



Rights of Women in the Establishment and Dissolution of Marriage in Oman: Between CEDAW and Sharia Perspective

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Article	Abstract
<p>Keywords: CEDAW; women; Human Rights, International Law, Islamic Law.</p> <p>Article History: Received: Nov 6, 2023; Reviewed: Nov 6, 2023; Accepted: Jan 23, 2024; Published: Feb 3, 2024.</p>	<p><i>The Sultanate of Oman has acceded to CEDAW in 2005. However, Oman has reservations about a few articles of the said Convention because some of its provisions conflict with Islamic Sharia or Oman's national laws, including Article 16 of CEDAW. Therefore, the objective of this article is to critically analyse Article 16 of CEDAW and the extent to which Oman Personal Status Law addresses marriage and divorce-related issues is compatible or in conflict with the Convention. To accomplish this objective, the research employs doctrinal legal research and an analytical approach to examine the texts of the Convention and their Omani equivalents. The analysis revealed that the courts could enforce the articles of CEDAW to assert rights, except for the provisions that Oman expressed reservations about. Oman has reservations regarding several features outlined in Article 16 of the aforementioned Convention, as they conflict with Islamic Law. The study highlights that the Convention effectively governs certain areas that promote gender equality in family matters, including stipulating that a woman's permission is necessary for marriage and her entitlement to dissolve the marital union by divorce or <i>kebulu'</i> under appropriate circumstances. In addition, Oman effectively implements certain provisions of the Convention to strengthen women's rights by modifying domestic legislation. In conclusion, the Oman National Law is consistent with the CEDAW, with the exception of the State's reservations concerning the implementation of Article 16 of the aforementioned Convention.</i></p>



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INTRODUCTION

Islamic law established laws that respect women from the time they were born until they die (Kadirov et al., 2016; Setyawati et al., 2024). The Sultanate of Oman sought to ensure protection and prevent all forms of discrimination against women in its Basic Laws and regulations, among which are laws regarding their right to choose their partners, the freedom to establish a marriage, and the validity of the marriage with their full consent only. Moreover, this research also discusses women's right to the dissolution of marriage if marital life becomes impossible. Oman made its pursuit clear by signing various international agreements that called for women's rights, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Oman ratified with reservation to some of its articles as per the Royal Decree (42/2005).

The CEDAW Convention, as conveyed mainly in Article 16, asserts equal rights in marriage and family relations concerning the choice of spouse, contract rights, dissolution, and documentation. This research attempts to highlight the impact of this Convention on the Omani legislation stipulated in the Omani Personal Status Law and its influence on its protocols, as well as the reasons behind Oman's reservation in some of its articles. Regardless of the Sharia ruling on the Convention, some of its components, such as establishing absolute equality between men and women in political, social, and family matters, not requiring a guardian in concluding a marriage, and forbidding polygamy as well as the equality of both men and women in inheritance laws contradict Islamic rules and principles. The current study analyses the establishment and dissolution of a marriage contract through Article 16 of CEDAW.

However, it has raised reservations over certain sections, particularly Article 16 of CEDAW, which presents challenges in terms of meeting international obligations and implementing national laws based on Islamic Sharia. Therefore, there may be certain deficiencies in the execution of the international convention, as stated in its concluding remarks. Nevertheless, following its accession to the convention, Oman expressed its reservations over the Article. This research aims to address the gaps in the implementation of Article 16 of the convention by clarifying the responsibilities of the personal status law in attaining the objectives of the convention. Additionally, it seeks to identify the factors that impede the full implementation of the aforementioned Article by the Sultanate of Oman, as well as the factors that align with the application of international law in accordance with the Omani Family Law.

Several studies in Islamic countries have addressed this challenge (Alam, 2019). Qahmous points out that the international convention influenced the Algerian legislature. Several amendments took place after Algeria ratified the international convention, especially in the aspects related to divorce and the equal right to establish and dissolve the marital relationship, as well as consent and guardianship. It recommends reviewing these changes in light of what Islamic law stipulates. The majority of Arab countries have ratified this convention except Sudan and Somalia. Iran is still not a party to this convention.

In Western countries, (Mashtalir & Kapitan, 2022) believe that gender equality is one of the most significant and controversial topics at the same time, as European countries incite to support the principle of equality and get rid of gender discrimination in different fields, including the social fields and role of both men and women (Sudirman et al., 2023). In a similar vein, (Vijayarasa, 2021) argues that gender equality should be founded upon the CEDAW convention since it is the foremost treaty concerning women's rights. This convention serves as a benchmark for assessing gender equality and its associated indicators across all domains. This entails adherence to the provisions of the Convention and embracing it as a benchmark for all facets of gender equality, serving as a gauge to assess gender-based discrimination (Ismail et al., 2023) within a country. In addition, (Raday, 2018) explains that the international conventions that support secularism, similar to the CEDAW convention, did not consider the religious dimensions of different religions like Islam, Christianity, and Judaism, as well as the dimensions of equality between men and women, as the most significant aspects of equality shall be kept in mind without affecting freedom of religion.

It is worth mentioning that the United States of America signed this convention but has not approved it yet, creating a position similar to the Convention on the Rights of the Child (De Silva De Alwis & Verveer, 2021). Given that Oman has entered the CEDAW convention with reservations of some Articles, including Article 16, some countries, including France, Belgium, Italy, Portugal, Greece, and others, expressed their objections. They stated in justification of their objections that no reservation that contradicts the purpose and subject matter of the convention is allowed. Besides, that reservation contradicts the Vienna Convention on the Law of Treaties does not affect the validity of the convention between the objecting countries and the Sultanate of Oman.

It is noted that some European countries agreed to join the convention without any reservations, but they provided explanatory announcements to clarify their position about some phrases and conditions thereof. The Netherlands indicated its position about Clauses 10 and 11 of the convention's preamble, including some political indications that it would have been better if they had not been included. Spain stated in its declaration that commitment to this convention shall not affect the constitutional rights of the Royal Crown. Moreover, some European countries, including France, Switzerland, and Malta, provided reservations about some articles in the convention. Some of those countries expressed reservations about Article 16 of the convention, which is the subject matter of this research. The reservations expressed by many Muslim-majority countries about Article 16 of the convention could be understandable due to the marriage and divorce aspects stipulated in the Islamic religion. However, some countries, such as Korea, Singapore, and India, also expressed their reservations about that Article.

In the context of Oman, (Al Balushi, 2019) pointed out the need to review some reservations to the convention in Oman, including the general reservation, because it may conflict with the convention and must be limited to articles that specifically violate

Islamic law. This is particularly important to activate constitutional oversight to ensure the implementation of the provisions of the Constitution and ensure that Sharia is the basis of legislation in Oman. Also, (Al Mukhmari, 2014) pointed out that the reservation of Islamic countries, including Oman, on some articles of the convention was due to their conflict with religion. She recommends that the legal system in Oman be reviewed so that it is compatible with CEDAW, with the need to withdraw some reservations and some national laws to be amended.

To deliberate this debate, this article will answer several questions, such as: 1) what are the main issues adopted by CEDAW? 2) what are the issues discussed in Article 16? and 3) what is the influence of Article 16 specifically on the Omani Personal Status Law concerning women's rights in the establishment and dissolution of marriage? Therefore, this article seeks to clarify Oman's commitment to implementing the provisions of international treaties from the perspective of international law based on the provisions stipulated in the CEDAW and Islamic Sharia law. It also aims to determine the status of the CEDAW Convention in the Omani legal system and the mechanism for its implementation. In addition, the current study aims to analyse the extent of the state's commitment to the terms of the provision and preserve the principles of Islamic Sharia law in family law.

METHOD

The research utilises doctrinal legal research (Ansari & Negara, 2023) to delve deeper into the rights of women in the establishment and dissolution of marriage contracts under Oman's Personal Status Law. The data were collected via library research, much like the research conducted by (Romainoor et al., 2023) and (Hassan et al., 2022; HASSAN et al., 2023; Hassan & Nordin, 2020). The study investigates various international legal instruments, including CEDAW, in addition to Islamic law, as they pertain to the rights of women in Oman with regard to marriage and divorce. To critically examine these topics, the research takes an analytical approach by analysing the text of the Convention and its equivalent in Omani law, as well as studying Omani judicial rulings on women's rights in the establishment and dissolution of the marital bond and investigating the origin of these rulings and their relationship to the Convention. In order to establish the validity and reliability of the data, the present study reinforces the argument by drawing on additional literature, employs triangulation, and guarantees the adequacy and consistency of the data.

RESULTS AND DISCUSSION

This research paper presents a comprehensive evaluation of the way Oman Personal Status Law addresses issues pertaining to matrimony and divorce, with a specific focus on Article 16 of the CEDAW. The analysis determines whether the legislation is compatible with the Convention, drawing on relevant international reports and Islamic Sharia principles. Therefore, the current study is divided into three main topics, namely the definition of CEDAW Article 16 specifically, its main provisions, and the accession of Oman to the Convention and commencement, marital

issues and rights of women in marriage, comparing the Convention to the Omani Personal Status Law and women's rights in the establishment and dissolution of marriage and the alignment of the Omani Personal Status Law with CEDAW.

The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Its Implementation in Oman

The CEDAW is a significant international treaty that ensures the protection and advancement of fundamental rights of women. It aims to prevent and address gender-based discrimination against women (Atrous, 2020; Shulton & Ismail, 2020). In this section, the study will shed light on the most prominent rights, with a special focus on Article 16, as it discusses the aspects of marriage, divorce, and family matters. In addition, it showcases Oman's stance on the agreement, beginning with its accession to the clarification of its reservations in some articles. Furthermore, the international reports submitted by the International Committee are concerned with the follow-up of the implementation of the agreement and the recommendations received on the submitted reports in the next part.

Additionally, the CEDAW came out as an answer to the Universal Declaration of Human Rights (UDHR), which affirms the principles of the inadmissibility of discrimination and equality of men and women to economic, social, cultural, civil, and political rights (Preamble of the Convention, Convention on the Elimination of All Forms of Discrimination against Women, OHCHR, 2023). The convention also states several rights and procedures that must be taken to reduce discrimination based on gender and the obligation to eliminate discrimination against women and achieve total equality between men and women (Nawal Qahmous, 2021).

The Convention signalled out Article 16 on matters relating to marriage and family relations, stipulating that state parties shall adopt all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall, in particular, ensure, based on equality between men and women, the right to enter into marriage among other rights (Arinda Putri.J et al., 2023). This Article refers to the quality in marriage matters (Muhammadi et al., 2021) such as the right to enter into marriage, rights in the marriage contract, and the responsibilities during marriage and its dissolution, rights regarding choosing a family name and the disposition of property and other aspects that may not be compatible with what some nations are accustomed to. Article 16 is one of the most related Articles to the Islamic Sharia Law texts due to its relation to family, marriage, divorce and Sharia rulings. For this reason, examining its texts compared to national laws regulating these aspects, derived from the Holy Quran and the Islamic Law provisions and jurisprudence, became necessary. Pertaining to this matter, Arab countries that have reservations about some of the provisions of this article are Algeria, Bahrain, Egypt, Iraq, Kuwait, Libya and Morocco. The Kingdom of Saudi Arabia generally has reservations about any clause contradicting Islamic law.

In the context of Oman, the CEDAW is a part of the Omani Law according to Oman's constitution. However, the validity of the provisions of the Convention is effective as per the provisions of the Royal Decree. It cannot oblige the country to the Articles it has reserved, which conflict with the Sharia Law or the national legislation, as well as Articles that infringe on the sovereignty of the State. The state's accession to the Convention requires it to implement the international obligations stipulated in the agreement and include its provisions in its internal legislation. Furthermore, amending texts inconsistent with the Convention and issuing legislation implementing what is agreed upon is recommended.

It is important to note that Oman can reconcile its international obligations and incorporating Sharia principles into its domestic legislation by drawing upon the successful practices of other States. For example, Algeria and Bahrain have amended their family law and withdrew certain reservations that did not conflict with religious principles, such as lifting the reservation on the article of nationality law. Countries like Egypt, Lebanon, and other Arab States let the son obtain his mother's nationality. In addition, Oman can also benefit from the experiences of other Arab and Islamic countries, especially regarding the regulation of the rights of domestic workers. Some laws govern this aspect in Jordan and Kuwait, while there is currently no similar regulation in Oman. It is also noted that in Oman, the blood money (*dijab*) paid in case of murder for women is stipulated to be less than that for men. In contrast, in some Arab countries, the blood money is equal without discrimination between women and men. In politics, Oman could benefit from the experiences of some Muslim-majority countries, such as Saudi Arabia, which has allocated 30 seats for women in the parliament or *Shura* Council (*Inter-parliamentary Union*, 2024). Hence, the recognition of women's rights holds great importance in empowering women in Oman, given the challenges that Omani women encounter while attempting to play a role in parliamentary affairs, as there are currently no women among the 90 members of the Shura Council in the current term (2023-2027).

Oman's Accession to CEDAW and Reservations

The Sultanate of Oman acceded to CEDAW in 2005 under Royal Decree No. (42/2005), which ratified Oman's accession to the Convention. According to the Basic Law, whether issued by the Royal Decree (101/96) or the Royal Decree No. (6/2021), international treaties and agreements after the issuance of decrees of accession or ratification acquire the force of law and are considered part of the national laws. Article (93) of the Basic Law, states, "International treaties and agreements do not have the power of law except after their ratification" (United Nations, 2019). According to Article (49) of the Basic Law of the State, one of the duties of the country's ruler is to "sign international treaties and agreements in accordance with the provisions of the law, or authorise their signing, and issue ratification decrees". Hence, the agreement is considered part of the internal law of the State after the issuance of the ratification decree by the Sultan.

Based on the above, the CEDAW is a part of the Omani Law. However, the validity of the provisions of the Convention is effective as per the provisions of the Royal Decree. It cannot oblige the country to the Articles it has reserved, which conflict with the Islamic Sharia Law or the national legislation, as well as Articles that infringe on the sovereignty of the State. Most Arab countries have preserved the provision of Article 29 of the Convention, which refers to arbitration and the possibility of resolving the dispute, to the International Court of Justice.

Additionally, the Royal Decree No. (42/2005) approved the accession to CEDAW with some reservations to specific provisions as follows:

1. All provisions of the Convention that deviate from the principles of Islamic Sharia and the existing legislation of the Sultanate of Oman.
2. Article 9, section 2.
3. Article 15, section 4.
4. Equality between men and women with respect regarding adoption (Article 16).
5. When a dispute between two or more states cannot be resolved through negotiation, the Sultanate is not obligated to abide by Article 29, section 1, which prohibits arbitration and the referral to the International Court of Justice.

According to Royal Decree No. (3), in 2019, Oman withdrew its reservation to section (4) of Article (15) of the Convention, which is related to granting women equal rights with men in terms of freedom of movement and choice of residence. It is apparent by Oman's reservation that there is a general reservation on the Articles that contradicts the provisions of the Sharia law and national legislations, indicating that Oman commits to the agreement except in provisions that contradict the Sharia and Omani laws, as it is not bound to it. That is, the national law overrules if there is a contradiction.

Furthermore, the application scope is always following Sharia boundaries, a concept called interpretive reservation, i.e., it delineates the limits by which the State will abide in the application (Ayat Muhammad Masoud, 2022). It is also noted that Oman generally has reservations about Articles contradicting the Sharia laws, national regulations, and specific articles. An example is Oman's reservation on the article related to nationality (Article (9) of the Omani Nationality Law promulgated by Royal Decree No. (38/2014)). Oman does not grant nationality to the son of an Omani female citizen, except in specific cases. In contrast, the son of a male Omani citizen acquires that nationality by origin. Thus, Oman reserved this article because it contradicts Omani Law.

Another instance of a reservation for the reason that it contradicts the Sharia law is the text provided in Article 16 regarding adoption; in its first report: adoption (if it is meant to decide that two non-biological parents of a child are their parents) is unacceptable under Sharia and Omani Law as lawful marriage is the only framework for the parent-child relationship. As stated in the CEDAW, First Periodic Report of the Sultanate of Oman, 2010, although the foster family system is recognised by Omani

law, it does not grant kinship or the family name to the child. Instead, it permits the child to be raised by individuals who are capable and willing to do so in the child's best interest, regardless of gender. Therefore, Oman could have a general reservation or specify articles that contradict the Sharia law and those that contradict the national laws without combining the two matters.

The general reservation is sufficient even if it conflicts with the recommendation of the International Committee of the Convention, among others to withdraw its reservation to Article 15 (4) of the Convention (United Nations, Concluding Observations on the Combined Final Report of the Second and Third Reports of Oman, 2017, para. 10). The State can decide whether to accept these recommendations by its constitution, laws, and legislation, taking into account Article (2) of the Basic Law of the State (6/2021), which recognises Islam as the official religion of the state.

The Reports from Oman and the Recommendation by International Committees

The Sultanate formed a committee to follow up on the implementation of this agreement after its accession. In addition to forming a committee to follow up on the implementation of the Convention and to submit periodic reports regularly to the concerned International Committee, Oman has made several legislative amendments to comply with the Convention and promote women's rights. Some of these are:

1. Equality between men and women in entitlement to government lands as per the amendment Royal Decree (125/2008).
2. Women are not required consent from their husbands or guardians to obtain a passport as per the amendment in the Omani Passport Law by Royal Decree No. (11/2010), which aligns with Article (15) of the Convention, to which Oman had previously made reservations upon accession, then lifted the reservation in 2019.
3. Amendment in the Civil and Commercial Procedures Law as per the Royal Decree No. (55/2010), which regulates complaints in case a guardian obstructs a woman's decision to marry, referred to in the Convention in Article (16) regarding the right to marry of choice (Al-Aghbari, 2020).

The International Committee is concerned with following up on the implementation of the Convention and submits recommendations after reviewing the international reports. The concluding observations submitted on the second and third reports of Oman comprise several recommendations, including withdrawing reservations for equality in cases of nationality, work, and positions, promoting legal awareness, and reducing harmful practices.

Further, with regards to marriage and family relations, "the Committee recommends that the State party review all discriminatory provisions of the Personal Status Law within a specified time frame, to include, in particular, the gradual removal of discriminatory provisions regulating legal capacity, polygamy, divorce, the guardianship system, and inheritance, taking into account the experience of other

countries with similar cultural backgrounds and legal systems. This includes the prohibition of polygamy, equality in marriage and divorce, ending the payment of dowries, setting the age of marriage to 18 years, equality in inheritance, equality at the dissolution of the marriage contract, and non-discrimination of such cases against women in their judgments, especially in cases of divorce, alimony, and custody of children (Disemadi et al., 2020); Introducing a law that provides a civil alternative to the Personal Status Law (Nations, 2017), Oman has clarified its position on these recommendations by answering the list of issues submitted on the abovementioned topics with detailed responses containing Oman's legislative, legal, and social aspects (International Committee, 2017).

The Impact of Article 16 of CEDAW on the Omani Personal Status Law on Women's Rights Related to The Establishment of The Marital Bond

One of the main articles the Sultanate has reservations about in CEDAW is Article 16. In this regard, the current research analyses the law regarding women's rights and freedom to choose a spouse in the Omani Personal Status Law and the women's freedom to conclude and document the marriage contract. Furthermore, the research will also analyse the effect of the Convention or the demands of the Committee of CEDAW on the Omani Personal Status Law.

The Women's Rights and Freedom in Choosing Spouse

Article 16 of the CEDAW stipulates in paragraph 1/b that a woman has the same right as a man to freely choose a spouse and enter marriage with her free and full consent, out of which is invalid if it occurs without her consent. The Omani Personal Status Law considers women's consent an integral part of the completion of the marriage contract and its validity, just like any other legislation. Article 19 of the Omani Personal Status Law provides evidence for this; "The woman's guardian undertakes the contract of her marriage with her consent," and it was previously mentioned in Article 17 that the marriage contract does not take place without the acceptance of the contracting parties with full consent. The expression of this consent must be unambiguous, and there is no difference between whether the woman is a virgin or not, for she has absolute freedom in choosing whom her heart desires. The Omani Personal Status Law regulates the pillars of the marriage contract in force in Oman. It is only done with the consent of the woman. Thus, the consent of the woman to conclude the marriage contract is considered one of the pillars of a marriage contract, and without it, the marriage is not valid (Avita et al., 2022)(Asman & Bin Muda, 2023). The Law has made it clear that if the guardian interferes with the woman's decision and her choice, she may sue him, and the court's decision will be in the woman's interest.

In relation to that, the Omani courts have worked on this basis, their verdicts are commanded by the women's right to consent, and it even obligates the guardian to accept her choice regardless. In the verdict issued by the Sharia Court department of

the Supreme Court under No. 3/2017, dated January 1, 2017, the court ruled to marry the plaintiff whose father refused to marry her to the one she chose. In another verdict from the same circuit, No. 97/2017, dated November 26, 2017, the court ruled in favour of the marriage, citing the same reasons that give women freedom of choice.

This article is essentially based on Islamic regulations, as the Quran states: "Do not hinder them from marrying other men if they have agreed to this in a fair manner" and confirmed in the Sunna of the Prophet Mohamed (peace be upon him) saying: "An ayim (previously married woman) has more authority over herself than her guardian, and a virgin (not married before) is asked for permission, and her silence is acceptance." Furthermore, there is evidence in the Sunnah that demonstrates Prophet Muhamad rejecting the marriage that occurred without the woman's consent. As narrated by Aishah that "Khansa Bint Khaddam Al-Ansariyyah was married by her father when she was a virgin, and she hated that, so she came to the prophet, (may God's prayers and peace be upon him) and told him, so he declared her marriage invalid." (As stated in Al-Rabee', chapter: On the Guardians, Hadith No. 512).

The Prophet obligated the guardians to marry the one whom the woman desired if he did not insult his religion or his morals. He said, peace be upon him: "If someone whose religion and morals you are satisfied with comes to you, then marry him. If you do not, there will be discord on earth and great corruption."

Women's Freedom to Conclude and Document the Marriage Contract

Paragraph 1 (a) of Article 16 of CEDAW stipulates that women have the same right as men to conclude a marriage contract without a third party interfering between them. Article 16 (2) CEDAW concludes that women have the freedom to document the marriage contract. As the legal evidence of the marital union between a man and his wife, the Omani Personal Status Law guarantees both spouses the right to extract, obtain and keep the official marriage document. This document is legally registered in the official state records with the Notary Public Department.

As for the woman's right to conclude the marriage contract by herself without referring to her guardian, whether the guardian is a father or any other person, meaning that no one may interfere in the conclusion of her marriage contract and that the woman is the decision-maker in her marriage, was confirmed by the Committee of CEDAW. According to the Committee of CEDAW, Concluding Observations on the Combined Final Report of the Second and Third Reports of Oman in 2017, it indicated these statements in its final recommendations to the Sultanate, as it considered the Omani legal requirement for a woman to obtain her guardian's permission to marry as a discriminatory provision against women and that she is not equal to a man as he is not required to do the same. In its recommendations, the Committee added that paying dowries to women is a practice that must be ended.

The Sultanate responded to the recommendations of the Committee in its reports that the requirement of a guardian and a dowry are among the conditions of marriage that cannot be amended in Omani Law as it is one of the texts of Islamic law

from which the Sultanate derived its provisions in the Personal Status. Any legislation that contradicts, according to what was stated in the response, is considered violating the provisions of the Basic Law. It also stipulates that marriage is not concluded without the woman's consent and is one of the pillars of the marriage contract without which marriage is not concluded (United Nations, Fourth Report of the Sultanate of Oman, para. 16).

Referring to the Omani Personal Status Law in Articles 16 and 19, a woman has no authority to marry herself. Although the woman is free to choose a husband, this does not give her the authority to marry herself, so she does not undertake the marriage contract herself without her guardian. The Law obliges one of her guardians, whether a father or a brother or whoever falls under the guardian classification, to govern the marriage for it to be valid. Any marriage contract based on otherwise is invalid. Article 16 stipulates that the guardian's consent to marriage is one of the pillars of the marriage contract, without which it is invalid. The other necessary elements include consent, dowry, and witness.

Article 19 demands that the guardian undertake the authority of marrying the woman, as mentioned: "The woman's guardian undertakes her marriage contract with her consent." The Omani Supreme Court ruled that the consent of the guardian is one of the pillars of the marriage contract and that if the marriage contract took place without the permission of the guardian, it is considered invalid according to Article (16) of the Omani Personal Status Law (Omani Supreme Court No. 76/2002, Session 7/6/2003). Supporting this statement (*Appeal of the Omani Supreme Court No. 217/2017, Session 4/8/2018 Shari'a Supreme Court*, n.d.), ruled that the marriage contract that took place without the guardian's permission was invalid. The woman's pregnancy did not intercede in the matter, as it is considered a verdict from the general system, on which it cannot be agreed in terms of what contradicts it.

Furthermore, the authority of the guardian in marriage is not unlimited, and the woman does have a say in the matter. The woman's consent is a requirement for the marriage to be regarded as valid, and any marriage that does not have the guardian's consent is deemed invalid. If the woman desires a husband whom the guardian refuses to marry without reason, the court has the right to oblige him. It is one of the women's rights confirmed in the Omani Personal Status Law and applied by the judiciary for more verdicts and decisions of the Omani courts on this subject, see the second requirement of this topic. The provision of this Personal Status Law was derived from true Sharia jurisdictions, as the Prophet proved it, may God's prayers and peace be upon him when he said: "There is no marriage without a guardian, dowry, and witness" (Al-Rabee', No. 510) and also said: "Any Woman who married without the permission of her guardian, then her marriage is invalid - repeated three times" (Al-Tirmidhi, No. 1021).

This is what is understood from the meaning of the Qur'anic verses that entrusted marriage to male guardians, as in the Almighty's saying in Surah Al-Baqara: 221. "And do not marry the polytheists until they believe," and His saying: "Marry off the free singles among you" (Surah Al-Nur: 32), which means if we suppose that they

had no guardianship over women in the matter of marriage, then the command and speech regarding marriage for them would have no meaning. Far be it from the word of God to be devoid of interest, the word of God Almighty is far from absurdity (Al-Maawali, p. 244).

Women's Freedom to Dissolve the Marital Bond

Under CEDAW, women have the right to dissolve the marital bond and the same right as the husband to dissolve and end the marital bond. Paragraph c of Article 16 indicates that the woman must obtain the same right as the man in dissolving and terminating the marriage contract.

Comparing the matter to the Omani Personal Status Law, the woman has the right to dissolve the marital bond whenever it is impossible to remain in the custody of the husband or remaining leads to apparent harm. The provisions of the Law have indicated that divorce may take place at the will of the husband only and by the agreement of the two parties with their complete will and consent, as in *Khul'* divorce. It may take place at the wife's will by requesting a divorce from the husband if it is justified, as in the case of judicial divorce.

The Women's Right to Judicial Divorce

Referring to the concluding observation of the International Committee No. 53 and its recommendation No. 54 regarding equal rights between men and women regarding divorce, Oman responded in its fourth report that women have the same right as men to dissolve the marriage contract, in which the law allows women to state the right to divorce herself and dissolve the marriage in the marriage contract. When there are legal and factual factors that support the woman's right to dissolve the marriage contract, she may petition the court for dissolution (Mujab & Rahma, 2022). According to the United Nations, the fourth report of the Sultanate of Oman (paragraph 162), the response added that the woman has the right to request a divorce in the event of harm caused by any conduct the husband may commit.

To clarify this, the jurists agreed that the marriage bond might be dissolved in two ways, either divorce or dissolution (Atfayyesh, 1985). Article 81, the Omani Personal Status Law defines divorce as the "Dissolution of the marriage contract as per the form prescribed for it by the Sharia." Divorce may occur between spouses through the judiciary. As stated in the Kuwaiti Encyclopaedia of Jurisprudence: Part 29 and beyond, it is one of the types of legally acceptable separation known in jurisprudence as judicial divorce. This is when the judge rules for separation in case the wife files a lawsuit requesting a divorce. It falls under the power of Sharia and law to be ruled by the judge when its reasons are available (Aristoni, 2022). This includes divorce due to defect, damage, discord, loss, absence, and inability to pay alimony (Al-Zuhaili, 1997). The judicial verdict may sometimes be called judicial separation if the request for separation includes a reason beyond the spouses' control or a religious matter that prevents the viability of the marriage, such as evidence of the prohibition

of the wife on her husband because of lineage that was not previously known, affinity, or breastfeeding, or the reason was accidental, such as lian, or the change of religion of one of them.

Judicial separation is one of the solutions presented by Sharia and applied by the law to solve marital problems if marital life becomes difficult (Nofiaridi & Samiran, 2023). The Omani law states that the divorce of the wife from her husband by the force of the law that the judge rules when reasons are available, which are mentioned exclusively in Articles 98-116, is called a judicial divorce. There is no doubt that the Omani legislation gave women flexibility in their access to the judiciary and requests for separation from their husbands from whom they complained of disunity, harm, lack of alimony, or from whom they complained of abandonment due to loss or absence. However, judicial separation, as interpreted by the verdict of the Omani Supreme Court in Appeal No. 19/2001, is forcing the husband to divorce for a cause the court is convinced necessitates separation (Omani Supreme Court No, session 10/11/2003). Therefore, if it is satisfied with the reasons for the request for separation filed by the woman, it is the court's power to rule for her separation and force the husband into the matter, as in Appeal No. 7/2006 (Omani Supreme Court, Session 4/15/2006). However, the court may not be satisfied with the appellant's demands, so it may reject the appeal and not order the separation, as in the Appeal judgment No. 60/2002 (*Appeal of the Omani Supreme Court No. 60/2002, Session 3/22/2003 Sharia High Court, n.d.*).

The cases of requesting separation are among the viable cases that the judiciary allows for reconsideration before the verdict on separation. In the case of a court verdict having previously rejected the woman's claim for separation for lack of evidence or due to conciliation between the spouses, it is permissible for the woman to file another case, even in the same matter if there is a reason for the action. It is not considered rejected due to the verdict already decided.

The Woman's Right to Dissolve the Marriage Contract by *Khul'*

One of the recommendations made by the Committee of CEDAW in Oman was that women's right to terminate the marriage contract is the same as that of men by considering the experience of other countries with similar cultural and legal backgrounds. In some Arab countries, *khul'* system gave the woman the right to end the marriage contract. For example, the Egyptian Law (*Appeal No. 308 of 73 Judicial Year "Personal Status" Session 7/10/2012 AD, n.d.*) and Algerian, a decision issued by the Algerian Supreme Court, Personal Status Chamber, on 09/15/2011, 2012, which states that the wife may divorce herself from her husband without his consent, provided that divorce is a voluntary right of the wife corresponding to the husband's matrimonial authority over his wife, on which the will of the husband is not reliable.

In terms of jurisprudence, however, the annulment of the marriage contract is a dissolution and removal of it from its basis, whether it was from the origin of its formation or because of what happened to it. The marriage contract is annulled by

agreement of the jurists if there is a flaw in its core, such as disrupting one of its pillars or conditions at the time of the contract, which makes it invalid from the beginning.

The annulment may be at the woman's request, in which the husband negotiated a sum of money to resolve her matter and annul her marriage contract, whether it was a settlement between them or through the judiciary. In Article 80, The Omani Personal Status Law stipulates that the separation between the spouses is based on matters including divorce, *Khul'*, and the ruling of the judiciary as divorce or annulment. Article 80 provides separation that occurs between the spouses: 1. by divorce; 2. by *Khul'*. 3. by virtue of the judiciary's divorce or annulment.

Khul' is the agreement of the spouses that the woman will ransom herself from her husband by returning what he paid in terms of dowry or value (Al-Khalili, 2003; Ali et al., 2022; Daud et al., 2021). Article 94/a of the Omani Personal Status Law stipulates that *Khul'* can only take place with the consent of both parties, and from this section, the Supreme Court ruled that the consent of the spouses to the marriage contract is a condition for the validity of the *Khula*. The principle stipulates: "The condition for the validity of *Khul'* is the consent of both parties of the marriage contract; a person not having the right to agree and accept cannot act upon *Khul'* (Appeal of the Omani Supreme Court No. 10/2010 Session 10/16/2010 Supreme Shari'a).

Nevertheless, according to Omani law, to safeguard a woman's rights in *Khul'* cases, it is stipulated that if a husband engages in behaviour that can be interpreted as blackmailing the woman, such as pressuring her to relinquish custody of her children, then *khul'* is considered as divorce rather than *khul'*. In accordance with the ruling of the Omani Supreme Court, the woman has the legal entitlement to keep the money, ransom, and dowry (*Appeal of the Omani Supreme Court No. 47/2006, session 27/1/2007 Sharia Supreme, n.d.*).

CONCLUSION

In conclusion, CEDAW can be considered part of the Omani law after Oman acceded to the said Convention in 2005. Its provisions can be applied in the courts and reliable to claim rights, excluding the provisions that Oman had reservations about in the accession decree, as they and the provisions that do not bind it are considered invalid. Having said that, The Sultanate of Oman has reserved several aspects stipulated in article 16 of the said international Convention due to its contradiction with Islamic Law. Despite this, CEDAW regulates many aspects that achieve gender equality in family aspects, such as requiring the woman's consent on marriage and her right to annul the marital relationship through divorce or *khul'* whenever the conditions are available. A number of Omani legislations preceded the CEDAW Convention in preserving the rights of women referred to in the Convention. Oman has also put to effective use several aspects of the Convention to enhance women's rights by amending some national laws.

The current study also pointed out that Oman has international obligations to implement CEDAW, with reference to its reservations on the said Convention. Having

said that, the Personal Status Law refers to equality between men and women in the marriage contract and the specific marriage terms. The study also indicates equality in the aspects related to the annulment of the marriage contract and resorting to divorce or *kbul'*. Omani Personal Status Law preserves equal rights for men and women by requiring their consent on the marriage contract. Besides, it requires the consent of the guardian of the woman on the marriage as an application of Sharia law. Still, it gives women the right to marry through the judiciary if the guardian abuses her marriage. Furthermore, Omani Personal Status Law gives the woman the right to end the marital relationship by *kbul'* or by filing her case in court if the reasons for the termination of the marital relationship are satisfied.

In a nutshell, the ratification of the international convention has a significant influence in advancing women's rights in Oman. This is apparent via the implementation of diverse procedures aimed at safeguarding women from violence, improving their access to justice, and implementing amendments in criminal legislation to strengthen the protection of women's rights. Deliberations concerning these advantages will bolster a milieu of parity in the professional sphere, affording equality in all prospects, including women holding high-ranking posts such as ministers, undersecretaries, and ambassadors in Oman.

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