lasting impact on the local customs, tribal system or Sharia Law, uncoded Muslim family law had remained the same for centuries. The uncoded prevalent jurisprudence of the school of law (*madhhab*) favoured by the local *qadi* had been applied to cases of Muslim family law. In the UAE, for example, Muslim family law issues regarding conditions of marriage, divorce, custody and inheritance were predominantly governed by the Maliki school of law and closely followed by the Hanbali school of law. The local *qadi* or *mutawwa* heard cases of Muslim family law for both the Emirati population and the Muslim foreigners described under the definition of local jurisdictions of the Sheikdoms during the British Protectorate period, if the occasion required so. For non- Muslims (foreigners), however, there was no provision available, since this group had always been part of

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<sup>24</sup> Welchman, L. (2007), *Women and Muslim Family Law in Arab States: A Comparative Overview of Textual Development and Advocacy*, Amsterdam: Amsterdam University Press, p. 12- 17.

British extra- territorial jurisdiction. After independence this gap in legislation was not filled until the codification of the Personal Status Law in 2005.

## 5.2 The Personal Status Law of 2005

The legal developments and codification process of UAE's Personal Status Laws was a time consuming project before its actual materialization as a UAE federal law. The process of codification was a joined operation initiated by the Supreme Council of the Gulf Cooperation Council (GCC) and with the recommendation of the GCC Justice Ministers of the member Gulf States in 1996. A general draft Law of Personal Status for the GCC States was created and was called the Muscat Document.<sup>25</sup> This document was adopted in 1996 and served as a consultative reference for the GCC and was extended twice until 2000.<sup>26</sup> The model text of the Muscat Document was an example of inter-governmental cooperation in the legal field to promulgate an almost identical Muslim Personal Status Law for the Gulf region as a whole and to boost uniformity and unity among the GCC member States with regard to law reforms. Therefore, the Personal Status Laws of the Gulf States of Bahrain, Qatar and the UAE bear similarities in many ways.

The UAE Federal Law no. 28 of 2005 of Personal Status was promulgated after intense lobbying and consultation sessions between UAE's law practitioners, family lawyers, judges and the General Women Union (GWU).<sup>27</sup> In essence, it aimed at bringing to the codification process legal certainty, uniformity and clarity of local Emirati Muslim family law. Islamic marriages are now officially documented. The process of Sharia Court marriage registration and the Sharia court documentation of proof of marriage are in the UAE based on the validity by Sharia. Age of full capacity and conditions for marriage are set by reaching puberty and the lunar age of eighteen years for both husband and wife. A specific marriage requirement is that the marriage contract of the woman is concluded by her guardian based on the majority of juristic view, making the two contracting parties to the marriage contract the husband and guardian (*wali*). Polygyny is allowed in the UAE, but the Personal Status Code expresses the condition of equity between co- wives. Matters of divorce are either conducted by the husband's unilateral divorce of *talaq*, or judicial *khul* where the court is having the authority to pronounce the *talaq*. The only arrangement in the Personal Status Law of 2005 where non- Muslims are mentioned is in the section on child custody. The non- Muslim parent or custodian loses custody of the child when aged five years. The UAE law further stipulates in Article 145 that a mother of a different religion loses custody of her child unless the *qadi* decides otherwise in the interest of the child.<sup>28</sup>

<sup>25</sup> The Muscat Document can be accessed at <http://www.gccsg.org/index.php?action=Sec-Show&ID=51>

<sup>26</sup> Welchman, L. (2010), 'First Time Family Law Codifications in Three Gulf States', in *The International Survey of Family Law*, p. 163- 178.

<sup>27</sup> The GWU is a UAE governmental organization concerned with family and women issues in the UAE.

<sup>28</sup> Welchman (2010), p. 163- 178.

Exceptional is the UAE's provision, which states that the law should be interpreted according to Islamic jurisprudence and its principles, but in cases where no text is available, the *qadi*'s ruling should rule in accordance with the four Sunni schools of law in the hierarchy: Maliki, Hanbali, Shafi'i and Hanafi. In addition, the Personal Status Law applies to all UAE citizens and non-citizens. Article 1<sup>2</sup> States: 'The provisions of this Law shall apply to citizens of the United Arab Emirates State unless non-Muslims among them have special provisions applicable to their community or confession. They shall equally apply to non-citizens unless one of them asks for the application of his law'.

## **6. Legal Practices and Developments of the Personal Status Laws in the UAE**

### **6.1 The UAE's demographic features and society**

Due to large oil revenues the economic developments in the UAE were boosted from the mid 1970's onwards. New urbanisation plans and the creation of a welfare state for the indigenous population attracted the influx of a large foreign labour force, changing the composition of the demography in a very short period of time. While during British Protectorate rule most foreign workers were predominantly from the Indian subcontinent, working in both the private commercial and public administration sector, non-Gulf Arabs hailing from pan-Arabic nations were non-preferred by British authorities. With the rise of Arab nationalism after independence most Gulf States were eager to connect to their Arab origin. Due to linguistic, cultural, and religious similarities with Gulf standards Arab workers from Middle Eastern countries such as Egypt, Syria, Lebanon, Iraq and Sudan were welcomed.

As the influx of foreign workers continued to rise, new labour policies were introduced in the 2000's to create a more open society based upon diversity in multi-nationality, multi-ethnicity and multiple religious belonging. Hence, the historical linkage between recruiting only Asian or Arab workers was abolished for good. Another aspect of Gulf migration is linked to the socio-economic conditions of foreign workers. There is a huge variety in economic living standards and working conditions of foreign workers. According to the latest surveys 85 % of the total population of the UAE are foreign residents hailing from all over the world and covering 200 nationalities.<sup>29</sup>

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<sup>29</sup> Roper, S. D & L. A. Barria (2014), 'Understanding Variations in Gulf Migration and Labor Practices', in *Middle East Law and Governance* 6, p. 37- 41.

## **6.2 Legal practices and developments of the Personal Status Laws in the UAE**

### *6.2.1 The use of the Personal Status Laws in the UAE*

To measure the effective use of UAE's Personal Status Laws in the legal practice of the UAE has been a time consuming process.<sup>30</sup> For the local Emirati population codification of an informal law already in use was very beneficial for the unification and the creation of a sense of oneness in all the Emirates. As this law concerned Muslim family law other Muslim residents in the UAE found no hesitation in the invocation of the law when deemed necessary and in accessing the Sharia law based court system. However, practical and social issues led to the disuse of the Personal Status Law by most foreign residents of both Muslim and non- Muslim origin. Since the majority of the foreign residents concerned are predominantly unskilled low income labourers, the UAE federal legal system in general was not accessible to them due to the high costs of legal fees, and due to their temporary work status within the UAE, the necessity of solving family matters within the UAE was not sought after legal remedy. The lack of knowledge of the legal system and the fear of approaching UAE local authorities for personal family matters also resulted in ignoring UAE family laws. Most workers were concerned that their issues and problems regarding divorces, custody of children could be interpreted by the UAE government as 'problematic' and would affect their work status and extension of their work visas. Besides, labourers and low income workers were not in a financial position to bring their families to live in the UAE. The high costs of living, health care provisions, and high private schooling fees resulted in leaving their families overseas. Their family issues, therefore, are resolved overseas most of the time.

### *6.2.2 Family issues in Dubai and Abu Dhabi*

With the latest developments of an influx of high skilled personnel and (Western) expats who want to live in the UAE with their families, the need for non- Muslim family courts are slowly growing in demand. As the emirate of Dubai, with a large expat community, does not have this provision yet, most people accessing the Dubai Courts family section request the use of their own family law on an individual basis, provided by the provisions of Article 1<sup>2</sup> of the Personal Status Law 2005 and Private International Law applications.

In the Emirate of Abu Dhabi, the Abu Dhabi Judicial Department (ABJD) has given the Christian clergy community permission to facilitate marriages, divorces, and custody cases by the Christian

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<sup>30</sup> This section is based on anonymous interviews held between the period of 2015- 2019 in the Emirates of Abu Dhabi, Dubai and Sharjah with persons working in UAE's legal practice such as legal practitioners and lawyers. I have also interviewed foreign workers of various economic and both Muslim and non- Muslim backgrounds on the topic of their (non-use of UAE's Personal Status Law 2005).

Churches of Abu Dhabi.<sup>31</sup> The intention is to give non- Muslims the possibility to use a legal system that is not based on Sharia and exempt Christians to go to Sharia Courts for their family matters. Other new developments within Abu Dhabi are the building of the first Hindu temple. Whether this will lead to new possibilities regarding Hindu and Indian Personal Status Laws remains to be seen.<sup>32</sup>

### 6.2.3 *Inheritance laws*

While in the Personal Status Law matters discussed above, migrants can choose to either submit a case to court or not use the legal system at all, this is different in inheritance issues. Under the Personal Status Law 2005 Islamic inheritance rules are affecting all residents in society unless a provision is requested. Under UAE laws based on Islamic law in the event of death, all financial assets such as income and property within UAE territory are typically frozen. Sharia Courts will contact the members of the extended family of the deceased to determine whether they have a financial claim. This can leave surviving family members with no access to their finances for a lengthy period of time. For wives and daughters of non- Muslims Islamic inheritance rules can lead to a loss in wealth compared to their own laws. Provisions for non- Muslims can only be invoked if the respective Emirate has provided thereto in. For example, in Abu Dhabi the Abu Dhabi Judicial Department (ABJD) has issued a registry for non- Muslim wills in their Courts and Dubai has arranged a special provision in the Dubai International Finance Centre (DIFC) of one their Free zones for the registration of wills of non- Muslims. The smaller Emirates lack special provisions for non- Muslim Personal Status Laws and the Personal Status Law 2005 remains applicable to all residents.

## 7. Conclusions

The legal history of the UAE from a closed tribal society, to British extra- territorial jurisdiction in the Trucial States, and towards a nation state has influenced the legal infrastructure of the country. Although Islamic norms are predominant in the present legal system, the social effects of, for example, the demographic labour force within society still bears similarities with the British extra- territorial period. Even though a uniform law is created for all residents, the use of the UAE law system depicts a dual legal practice. The UAE's Personal Status Law is strongly influenced by Islamic law (Sharia). For the local Emirati community this family law resembles their tribal, historical and social community based norms. Foreign Muslims of different nationalities can accept this law as their preferred law as well.

Nevertheless, most non- Muslims and economic underprivileged foreign workers of both Muslim and non-Muslim background living in the UAE shun the Personal Status Courts in practice. Although the

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<sup>31</sup> For more information access the website of St. Joseph's Cathedral Abu Dhabi - Abu Dhabi at <https://www.stjosephsabudhabi.org>.

<sup>32</sup> For more information access the website of [BAPS Hindu Mandir | Abu Dhabi](https://www.mandir.ae) at <https://www.mandir.ae>.

law provides them with a provision to request the application of their own family law this is not frequently used however. High legal costs, fear of local authorities and poor understanding of Sharia based UAE laws in general are factors that lead to the non-application of the Personal Status Law by non-Muslims and low-skilled workers, resulting in the underdevelopment of a provision given and provided for by the UAE government.