

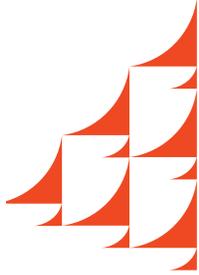
The Arab Gulf States
Institute in Washington

Building bridges of understanding



The Personal is Political: Gender Identity in the Personal Status Laws of the Gulf Arab States

Hala Aldosari



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Aldosari has worked as a medical scientist, a lecturer, and an administrator in the Saudi health and education sector. She has also worked as a consultant to the Ministry of Health in Saudi Arabia in research and planning of the country's national health policy and services. In 2015, she completed a fellowship at Johns Hopkins University, focusing on social determinants of women's health and violence against women. She currently directs and maintains a women's rights advocacy project online (www.aminah.org) and participates in advocacy efforts and community capacity building aimed at promoting women's rights and empowerment in Saudi Arabia.

Aldosari is also a writer and a blogger, commenting on Saudi political and social affairs. Her writings have been featured in several major media outlets including The Guardian, Foreign Policy, and Al Jazeera English, among many others.

Contents

Executive Summary.....	1
Glossary of Key Terms.....	3
Introduction.....	4
The Politics of PSL in the Gulf Arab States.....	5
Examining Gender Roles within PSL.....	8
Attempts to Reform PSL.....	13
Conclusion.....	15
Appendix.....	16
Table 1: Overview of PSL in the GCC.....	16
Table 2: Marriage Regulations and Conditions.....	17
Table 3: Divorce Regulations.....	18
Table 4: Child Custody Regulations.....	19

Executive Summary

This paper examines personal status law in the six Gulf Arab states, and the limitations PSLs impose on women's autonomy and the role of women within the family. PSLs have restrictions on women's autonomy in three areas in particular: marriage, divorce, and child custody. The gendered nature of PSL is an extension of the political values inscribed in constitutional laws and the customary patriarchal norms. The paper examines constitutional articles in each state that deal with PSL and draws on the roles assigned for men and women in the family and the state's part in promoting those roles. PSLs are claimed to be based on Islamic references, however secular codes are included when there is a political need, such as enforcing a nationality law or public health concern, but not necessarily to protect women's rights in the family. Selection of particular Islamic schools of thought was based on what was customarily practiced in each state rather than on finding a more responsive code for the best interests of women. The states' entries into international commitments and treaties have influenced the codes detailing the minimum age of marriage but not to the extent of protecting a child's best interest.

The paper discusses the definitions of marriage in PSL to explain the roles attributed to men and women in the family. Definitions prioritized the role of men as head of the family and women as the caregivers, obedient followers. Codes in various laws restrict women's right to education, leaving the house, or work. If a woman is married, such functions are at the discretion of her husband and what he determines is best for the wellbeing of the family and is compatible with what he deems acceptable Islamic conduct.

Child marriage is neither banned nor permitted in PSL of the Gulf Arab states. In states that mandate a minimum marital age of 18 years, such as Oman and the United Arab Emirates, a judge can approve a marriage of an underage girl if he deems it beneficial. However, there is no explanation of what constitutes a benefit. Early Islamic scholars argued and differed over the requirement for the approval of a male guardian – usually a woman's father or next of kin male relative – for a woman to marry. Nevertheless, PSL codes have enforced only the opinions requiring the guardian's permission. Instead, PSLs have provided a woman with the right to challenge her guardian's refusal of her marriage in court. In these cases, a judge assigns the next of kin male relative to act as her guardian; if no male relative exists, the judge acts as the guardian. PSLs in the six states differ over the conditions that need to be met to determine compatibility between a man and a woman for the two to marry. These conditions have for the most part been regulated by different laws and have been subject to the broad interpretation of judges. Moreover, the PSLs regarding compatibility reference customary norms, which differ not only across states but across different social groups in each state. In the PSL of the Gulf Arab states, the only regulation in regards to polygyny is that a husband must be equitable in his treatment of all his wives. Bahraini law mandates listing the names of all previous wives in each new marriage contract and formally informing the previous wives only if each requested that as a condition in her marriage contract.

According to PSL, a man has a right to divorce his wife at any time without any restrictions. A woman is limited in her access to divorce. There are two options for divorce for a woman: If her husband refuses to divorce her willingly a woman can get a judicial divorce or a woman can

pay her husband a sum of money to annul the marriage in a process called Khul. For either of these two options, a woman must file a request in court. PSLs across various states differ in the list of conditions for a woman to seek a judicial divorce. Those conditions have been marked by the same broad language that leaves ample room for judicial discretion and therefore limits a woman's access to judicial divorce, often forcing her to pay her way out of marriage. Maintenance of marital ties is often viewed as a priority in the legal traditions; reconciliation measures of varying lengths are generally enforced, thus prolonging the litigation procedure and exhausting women seeking justice.

A woman's authority over her children is not equal to that of men in PSL. Mothers are granted partial authority as caregivers and fathers are granted the authoritative, disciplinary authority over children after divorce. Following divorce, mothers can only retain custody of a child beyond a certain age who is mentally challenged or physically disabled, which is indicative of the caregiver role assigned to mothers. This paper highlights several clauses demonstrating how specific gender roles are enforced. A father's superior status is specifically apparent when considering paternity claims; broad regulations grant fathers the right to deny paternity to a child merely by swearing it off in court.

Considering the huge impact of gendered PSL on women's autonomy and personal choices, civil society's attempts to reform PSL remain timid and limited to procedural law rather than substantive law. The paper looks at two civil society projects working on PSL: Wracati project in Kuwait, to examine the gender-discriminatory laws, and Mawaddah charity organization in Riyadh, which works to address women's and children's grievances caused by divorce laws. While such initiatives have created a much-needed channel for women's voices in the legal and public sectors, they lack the political support to effectively lobby to change the gendered PSL and therefore cannot achieve a substantive change in the existing, authoritative political systems.

Glossary of Key Terms

Fatwa A religious edict or ruling issued by a religious scholar to describe the Islamic opinion on a specific situation or in response to a specific question

Fiqh The process of reasoning by religious scholars to derive rulings and opinions from sharia

Hadith Sayings attributed to the Prophet Muhammad, collected 150 to 200 years after his death by early religious scholars

Iddah A required, mandatory waiting period (usually between 10 days and four months) after a woman is divorced or widowed before she is legally allowed to remarry. The rationale for Iddah is to rule out possible pregnancy before a woman remarries and to give a husband a chance for reconciliation to return to his wife.

Ijtihad Islamic opinions derived by religious scholars on matters not mentioned in the Quran, Sunnah, or major schools of thoughts

Khul The request of a woman to annul her marriage in courts after paying compensation to her husband, usually done when no valid evidence can be provided to claim divorce

Lean A legal procedure in which a father who doubts the paternity of a child swears that the child is not his in front of a judge and the mother swears that the child is indeed his to avoid the punishment for adultery. The result of the process is the annulment of marriage and naming of the child after the mother's family.

Madhhab (plural "madhahib") A school of thought, or jurisprudence, based on the opinions of founding religious scholars. There are four main schools of thought for the Sunni population following key Islamist jurists: Hanafi (d. 767), Maliki (d. 795), Shafii (d. 820), and Hanbali (d. 855). Additionally, the Jafari (d. 765) school of thought is followed by the Shia population. Various political, social, and demographic factors influenced these schools in their development and regional spread.

Qiwama A word used in the Quran to convey the responsibility of men to provide protective care for women in their families

Quran The words of God, or "Allah," as delivered to the Prophet Muhammad, considered to be the primary source for Islamic legislation

Sharia Sources of Islamic jurisprudence, including from the Quran or Sunnah

Sunnah The teaching of the Prophet Muhammad, collected from his followers' narration approximately 150 years after his death

Thayyeb A woman who was previously married and currently divorced or widowed

Wilaya A state where a man or woman is appointed as a legal guardian of another by a judge, or assumes legal guardianship of another based on a religious edict or customary norms

Introduction

Personal status law is a contentious area of legislation due to the impact it has on shaping gender relations and cultural norms, both in the family and in the public sphere. *Islamic personal status law* is best defined as “that part of Sharia that applies to family relations, such as marriage, divorce and custody of children, through the political will of the state.”¹ The recognition of the state’s agency in shaping PSL is key as the fierce resistance to reforming these laws comes from considering them as one and the same as sharia. Individual Muslims are free to follow any particular opinion from any Islamic school of thought, but turning these opinions into binding laws revokes the individual’s privilege of choice. Consequently, by legalizing certain religious opinions in PSL, the state shapes and influences a certain form of gender relations not only in laws but also in the prevalent culture.

It is not surprising, therefore, that the codification process of PSL is lengthy and contentious. Religious resistance to codification has often impeded the process even when the head of state orders codification, as in Saudi Arabia and the United Arab Emirates. The process in the UAE took over 30 years after it was first suggested by Sheikh Zayed bin Sultan al-Nahyan in 1978.² Kuwait was the first state to enact its PSL in 1984. Qatar, the UAE, Bahrain, and Oman codified their PSL based on a standard legal document, the “Muscat Document of the Uniform Code (the Law) of Personal Status for GCC Countries,” which was issued by the Gulf Cooperation Council in 1996.³ The Muscat document was modeled after the legal document “The Draft of the Unified Arab Law of Personal Status” issued by the League of Arab States in the late 1980s.⁴ Saudi Arabia remains the only Gulf state without a codified PSL, despite a PSL draft presented in 2013 by the Shura Council, Saudi Arabia’s appointed advisory body.⁵ Saudi judges follow the Muscat PSL as a reference, but not as an obligatory document. Most Saudi judges continue to apply the strict Hanbali madhhab that rejects any attempts of reformation of earlier interpretation of the Quran and hadith, including codification for legal references. Resistance to legal codification, including to that of PSL, is based on the belief that it violates the millennium-old Islamic jurists’ tradition. Codification compels a jurist to a binding law, therefore restricting his individual evaluation of and judgment on a particular case instead of using the full range of Islamic debates and opinions available through the classical fiqh literature.⁶ Codification of PSL, though it may cement discrimination into laws, restricts the ample authority granted to a judge, who is otherwise left to rule based on his own discretion.

1 Abdullahi An-Naim, *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Books, 2002).

2 “The explanatory notes of United Arab Emirates Personal Status Law appendix,” *Alshari’a and Alqanoon* 26, no. 4 (2005): 5.

3 “[Muscat Document of the Uniform Code of Personal Status for GCC Countries](#),” *Gulf Cooperation Council*, accessed 2016.

4 Lynn Welchman, “[Bahrain, Qatar, UAE: First time family law codifications in three Gulf States](#),” *International Survey of Family Law* (July 2010): 163-78.

5 Hayat Alghamdi, “[Alshura places reservations on the personal status law and withdraws the sexual harassment law](#),” *Al-Hayat* (August 26, 2014).

6 Nathan J. Brown, “[Why won’t Saudi Arabia write down its laws?](#),” *Foreign Policy*, January 23, 2012.

Unequal gender norms, in terms of privileges granted to men and restrictions imposed upon women, are not necessarily a direct result of Islamic teachings. Men's superiority over women, as reflected by concepts such as *Qiwama* or *Wilaya*, is a product of historical contexts in which Islamic jurists were influenced by prevalent patriarchal perceptions of gender roles. This is an especially important consideration when noting that the main *madhahib* of Islamic *fiqh* were developed 150 to 250 years after the Prophet Muhammad's death. The historical development and spread of each *madhhab* was therefore influenced by a variety of sociopolitical and demographic factors rather than by a direct teaching of the prophet.⁷

According to Hassan Yousefi Eshkevari, three main assumptions have shaped the classical *fiqh* perceptions of gender roles: a belief in men's superiority over women, a need to protect the patriarchal family structure, and an Aristotelian notion of justice. Women's difference in physiology and their presumed weaker reasoning ability and emotional nature were considered reasonable claims to assign men the guardianship role, or *Wilaya* of women, particularly to guard women's sexuality so as not to corrupt men. The historical imperative of protecting the patriarchal family structure shaped the view of Islamic jurists. Men were given the responsibility of providing for women, an obligation referred to as *Qiwama*, and therefore the right of men to determine women's choices, or *Wilaya*. Aristotelian essentialism, a belief that human beings are made of unchangeable essences, has shaped the perception of Muslim jurists that the goal of justice is "to maintain everything in its proper place," including the authoritative position of men and the submissive position of women. Therefore, men's authority to discipline women for what they perceive as disobedience is considered legally justified to maintain social order.⁸

Unequal gender norms, in terms of privileges granted to men and restrictions imposed upon women, are not necessarily a direct result of Islamic teachings.

How did PSL in the Gulf Arab states influence gender relations? And what were the privileges granted to men or the restrictions imposed upon women by such codes? This paper will attempt to answer such questions by focusing on the analysis of three main areas in the PSL of the Gulf Arab states: marriage conditions and obligations, divorce restrictions on women, and differential parenting authority over children as perceived by PSL codes. Additionally, the paper will highlight certain remedial actions, outside of the realm of PSL, that have been adopted by community organizations or governmental institutions in the Gulf Arab states to fill the gaps in PSL legislation. As a preamble the paper will first explain the political context behind the formulation and implementation of PSL.

The Politics of PSL in the Gulf Arab States

Codification of laws may not necessarily be reformative; rather it can be a mere institutionalization of the practiced law with all its inherent discriminatory aspects. The Gulf Arab states are relatively new in terms of the development of their legal and administrative systems. The codified PSL reveals subtle differences among various Gulf Arab states in the

⁷ Abdullahi An-Naim, *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Books, 2002).

⁸ Hassan Yousefi Eshkevari, "Rethinking men's authority over women: *Qiwama*, *Wilaya* and their underlying assumptions," in *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition* ed. Lena Larsen, Ziba Mir-Hosseini, Christian Moe, and Kari Vogt (New York: I.B.Tauris, 2013), 191-212.

selection of Islamic schools of thought, applicability or exclusion of certain groups from the law, and codes of particular political concern for the individual state (see Table 1). The codes, in general, are highly gendered and share a common notion of patriarchal gender roles, assigning men as the heads of and providers for the family, and women as dependents and caregivers.

The gendered nature of PSL in the Gulf Arab states is an extension of the political values inscribed in constitutional law. The patriarchal family, and not the individual, is recognized as the founding unit of the society and the central institution fostering the chosen political values of the state. For instance, the constitutions of Kuwait (Article 9), Qatar (Article 21), UAE (Article 15), and Oman (Article 12) have identified the pillars of the family as religion, morals, and patriotism. Articles in Gulf Arab state constitutions pledge to protect the family, strengthen the relationships of its members, and protect the maternal and childhood functions of the family. Constitutional law not only protects the state-envisaged gender roles and moral behavior of the family, but also entrusts the state to act as the guardian for the family. The Bahraini Constitution (Article 5b) assigns responsibility for guaranteeing the fulfilment of a woman's familial and employment obligations to the state. Similarly, the Saudi Constitution (Article 10) holds the state as responsible for strengthening family ties and protecting Islamic and Arab values. Loyalty to the patriarchal family values and norms is therefore linked with loyalty to the state's religious and patriarchal values.

The gendered nature of PSL in the Gulf Arab states is an extension of the political values inscribed in constitutional law.

Abdullahi An-Naim argues that the modernizing political elite in Islamic countries have sacrificed women's basic rights for the sake of political expediency by practicing an "avoidance tactic" in which legal and administrative reforms of the state were pushed through, while women's rights were relegated to religious authority.⁹ Saudi Arabia is a typical case of "political avoidance." The Saudi king acts as a "Custodian" of both the tribal and religious authorities, entrusted to extend their social values and gender norms.¹⁰ A draft of PSL in Saudi Arabia was presented and approved by the Shura Council (Royal Advisory Council) in 2013, but it was never adopted by the Ministry of Justice.¹¹ The spokesperson of the Ministry of Justice said the delay in codifying PSL since 2005, when a higher committee was formed, was because "PSL is a serious and sensitive type of law---- with repercussions that can reshape the social, cultural, economic and religious aspects of the society."¹² The religious scholars' ability to ignore royal and legislative directives reflects the political margin granted to the clerics in deciding family and gender-related policies. Across the Muslim majority countries, whenever the state relegates family laws to religious authorities, legal discrimination against women becomes more evident.¹³

⁹ Abdullahi An-Naim, *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Books, 2002).

¹⁰ Eleanor A. Doumato, "Gender, monarchy, and national identity in Saudi Arabia," *British Journal of Middle Eastern Studies* 19, no. 1 (1992): 31-47.

¹¹ Fatima Al-Dubais, "[Shura members accuse interest groups of blocking key resolutions](#)," *Saudi Gazette*, March 26, 2016.

¹² Mohammad Ateef, "[Saudi Ministry of Justice denies approving a personal status law](#)," *Al Arabiya*, July 9, 2013.

¹³ Mala Htun and S. Laurel Weldon, "Religious Power, the State, Women's Rights, and Family Law," *Politics & Gender* 11, no. 03 (2015): 451-77.

PSL legislation varies in both scope and legal reference (see Table 1). The choice of a particular madhhab, or more than one madhhab, is often based on the most common one for the population served. However, it can also be a selection of opinions across various madhahib to reach the best legal code. Decisions in such regards are solely made by religious and legislative authorities of the respective state. For instance, the Maliki madhhab, adopted by the Kuwaiti PSL, considers compatibility in marriage to be based upon a husband's religiosity and absence of diseases that may affect the consummation of marriage. Though only the wife has the right to object to the marriage over the latter condition. On the other hand, the Hanbali madhhab, adopted by Qatari and Saudi Arabian PSLs, defines compatibility in marriage as based on matching in religiosity, social status, wealth, and lineage.¹⁴ Therefore, marriage compatibility, and the right to annul a marriage for incompatibility, is defined differently by different laws: PSL of Bahrain considers religiosity while PSL of Oman, Qatar, UAE, and Saudi Arabia considers religiosity, social norms, and tradition as legitimate conditions for marriage incompatibility. The PSLs in Kuwait, Qatar, UAE, and Oman are very detailed, covering premarital agreements, marriage, divorce, caring for and custody of children, and inheritance rules. Bahrain's PSL is the most basic law, leaving inheritance and transfer of familial property out of its codes.¹⁵ In addition, the founding of PSL on a certain madhhab effectively excludes followers of other sects from the law. In those states, Shia constituencies, mainly women, resort to traditional and uncodified religious systems to settle their familial disputes. Such litigation is often lengthy and of uncertain outcome.¹⁶ Exclusion of certain religious sects from PSL codes is sometimes politically deliberate. For example, in 2009, part one of the Bahraini PSL, dedicated for use by Sunni citizens, was approved and enacted by the state, while part two, dedicated for Shia citizens, was not. Shia distrust of the political leadership led the Shia to demand a constitutional guarantee that future changes to their drafted PSL would be made in consultation with the Shia religious leaders, a condition rejected by the state.¹⁷

Secular codes were included in the Gulf Arab states' PSL to enforce state laws regarding citizenship, public health, and public policy.

The Omani PSL is unique in not referring to a particular madhhab, but rather applying the law to the entire Muslim population. However, the law grants the husband, and not the wife, the option to follow his own madhhab if it mandates stricter rules on separation or divorce (Article 281-b). The latter represents a serious problem for Shia women as divorce regulation is stricter for women in the Shia madhhab. Women as a group bear the heavier burden of the variation in codes, whether based on gender or sectarian discrimination.

Secular codes were included in the Gulf Arab states' PSLs to enforce state laws regarding citizenship, public health, and public policy. There is a special sharia-overriding authority granted to the head of the state, or *Wali-ul-Umr*, to protect the public's best interests in cases in which there is a contradiction with a command of sharia. This authority is similar in principle

¹⁴ [Islamic jurisprudence according to the four madhahib](#), vol. 4, *The book of marriage and divorce*, 2nd ed. (Beirut: Dar Alkotob Alelmiah, 2002), 56-9.

¹⁵ Lynn Welchman, "[Bahrain, Qatar, UAE: First time Family Law Codifications in Three Gulf States](#)," *International Survey of Family Law* (July 2010): 163-78.

¹⁶ Author interview with Naseema Alsadah, Saudi activist from the Shia community, June 10, 2016.

¹⁷ Nada Alwadi, "[Wefaqi and liberal women activists in one place](#)," *Alwasat*, November 4, 2007.

to the *ijtihad* used by scholars of Fiqh Almaqasid, or the Islamic reasoning, with the objectives to preserve life, property, progeny, sanity, and religion.¹⁸ The authority of the Wali-ul-Umr is therefore used in passing secular codes, such as those regulating the marriage of citizens to noncitizens in Bahraini (Article 11) and Qatari (Article 177) PSLs; a wife's choice in work or education in Qatari (Article 68) and Emirati (Article 72) PSLs; or the obligatory premarital screening for inherited or infectious diseases in Qatari (Article 18) and Emirati (Article 72) codes.

The codification process of PSL in the Gulf Arab states coincided with the ratification by these states of several international conventions and treaties, such as the United Nations' Convention on the Rights of the Child in the 1980s and 1990s. While states' commitments to international law may not necessarily trigger the codification of family law, it has influenced some of its clauses, particularly those regulating the minimum age of marriage and the age of capacity (the age the state considers an individual legally responsible) as defined by some of these laws. The variations observed in PSL codes across the Gulf Arab states reflect the extent to which a state chooses to co-opt the pre-existing traditional, patriarchal, or religious authorities and institutionalize and empower these forces as in Saudi Arabia. Examination of women's identity, as portrayed in marriage, divorce, and child custody regulations, reveals the extent of the state's political relation with traditional forces, as detailed in the following sections.

Examining Gender Roles within PSL

Marriage Conditions and Obligations

Marriage Definitions, Rights, and Obligations

The definition of marriage in most PSLs portrays a traditional perception of gender roles. Omani and Qatari PSLs have adopted the Muscat Document definition of marriage, which specifically assigns the man the role of head of the family: "Marriage is a legitimate contract between a man and a woman aimed at preserving chastity and the formation of a stable family under the care of the husband, on basis that guarantees for both spouses the ability to bear responsibilities with mutual affection and mercy."¹⁹ Qatari law focuses on marriage as a permanent relationship and has the most basic definition: "a legitimate contract between a man and a woman on a permanent basis aimed at preserving chastity and providing homage." The focus on marriage permanency may have been an attempt to limit other popular, but secretive, temporary marriage forms. The Bahraini PSL definition of marriage is the only one to emphasize shared duties and rights: "A marriage is a legitimate contract between a woman and a man to form a family according to certain requirements for eligibility, which results in mutual duties and rights."

¹⁸ Nasr Abu-Zayd, "The status of women between Qur'an and Fiqh," in *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition* ed. Lena Larsen, Ziba Mir-Hosseini, Christian Moe, and Kari Vogt (New York: I.B.Tauris, 2013), 153-68.

¹⁹ Gulf Cooperation Council, "The Muscat Document of the GCC Common Law of Personal Status," 1996.

PSL in the Gulf Arab states prioritizes a woman's role as a mother and wife and grants the husband the right to decide whether a wife can assume other roles outside the home for education, work, or social activities. Still, there are interesting variations in emphasis reflecting specific state-driven objectives for society.

For instance, Bahraini (Article 55), Kuwaiti (Article 89), and Qatari (Article 69) laws include provisions allowing the husband to deny his wife work he deems interferes with her "marital duties," the "wellbeing of the family," or "acceptable Islamic conduct." Kuwaiti PSL does not consider a wife disobedient if she goes out of the house for legitimate reasons or works "unless her work negates the family's interest" (Article 89). On the other hand, Qatari law (Article 55-2) recognizes the importance of girls' education and "encourages" the husband to allow his wife to complete her compulsory education and/or her "in-state" higher education, "without compromising her marital duties." However, the same law (Article 69) denies a woman's right to financial support from her husband if she travels or works without his permission, or if she refuses to travel with him without a legitimate reason. No definition of "legitimate reason" is listed in the law. UAE law (Article 55-2) prohibits a man from preventing his wife from completing her education. However, the same law (Article 72) restricts a woman's ability to leave her house except in cases deemed urgent and in compliance with customary practice or sharia teaching. On the other hand, the law is not contradictory or indecisive in the language used in listing the husband's marital rights.

Child Marriage

The vague regulations of the legal minimum marital age for girls and boys raises the most contentious debate of PSL of the Gulf Arab states. Child marriage is not banned or allowed by law but is subject to the discretion of a judge whether he deems it beneficial. An explanation of what constitutes a benefit for a child or for the marriage parties is not provided. Minimum marital age of PSL codes varies between 15 to 18 years for girls and 17 to 18 years for boys (see Table 2). Oman and UAE laws maintain the marital age at 18 for both girls and boys in compliance with state ratification of the Convention to Protect the Rights of the Child. However, UAE law allows a judge to prevent the marriage if the man is twice the age of the woman or more (Article 21). In such cases, the woman or someone from her family, often her mother, must object to the marriage in court for dissolution of the marriage.

In Saudi Arabia, the unrestricted religious sanctioning of child marriage further promotes the practice.²⁰ The Saudi Ministry of Justice has not issued regulations regarding child marriage, rather has granted a female child the right to object to a forced marriage in court. Regardless, this rarely occurs due to the usual family coercion of the child in such cases.

Guardianship in Marriage

The age for marriage as specified in PSL clauses is not the same age of capacity as stated by the same laws (see Table 2). For instance, UAE PSL defines the legal age of capacity as "the age in which an individual becomes legally responsible to assume his or her own civil rights"

²⁰ Habib Toumi, "Saudi Arabia Grand Mufti says no opposition to underage marriage," *Gulf News*, December 21, 2014.

(Article 171). However, a woman reaching the age of capacity is not legally allowed to sign her own marriage contract or assume the same authority over her children as a man. Instead, a woman's marriage is conditioned on the approval of her guardian, regardless of age.

Most of the Islamic jurists of the Hanbali, Maliki, and Shafii madhahib view the permission of the male guardian essential for a woman to marry based on one contested narration attributed to the Prophet Muhammad: "No marriage without a wali," i.e. without a male guardian. However, there is controversy among scholars over whether permission of a guardian is required for adult women or women who were previously married. Hanafi jurists permit adult women or women who were married previously to marry without a guardian's permission, citing many precedent cases and evidence from early Islamic history.²¹

Nevertheless, a woman's right to choose her husband is conditioned upon her guardian's approval. If a guardian disapproves of a woman's marriage without a reasonable justification, a judge can assign the next of kin male relative to act as the woman's guardian. If such a relative is not available, the judge will act as the guardian providing that the spouses are compatible and fulfill the conditions of marriage as stated in the law. Kuwaiti law is unique in having two ambiguous articles – Articles 29 and 30 – conveying that there is some exception in requiring a guardian's permission for marriage. Article 29 of the law allows the marriage of any consenting woman who reaches puberty but is less than 25 years of age with her guardian's approval. Article 30 exempts women over 25 years of age or women who have been married before from providing the approval of their male guardians, but then mandates that their guardians initiate and sign their marriage contracts. A modification was made to Article 30 in 2004 allowing the judge to sign the contracts for women over 25 years of age or women who have previously been married "after notifying their guardians and taking their views under consideration." Regardless of the modifications or exemptions, the law maintains a guardian's approval either directly or through the judge, rendering exemptions or modifications irrelevant.

Compatibility in Marriage

Another example of a guardian's authority over a woman's choice in marriage involves spousal compatibility. PSL codes in the GCC states have been explicit in listing conditions required to ensure compatibility in marriage (see Table 2). Religiosity, morality, and customary norms are conditions for spousal compatibility subject to a guardian's discretion, while spousal age compatibility is determined only by a woman's approval. Compatibility is a temporal condition for marriage, required only at the time of contract, but can be a legal reason to annul the marriage in certain cases. As long as a woman does not get pregnant or if one year has not passed since the contract, she or her guardian can request annulment for incompatibility that was not disclosed at the time of contract.

There are variations across the GCC states in the elements of compatibility acknowledged by law. Religiosity of a spouse is the most common reason cited by PSLs of Gulf Arab states to request a marriage annulment. Religiosity is the only legitimate reason in PSLs of Bahrain, Kuwait, and Qatar to request a marriage annulment based on incompatibility. Compatibility

²¹ Ebrahim Saifuddin, "[Marriage without Wali](#)," *People of Sunnah*, accessed April 10, 2016.

according to customary norms and standards in each society is acknowledged in Oman, the UAE, and Saudi Arabia. This condition may be interpreted broadly and subjectively, allowing marriages to be annulled on the basis of a wide variety of beliefs and practices. For example, Sheikh Abdullah bin Sulaiman al-Manea, a member of the Council of Supreme Religious Scholars in Saudi Arabia, acknowledged tribal consideration of lineage and social status as customary norms; therefore, these can be used as a reason to annul a marriage. His rationale was that incompatibility, based on customary norms, may cause a rift between members of the respective families and therefore should be avoided.²² Saudi Arabia has no written regulation for compatibility and judges often rule according to their discretion. For example, courts in Saudi Arabia issued annulment of 16 marriages in 2015 based on incompatibility between spouses in their tribal lineage.²³ The guardian's overriding authority in marriage or annulment of marriage based on incompatibility highlights the role PSL plays in furthering the patriarchal family structure and the rule of fathers.

Religiosity is the only legitimate reason in PSLs of Bahrain, Kuwait, and Qatar to request a marriage annulment based on incompatibility.

Polygyny Regulation

Regulation of polygyny is another area of PSL where men have an unchecked authority over women. Legislators of PSL maintain minimal regulations for this practice, restricting men to four wives, on the condition of the equitable treatment of all wives (see Table 2). Bahrain (Article 7) further regulates polygyny by mandating a man list the names and addresses of his current wives in the new wife's marriage contract. The article also mandates that a man must inform his previous wife or wives of the new marriage, but only if they made a condition for him not to take another wife in their own marriage contracts. It is not clear if and how that regulation is enforced. Virtually in all PSLs no specific guarantees were identified in the law to ensure that the condition of equitable treatment between wives is followed and respected by a polygynous husband.

Divorce Restrictions on Women

Similar to polygyny, the regulation of divorce in PSL places many restrictions on women and few to none on men (see Table 3). Men are granted a unilateral right to divorce by stating "I divorce you" three times on one or multiple occasions. The only condition required is for the man to ensure that no sexual intercourse takes place after divorce for a specific duration of time, called *Iddah*, that usually lasts for three months. A man can return to his wife any time during *Iddah*, and the divorce will be considered revoked, as long as he has not divorced her more than two times. The main reason for a waiting period after expressing the intent to divorce is to provide a chance for reconciliation.

²² H. Alsaleh, "Saudi Arabia: Religious and social arguments of the case of compatibility in marriage, after records of court annulment of marriages," *Asharq Al-Awsat*, March 8, 2007.

²³ Muneera Alhudaib, "[Lineage and compatibility goes back to front with the plea from a pregnant and an inconvenience of an officer](#)," *Al-Hayat*, April 14, 2016.

A woman seeking divorce, without her husband's consent, has two legal options: judicial divorce or *Khul*. Judicial divorce may be allowed for several reasons: a husband's incurable illness or defects that prevent the normal marital relationship; a husband's failure to provide financially for the wife; absence or desertion of the wife by the husband; and irreconcilable conflicts. Some states accept more reasons such as a husband's addiction as in Bahraini PSL (Article 119) and a husband's conversion of religion from Islam in Kuwaiti (Article 143-45) and Qatari (Article 153-55) PSLs.

Reasons acknowledged by courts for women to file for judicial divorce are marked by the same vague language permeating other areas of PSL in the GCC states. For instance, violence against women, one of the most serious reasons for seeking divorce, is not explicitly listed in the law. Instead, a general term of "harm" as a justification for seeking judicial divorce is listed without a clear definition of the term or the required evidence needed for filing the case. Harm is treated in PSL as irreconcilable conflicts, leaving judges with discretionary power to decide on the course of action: marital reconciliation or divorce.

Khul allows a woman to leave a husband for personal reasons, unrelated to her husband's failure to fulfill his marital duties, by paying a financial compensation that is equal to her dowry in most cases. Khul is the preferred choice for many women when a faster legal solution is desired or when marital harm is difficult to prove. In cases where Khul is requested by a woman, the courts often refer the couple for reconciliation before deciding to review the case. Reconciliation, as advised by the Quran, is a process of assigning referees of the spousal families to try to resolve marital conflicts and avoid divorce. As practiced legally, reconciliation is a process in which the judge assigns two referees from the spousal families or two appointed referees, religious clerics or counsellors, to convene with the spouses and try to resolve the conflicts, then submit a report of their findings to the judge detailing their understanding of the marital problem. Khul regulations differ across the GCC states in the length of the reconciliation process required by the courts.

While a man can divorce his wife and obtain a divorce document from a court without any reason, a woman must submit to a long litigation process to prove her reasons are valid for seeking divorce or Khul.

The preference of judges to maintain marital ties to preserve the family structure is evident from the list of conditions restricting a women's access to Khul or judicial divorce. While a man can divorce his wife and obtain a divorce document from a court without any reason, a woman must submit to a long litigation process to prove her reasons are valid for seeking divorce or Khul. For instance, it takes four years of litigation in Kuwait to annul the marriage of a woman whose husband goes missing without information on his whereabouts (Articles 146-48). On the other hand, a man is granted the right to take another wife or divorce a wife who deserted him without restrictions. A wife is only allowed to file for judicial divorce one year after her husband's incarceration. If a judge decides to refer a woman to marital reconciliation, it can take several months or more before a decision of divorce, annulment of marriage, or Khul is reached. This prolonged and expensive litigation impedes women's access to divorce, particularly if women are financially dependent, which is the case for the majority of women in the GCC states.

Women's Authority Over Children

PSL treats mothers as the default custodians entrusted with the caregiving of children but reserves the power of legal guardianship to fathers (see Table 4). This is reflected in the definition of custody in Bahrain, Oman, and the UAE: "Custody is protecting, raising and caring for a child without compromising the right of the child's guardian." Qatari PSL is unique in defining custody with emphasis on the child's best interests and without reference to the father's authority: "Custody is protecting, raising and caring for a child according to her or his best interest." The first definition clearly distinguishes between the custodial mother who is providing care for the child and the father who possesses the authoritative power over the child. Moreover, a mother is granted the custody of her children under certain restrictions: Once she remarries or once the child reaches a certain age, she forfeits custody as a rule.

Judicial discretion sometimes allows women to maintain custody if it is in the best interests of the child. Yet even when mothers are granted custody, PSL sets different levels of authority for mothers or fathers over their children. For instance, mothers can have custody of the children at night but fathers retain the disciplinary duty, according to Bahraini law (Article 142). Mothers can maintain the custody of a child who is mentally challenged or physically disabled beyond the custodial age, according to UAE law (Article 156). Such clauses reveal the role envisioned by legislators for mothers as merely caregivers and not as authority figures. They also reveal the roles envisioned by legislators for fathers as the trusted disciplinary authority figures for children. Additionally, PSL grants the father the right to hold the travel document of a child who is in the custody of the mother. She will need to resort to court if the father does not reasonably cooperate in allowing the child to travel as needed (Qatari law Article 176).

Paternity claims further engrain a man's superior status over a woman. PSL mandates that women bear the sole responsibility for a child when the father denounces his paternity in a practice known as *Lean* (see Table 4). The law does not mandate any evidence be presented by fathers and requires women and children to bear the consequences of marriage annulment and paternity revocation. The Bahraini law is the only law that mandates medical testing in paternity disputes (Article 83). The consequence of legally enforcing the *Lean* practice is devastating, as the child is legally required to be named after the mother's family with no right to paternal name or support. In practice, mothers refrain from obtaining any official documentation to rename the child for fear of social stigma and alienation. This may leave the child with no identification and therefore unable to obtain basic governmental services like education or health care, or to prove nationality. More seriously, it may subject the mother, and potentially her child, to honor-related crimes. The paternity and custody clauses in PSLs reveal the authoritative role of fathers and the passive, subordinate roles given to mothers in decisions profoundly affecting their children's lives.

Attempts to Reform PSL

A number of civil society organizations and individuals in the Gulf Arab states have been working to reform PSL in the Gulf Arab states. However, more focus has been directed toward raising awareness and engaging women as stakeholders than tangible reform to the codes. Wracati project in Kuwait is a partnership between international and local organizations in

which Kuwaiti women lawyers and advocates screen existing legislation involving women and support legal reform of these codes.²⁴ The project's efforts are conducted in several phases that facilitate women's access to legal assistance and build capacity for providers of legal information. The project uses national outreach and media campaigns to raise awareness and educate women on their legal rights. Working papers produced by Kuwaiti female lawyers have identified the existing limitations on women's legal positions and have drafted a set of recommendations to reform the substantive and procedural law.

Facing a legal environment that largely excludes women from decision making, Mawaddah (or affection), a Riyadh-based organization named after the Quranic term used to describe the marital relationship, has achieved a remarkable breakthrough in legal reforms in Saudi Arabia.²⁵ The organization was established through the patronage of a female royal family member to support women facing divorce-related problems. By documenting the cases of women seeking Mawaddah's help and legal experience, the organization was able to work with the Saudi Ministry of Justice to develop a response system based on need assessment. For example, Mawaddah provides visitation centers to allow parents to see their children in neutral spaces. Previously, a divorced parent who did not have access to visit a child in the home of the parent with custody would resort to visiting the child in police stations. Mawaddah's most significant work is providing legal counseling for women in Riyadh's courts. Many women are not able to present their cases properly or to understand the outcomes of different legal processes due to the subjective, uncodified law. Mawaddah female lawyers are able to provide acceptable legal evidence and therefore to reduce court hearing times and increase the likelihood of successful outcomes for women through litigation. In fact, judges have been so pleased with the concise and well-supported statements prepared by Mawaddah female lawyers that the Ministry of Justice has expanded the counseling to another city, Jeddah, and initiated further collaboration with Mawaddah on various other projects.

PSL remains largely controlled by the political and religious authorities with minimal influence from women as stakeholders.

Nesreen Abdulrahman Al-Issa, a female lawyer, has conducted another creative form of advocacy by creating a downloadable app, "Know Your Rights," that provides detailed information on the procedures of PSL as practiced in Saudi Arabia. The app also provides women with templates to write their legal statements in all types of personal claims.

Despite these laudable initiatives, PSL remains largely controlled by the political and religious authorities with minimal influence from women as stakeholders. Steps taken to raise awareness among the public or the legal communities may offer support for interacting with the legal system, but not necessarily reform the codes in the male-dominated, patriarchal political system of absolute decision-making power.

²⁴ "Promoting legal empowerment of women in the state of Kuwait (WRACATI)," UNDP Kuwait, accessed July 19, 2016.

²⁵ Mawaddah organization website, accessed July 10, 2016.

Conclusion

The political nature of PSL in the Gulf Arab states is evidenced by the selection of sharia reference, the applicability and exclusion of certain groups from the codified law, and the gendered nature of the codes. In its existing state, PSL is heavily influenced by the authority granted by the state to the traditional tribal and religious authorities. As a result, men have been assigned the role of head of the family and granted a higher authority over wives and children during marriage and after divorce. The custodial authority over children in PSL is gendered, granting fathers higher authority than mothers. The ramifications of prioritizing men's interests over those of women and children is profound, leaving women and children vulnerable to the father's abuse of power.

Moreover, PSL uses a broad, nonspecific language that grants enormous discretionary power to judges. It is hard to achieve accountability without some limitation on judicial discretion. Substantive legal reforms short of full codification are possible, including the review of contradictory clauses and greater specification of overly broad clauses, such as the definition of marriage compatibility, the definition of harm as a condition for divorce, and the exceptions to a guardian's permission for marriage. Reaching a definition that is compatible with the state's commitments to international conventions and treaties would minimize the arbitrary nature of rulings in such cases. In addition, the impact of laws can only be understood in totality through a review of their application. Maintaining and studying the archives of legal cases can elucidate the exact interpretation and impact of the codes, such as they exist.

Attempts by civil society organizations and individuals to reform PSL show promise in their achievements in raising awareness and reforming procedural law, although they have not changed substantive law. Their greatest significance may be in how they reflect an initial push by civil society, however limited, to transform legal practice. However, without more comprehensive political representation, especially from women, such attempts remain limited in scope and impact.

Table 1: Overview of PSL in the GCC

Country	Year Issued	Madhhab	Applies to	Exceptions ^a	Unique Clauses
Bahrain	2009	Sunni ^b	Sunni population	Shia population	<ul style="list-style-type: none"> • Marriage to noncitizens requires court permission (Article 11)^c • No clauses on the transfer of property/inheritance
Kuwait	1984	Maliki	<ul style="list-style-type: none"> • Maliki Sunni population • Non-Muslims • Inter-sect and interfaith marriages 	Shia population	<ul style="list-style-type: none"> • Reformed clause in 2004 stated: "a <i>Thayyeb</i> can ask a judge to sign her marriage to her divorced husband, a notification of her guardian is needed" (Article 30)
Oman	1997	Not listed	<ul style="list-style-type: none"> • Omani population • Other non-Muslims when requested • Inter-sect and interfaith marriages 	<ul style="list-style-type: none"> • Non-Muslims • Husbands of a sect that mandates stricter rules can refer to his own madhhab (Article 281-b) 	
Qatar	2006	Hanbali followed first, plus any other madhhab based on a judge's discretion	<ul style="list-style-type: none"> • Hanbali Sunni population • Non-Hanbali population upon request • Inter-sect and interfaith marriages 	<ul style="list-style-type: none"> • Non-Muslims • Shia population • Populations of other sects 	<ul style="list-style-type: none"> • Polygyny regulation (Articles 14, 57-6, 67) • Sponsorship of a noncitizen woman who has custody of Qatari children (Articles 177, 185) • Husband encouraged to enable his wife to complete her compulsory education and in-state university education without compromising her familial duties (Article 68) • A wife is not entitled to financial support if she traveled or worked without her husband's permission, or if she refused to travel with her husband as demanded by his work (Article 69) • Premarital screening is mandated (Article 18)
Saudi Arabia	---	Hanbali	All ^d	---	---
UAE	2005	Maliki first, then Ahmad, Shafii, and Abuhanifa	---	---	<ul style="list-style-type: none"> • A man shouldn't ban his wife from completing her education (Article 55-2) • A wife can leave her house within the limits of sharia or local customs or for urgent needs; a wife who worked before marriage or made a condition to work in her marriage contract or if she has a husband who accepted her work after marriage generally cannot be banned later from work while married (Article 72)

^a These populations are subjected to their faith-based customary law or to their civic laws.

^b The preamble states that the law was based on opinions from the main Sunni schools of thought.

^c A court marriage is required if a female national below 20 years of age wants to marry a non-national man over 50 years of age and if a male national over 60 years of age wants to marry a non-GCC national woman of any age.

^d There is a Jafari court with state-appointed Shia judges in the Eastern Province of Saudi Arabia, but it has no authority to enforce rulings. Shia citizens who are not content with the Jafari court ruling can refer to the Sunni courts to appeal or enforce certain rulings.

Table 2: Marriage Regulations and Conditions

Country	Minimum Marital Age		Age of Capacity	Guardian's Consent Needed to Marry	Spousal Compatibility Requirement	Polygyny Regulation
	Males	Females				
Bahrain	18	16 ^a	Not listed	Yes	Yes (Article 36): <ul style="list-style-type: none"> Based on religiosity or a deception wife/guardian can submit a request Spousal-age compatibility is a right to the wife only 	A man needs to disclose his marital status in the contract (Article 7) ^b
Kuwait	17	15	15 or reaching puberty (Article 208)	Yes	Yes: <ul style="list-style-type: none"> A wife/guardian can submit a request (Article 34) Based on religiosity (Article 35) Spousal-age compatibility is a right to the wife only (Article 36) Claims are unacceptable if a wife gets pregnant, previously accepted the husband, or if married for one or more years (Article 39) 	A man is limited to four wives at a time (Article 21)
Oman	18	18	18 (Article 139)	Yes	Yes <ul style="list-style-type: none"> A wife/guardian can submit a request (Article 20-a) Based on religiosity then on norms (Article 20-b) 	<ul style="list-style-type: none"> A man is limited to four wives (Article 35) Equal treatment of wives required (Article 37-6)
Qatar	18	16	18 (Article 189)	Yes	Yes: <ul style="list-style-type: none"> Based on religiosity, morality or deception (Articles 31, 34) A wife/guardian can submit a request (Article 32) Claims are unacceptable if a wife gets pregnant, previously accepted the husband, or if married for one or more years (Article 35) 	<ul style="list-style-type: none"> Equal treatment of wives required (Article 57) Separate housing for wives unless each accepts otherwise (Article 67)
UAE	18	18	21 (Article 172)	Yes	<ul style="list-style-type: none"> A wife/guardian can submit a request (Article 23) A man who is twice the age of the woman needs to sign marriage contract in court, the judge determines the benefit of the marriage (Article 21) Based on religiosity of the husband, norms, or deception (Articles 22, 24) Claims are unacceptable if a wife gets pregnant, previously accepted the husband, or if married for one or more years (Article 25) 	<ul style="list-style-type: none"> A man is limited to four wives (Article 47-2) Equal treatment of wives required (Article 55-6)
Saudi Arabia	---	---	---	Yes		

^a Article 8: Girls younger than 16 years old cannot be married without the consent of the specialized Islamic court.

^b A man is required to state in a marriage contract his marital status and the name(s) of his current wife or wives. If a wife made a condition in her marriage contract for her husband not to have another wife, her husband must notify her by registered mail within 15 days of signing a new marriage contract.

Table 3: Divorce Regulations

Country	Khul Allowed?	Judicial Divorce Justifications
Bahrain	Yes (Articles 101-03)	<ul style="list-style-type: none"> Incurable ailment in husband for over a year (Article 104) Irreconcilable marital conflict (Article 10-112)^a Husband's failure to provide financially (Article 113) Husband's absence, desertion, or incarceration (Articles 114-18)^b Husband's addiction to alcohol/drugs (Article 119) Deception in contractual information (Article 124)^c
Kuwait	Yes (Articles 111-19)	<ul style="list-style-type: none"> Husband's failure to provide financially (Articles 120-22) Husband's failure to fulfill his marital duty (Articles 123-25) Harm: verbal or physical abuse (Articles 126-35)^a Desertion or incarceration (Articles 136-38)^b Ailment or defect that was discovered after marriage and prevents a spouse from enjoying the other (Articles 139-42)^d Conversion of a husband from Islam (Articles 143-45) Absent husband for over four years if no information is available (Articles 146-48)
Oman	Yes (Articles 95-97)	<ul style="list-style-type: none"> Incurable or long ailment or defects in a spouse for over a year that prevent marital relation (Articles 98-99) Failure to pay dowry upon contract before consummation of marriage but not afterward (Article 100) Harm and irreconcilable marital conflicts (Articles 101-08)^a Husband's failure to provide financially (Article 109)^e Husband's absence or loss (Article 110)^{b,f} Husband's refusing to attend to his marital duty within four months (Articles 113-14)
Qatar	Yes (Articles 118-22) ^g	<ul style="list-style-type: none"> Incurable ailment or defect for over a year before or after marriage contract (Article 123)^d Failure to pay dowry upon contract before consummation of marriage but not afterward (Article 128) Harm and irreconcilable marital conflicts (Articles 129-36)^a Husband's failure to provide financially (Articles 127-42) Husband's absence, loss, or incarceration (Articles 143-45)^h Husband's refusal to attend to his marital duty within four months (Articles 146-50) Husband's or wife's conversion from Islam (Articles 153-55)
UAE	Yes (Article 110-11) ⁱ	<ul style="list-style-type: none"> A defect that prevents sexual fulfilment before or after marriage contract (Article 112) An incurable illness is a reason for immediate annulment or within a year to await recovery if curable (Article 113) Deception or infertility validated medically, that has continued for five years despite treatment when the woman has no children and less than 40 years old (Article 114-2) If one of the spouses is sentenced for adultery or similar offenses (Article 114-3) A deadly or infectious disease of a spouse (Article 114-4) Marital conflicts and harm (Articles 117-23) Husband's failure to provide financially (Articles 124-28) Husband's absence, loss, or incarceration (Articles 129-31) Husband's refusal to attend to his marital duty within four months (Articles 132-35)

^a A judge initiates reconciliation and assigns family members or capable individuals to mediate and submit a report in three months to decide on divorce or Khul.

^b Husband's absence without reasonable excuse for one year or more or his incarceration for three years or more is a legitimate ground for a wife to file for judicial divorce after one year of absence or incarceration.

^c A court must be notified within two months if either spouses was a victim of deception by the other after signing a marriage contract.

^d A husband's impotence is a valid ground for a wife to file for annulment of marriage even if she was aware at the time of the contract.

^e A wife cannot be divorced, because a husband's failure to provide financially, if she had money of her own, or if she knew of her husband's limited financial status before marriage.

^f A wife can file for divorce if her husband has a known address but he deserted her for over four months. The judge will notify the husband and if he fails to reunite with his wife within one year, her divorce is granted (Article 110).

^g Spouses must agree on a suitable compensation. In case of disagreement, the judge starts reconciliation in six months, if spousal disagreement continues, the wife must return her dowry and waive her financial rights for annulling the marriage.

^h A wife can file for divorce if her husband is sentenced for no less than two years. The judge can order her divorce one year from the incarceration date only.

ⁱ No specific compensation is set by law for Khul, but the judge can interfere to determine compensation if he judges the husband to be obstinate (Article 110-5).

Table 4: Child Custody Regulations

Country	Age Limit for Maternal Custody		Mother Gets Custody		Paternity Test in Lean
	Boys	Girls	Boys	Girls	
Bahrain	15 ^a	17 ^a	Yes ^{b,c}		Yes (Article 83)
Kuwait	Puberty	Marriage	Yes (Articles 189-99) ^e		No (Articles 176-80) ^d
Oman	7	Puberty ^g	Yes (Articles 129-37)		No (Articles 78-79) ^f
Qatar	13	15 ^h	Yes (Articles 168-1, 169)		No (Articles 96, 151)
UAE	11	13 ^j	Yes (Articles 144, 146)		No (Article 97) ⁱ

^a After a child reaches custodial age limit, he or she chooses the parent/guardian to live with (Article 133)

^b Unless married to another man or kept as a guardian by a court order for the benefit of a child (Article 134-b), a father is in charge of disciplining a child but the child spends the night with the mother (Article 142)

^c Travel of a mother with her children requires the permission of a guardian

^d A husband can deny his paternity of a child within seven days from birth or from the date of his knowledge of the child's birth and must begin Lean process within 15 days. A husband can confess to lying in his testimony and remarry his wife and restore his paternity of the child.

^e Marriage of a mother revokes her custody to the children. A non-Muslim mother is not allowed custody of her children beyond seven years of age.

^f A man has the right to deny paternity within one month of his knowledge of the child or from the date of birth, and a Lean case can be submitted within two months. If a man claims he was lying he can reclaim the paternity of the child.

^g A judge can keep the custody longer for the well-being of the child

^h A judge can order the extension of the mother's custody until boys are 15 and girls get married, an exception is made to extend the mother's custody if the child is mentally challenged or physically disabled. A guardian cannot regain custody of a child without the approval of the mother or the court.

ⁱ A man can file for Lean within seven days from the date of birth or his knowledge of birth. A case can be submitted within 30 days from the time he becomes aware of the child's birth. A man can restore his paternity if he confesses to lying. A court can refer to scientific means to prove paternity (Article 97-5).

^j A court can extend the mother's custody of a boy until puberty and a girl until she marries, and also if the child is mentally challenged or physically disabled unless his best interest calls for otherwise (Article 156).

