Intertwining Religion and the Law: A Comparative Exploration of the Rights of Women and Non-Muslim Citizens Under the Influence of Islam Within Select Arab States

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Abstract

The rights of women and non-Muslim citizens within selected Arab states remain significantly constrained by the interaction between religion and the law. While Islam has played an integral role in shaping legal frameworks across the Arab world, its influence need not inherently result in the legal discrimination that has often emerged through traditional interpretations and applications of Islamic principles. Indeed, certain Arab states, most notably Tunisia, have demonstrated significant progress towards gender and religious equality through the interpretive mechanism of *Ijtihad*. By enabling reinterpretation of Islamic texts in accordance with contemporary principles of equality and inclusivity, *Ijtihad* provides a potential pathway for positive legal reform. This article compares Tunisia, Libya, Egypt, Morocco, and Syria in relation to divorce, inheritance and polygamy laws, alongside examining the legal treatment of non-Muslim communities, to identify areas where reform may be achieved through reinterpretation. Unfortunately, progress towards achieving equality in Egypt and Syria remains impeded by a strong adherence to traditional interpretations of Islam, alongside an apparent political reluctance to pursue meaningful reform. Whilst this article acknowledges that some significant progress has been achieved, particularly following demands for equality and non-discrimination associated with the Arab Spring, substantial barriers do remain. Ultimately, achieving gender and religious equality requires continued reinterpretation of Islamic legal principles, supported by sufficient and proactive political will.

Introduction

The strong relationship between religion and the law in Arab countries is deeply rooted in Islam's influence on social, political, and legal systems. As Farah observes, the role that religion has played in 'structuring and shaping the relations between state and society in early civilizations is undisputed'.1 This dynamic is particularly evident in constitutional texts and personal status laws, often grounded in Sharia law2. However, traditional interpretations of Sharia have often prioritised the rights and interests of Muslims over non-Muslims, while also reflecting conventional expectations of women's roles within the private sphere. This article will explore how these interpretations have resulted in entrenched forms of discrimination within legal frameworks.

Sharia, meaning 'the path to be followed',3 makes up the body of Islamic law. The two primary sources of Sharia are the Qur'an and the Sunnah, complemented by Ijma and Ijtihad. Ijtihad is the 'intellectual exertion'4 of a qualified jurist to derive or interpret rules of Sharia from their sources, and Ijma is the 'consensus of agreement'5 amongst them. This article explores the application of Sharia in Tunisia, Egypt, Morocco and Syria, with a focus on how Islam functions as a cornerstone of national identity in these societies to shape the law. In accordance with Coulson's observation that 'the fusion of law and religion is complete within the Sharia texts',[6] this article explores the inconsistent protection of the rights of women and non-Muslim citizens across different states, focussing on divorce, polygamy, inheritance, and the treatment of religion within the law as areas that display significant inconsistencies. Despite attempts to

[1] Paolo Farah, Law, Society and Religion: Islam and the West. in Lorenzo Ramaioli (ed), Juridical Perspectives between Islam and the West – A Tale of Two Worlds (Palgrave MacMillan (United Kingdom) 2024).
[2] Lynn Welchman, Women, family and the law: the Muslim personal status ;aw debate in Arab states. in RW Hefner (ed), The New Cambridge History of Islam (Cambridge University Press 2010) 411- 437.
[3] Amira Mashhour, 'Islamic Law and Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt' [2005] 27(2) Human Rights Quarterly 562-596.
[4] Sajila Kausar, 'Collective Ijtihad: History and Current Perspective' [2017] III(V) International Journal of Humanities & Social Science Studies 151-152.
[5] Sajila Kausar, 'Collective Ijtihad: History and Current Perspective' [2017] III(V) International Journal of Humanities & Social Science Studies 153.
[6] Noel Coulson, 'Law and Religion in Contemporary Islam' [1978] 29(6) Hastings Law Journal 1449.

modernise these areas of the law, the achievement of full equality within these states remains elusive. However, there is potential to strengthen women's and non-Muslim citizens' rights whilst preserving the relationship between religion and the law through the interpretive power of *Ijtihad*. It is important to note that the exercise of independent reasoning through *Ijtihad* is limited to qualified jurists (*Mujtahid*).[7] Accordingly, this article explores the extent to which *Ijtihad* can enhance the rights of women and non-Muslim citizens, arguing that, while it provides an important mechanism for reform, it cannot be regarded as a panacea.

The historical basis for the strong relationship between Islam and the law

To understand the strong relationship between religion and the law in Arab countries, it is beneficial to recognise Islam's role as the national identity amongst the majority of states within the MENA region. As Charrad describes, Islam serves as an ''umbrella identity' and idiom of cultural unity'[8] integrating diverse social and legal elements. This is clear within many Arab constitutions, for example Egypt's 2014 Constitution (Article 2), which declares Sharia as the principal source of legislation,[9] deeply intertwining religion with its legal frameworks. In Egypt, the historical application of Hanafi jurisprudence within personal status laws has solidified traditional family roles and reinforced gender inequalities.[10] Of the four schools of Sunni Islamic Jurisprudence – Hanafi, Maliki, Shafii, and Hanbali –the Hanafi school is the most widespread within Islamic law[11] and emphasises 'reason, logic [and] opinion'.[12] Having

[7] Wael B Hallaw, 'Was the Gate of Ijtihad Closed?' [1984] 16(1) International Journal of Middle East Studies 3-41.
[8] Mounira Charrad, 'Gender in the Middle East: Islam, State, Agency' [2011] 37 Annual Review of Sociology 417-437.
[9] Constitution of the Arab Republic of Egypt 2014, art 2.
[10] Sara Abdel Ghany and Azza Soliman, 'Reforming the Egyptian Personal Status Laws A case for Islamic feminism' [2020] 44(2) Al-Raida Journal 125.
[11] Hyder Gulam, 'Comparing the legal rules (Akham-I Shariah) in the Maliki and Shafii Schools with the Hanafi School of thought' [2016] 16(1) Jurnal Ilmiah Islam Futura 4.
[12] Hyder Gulam, 'Comparing the legal rules (Akham-I Shariah) in the Maliki and Shafii Schools with the Hanafi School of thought' [2016] 16(1) Jurnal Ilmiah Islam Futura 4.

been unaffected by colonial codification efforts in Egypt,13 Hanafi jurisprudence 'sustains a hierarchical regime of gendered spousal roles'14 within its present-day family law, codified into the Egyptian Personal Status Laws in the twentieth century.15 In this context, religion and the law are intertwined, creating 'policies where both law and religion [are] intermix[ed], each supportive of the other',16 and as will be explored in the latter half of this essay, the law has consequently foregone many rights of women and non-Muslim citizens within Egypt and other identified Arab states.

However, some argue that gender disparities within the law stem not from the historic influence of Islamic jurisprudence itself, but from its misinterpretation. Haddad in 'Our women in the Sharia and society',17 advocated for social change for women, and presented the opinion that 'over many years, Islam had been misinterpreted to such an extent that women were unaware of their duties and the legitimate advantages they could expect in life'.18 This is particularly interesting, as it highlights the argument that Islam is not exclusively and inherently discriminatory against women, but rather the interpretations of Islam have developed over many years to reinforce inequalities towards women, and such interpretations have influenced the law. On this basis, we can consider the importance of Ijtihad to rethink traditional Sharia principles to align with more modern ideas of fairness and gender equality. This article

[13] Nadia Sonneveld, The Case of Women's Unilateral Divorce Rights in Egypt Revolution and Counterrevolution? from Part IV - What Is Law? Oral and Codified Law. in Doris Gray and Nadia Sonneveld (eds), Women and Social change in North Africa *What counts as Revolutionary?* (Cambridge University Press 2017) 331-352.
[14] Sara Abdel Ghany and Azza Soliman, 'Reforming the Egyptian Personal Status Laws A case for Islamic feminism' [2020] 44(2) Al-Raida Journal 125.
[15] Yakare-Oule Jansen, 'Muslim Brides and the Ghost of the Shari'a: Have the Recent Law Reforms in Egypt, Tunisia and Morocco Improved Women 's Position in Marriage and Divorce, and Can Religious Moderates Bring Reform and Make It Stick?' [2007] 5(2) Northwestern Journal of Human Rights 198.
[16] Paolo Farah, Law, Society and Religion: Islam and the West. in Lorenzo Ramaioli (ed), Juridical Perspectives between Islam and the West – A Tale of Two Worlds (Palgrave MacMillan (United Kingdom) 2024).
[17] Tahar Haddid, Our women in the Sharia and society (1st edn, 1930).
[18] Amel Grami, 'Gender Equality in Tunisia' [2008] 35(3) British Journal of Middle Eastern studies 349-361.

therefore affirms Haddad's case for the reform of personal status laws to accurately reflect women's position in the society through interpretations of the Qur'an through a different lens.

The 'Interpretive power' of Ijtihad

The application of Ijtihad has provided a means of interpreting Sharia in response to changing social circumstances, particularly strengthening the rights of women's and non-Muslim citizens' rights whilst continuing to recognise Islam as the National identify within select Arab states. *Ijtihad* is one of the sources of Sharia, and as acknowledged by Dunne, is described as a 'rethinking',[19] or perhaps even more commonly a 'juristic reasoning'[20] that is 'used to regulate the whole field of human relationships'.[21] One of the earliest and most influential examples of *Ijtihad* is attributed to Caliph Omar ibn-al-Khattab, who suspended the application of the Qur'anic punishment of cutting the hands of thieves by prioritising and applying the broader principles of 'justice and fairness'.[22] Indeed, the application of such principles can be applied in a range of different contexts. As such, Arab countries like Tunisia have embraced the concept of *Ijtihad* with regard to the achievement of gender equality within polygamy and divorce laws. Crucially, *Ijtihad* facilitates the reinterpretation of Sharia in a way that can reflect modern understandings of gender equality and non-discrimination, whilst retaining the cultural and religious importance of traditional Islamic teachings.[23]

Challenges to the influence of traditional interpretations of Islamic law in the modern world

The impact of the Arab Spring on the relationship between religion and the law, particularly regarding constitutional texts and personal status laws concerning women's rights, varied

[19] Shaista P Ali-karamali and Fiona Dunne, 'The Ijtihad Controversy' [1994] 9(3) Arab Law Quarterly 238-257.
[20] Noel Coulson, 'Law and Religion in Contemporary Islam' [1978] 29(6) Hastings Law Journal 1448.
[21] Noel Coulson, 'Law and Religion in Contemporary Islam' [1978] 29(6) Hastings Law Journal 1449.
[22] David Smock, Ijtihad: Reinterpreting Islamic Principles for the Twenty-First Century (United States Institute of Peace 2004).
[23] Miyase Yavuz, 'Allah (God), al-Watan (the Nation), al-Malik (the King, and the role of ijtihad in the family law reforms of Morocco', [2016] 7(2) The Journal of the Middle East and Africa 207-227.

immensely across the countries in the MENA region. This wave of 'anti-regime uprisings'[24] saw significant protest by both women and men regarding the 'ineptitude and transgressions'[25] of their governments, and the desire for heightened gender equality. Women actively rallied for equal socio- economic, political and legal rights, as well as equitable representation in the political transitions expected to follow the uprisings.[26] During this period, the relationship between religion and the law came under intense scrutiny, particularly regarding the inequalities faced by women; the impact was so profound during the uprisings that Egyptian feminist Nawal El Saadwi acknowledged 'I felt for the first time that women are equal to men'.[27]

These uprisings had varying results across the MENA region. Tunisia greatly benefited from the Arab Spring and marked a huge progression by ensuring that gender equality was recognised in the subsequent 2014 constitution[28] (and amended 2022 constitution[29]), as explored in the latter half of this article. Here, we can see Tunisian legislation committing to a significant shift towards achieving equality between the genders, with particular efforts being made in regard to divorce rights.[30] This step towards equality however was not reflective of the whole of the MENA region, with many other countries unfortunately remaining stagnant in the face of gender equality progressions. Johansson notes that the political changes following the uprisings have 'arguably so far only ushered in mixed messages and continued insecurity for

[24] Elisabeth Johansson-Nogués, 'Gendering the Arab Spring? Rights and (in)security of Tunisian, Egyptian and Libyan women' [2013] 44(5/6) Security Dialogue 393-409.
[25] Elisabeth Johansson-Nogués, 'Gendering the Arab Spring? Rights and (in)security of Tunisian, Egyptian and Libyan women' [2013] 44(5/6) Security Dialogue 393-409.
[26] Elisabeth Johansson-Nogués, 'Gendering the Arab Spring? Rights and (in)security of Tunisian, Egyptian and Libyan women' [2013] 44(5/6) Security Dialogue 393-409.
[27] Lauren Bohn, Lynch Sarah, 'Women and the Revolution: What does the new democratic future hold for Egyptian women?' (*Foreign Policy*, 2 March 2011) <https://foreignpolicy.com/2011/03/02/women-and-the-revolution-2/> accessed 5 December 2024.
[28] Constitution of the Tunisian Republic 2014.
[29] Constitution of the Tunisian Republic 2022.
[30] Adrian Morse and Leila Sayeh, 'Tunisia: Marriage, Divorce, and Foreign Recognition' [1995] 29(3) Family Law Quarterly 701-720.

women'.[31] Indeed, such is the case in Egypt's 2014 constitution, where, despite proclaiming equality,[32] there remains a rather traditional approach to gender rights. The previously identified areas of law will now be considered in depth, examining the relevant constitutional provisions and personal status laws within each of the states identified above.

Islam and the Law: Divorce

Marriage in Islam is regarded as an 'everlasting institution',[33] and while Sharia does permit divorce in exceptional circumstances, it does so reluctantly, prioritising the preservation of the family unit. Indeed, divorce is seen as a compromise – allowing the dissolution of the marriage rather than forcing individuals to endure a 'companionship that has become odious'.[34] However, the permissibility of divorce is strongly disapproved within Sharia principles, influencing the perception and application of Islamic law regarding divorce across the Arab world. Ahmad describes divorce as 'only a necessary evil',[35] a sentiment echoed in the Hadith of the Prophet Muhammad which states 'Allah did not make anything lawful more abominable to Him than divorce'.[36] This article will subsequently explore how this heavy influence of cultural and religious disfavour has translated into legal systems that make divorce more accessible to men.

As aforementioned, Sharia is the principal source of legislation within Egypt,[37] and this influence is reflected in Egypt's divorce laws, which afford men greater rights to initiate divorce. In Sharia, Muslim men can terminate their marriage by *Talaq* (meaning

[31] Elisabeth Johansson-Nogués, 'Gendering the Arab Spring? Rights and (in)security of Tunisian, Egyptian and Libyan women' [2013] 44(5/6) Security Dialogue 401.
[32] Constitution of the Arab Republic of Egypt 2014, art 53.
[33] Shagufta Omar, 'Dissolution of Marriage: Practices, Laws and Islamic Teachings' [2007] 4(1) Policy Perspectives 91-117.
[34] G.C. Cheshire, 'The International Validity of Divorces' [1945] 61 Law Quarterly Review 352.
[35] Furqan Ahmad, 'Understanding the Islamic Law of Divorce' [2003] 45(3/4) Journal of the Indian Law Institute 484-490.
[36] Sunan Abi Dawud, hadith 2177.
[37] Constitution of the Arab Republic of Egypt 2014, Art 2.

'repudiation'[38]) which is actionable unilaterally by the husband against the wife. It is interesting to note the different forms of *Talaq;* this article will discuss the *Talaq al Sunna,* (as opposed to the *Talaaq al Bidaa* which poses inconsistencies with 'Allah's teachings'[39]). *Talaq al Sunna* enables the husband to simply pronounce the divorce, and then to dissolve the marriage at a later date, following the period of the *Iddah*[40] (the period of reconsideration). This is however problematic, since under Sharia, to obtain a divorce (a '*Khul*'), in many instances a woman must provide her husband financial compensation in the form of the dowry[41] (the *Mahr*) which places an additional burden on the woman[42]. This is confirmed in *Surah Al- Baqarah* of the Qur'an*,* 'If you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back'.[43]

Importantly, Article 20 of the Egyptian personal status law No.1 of 2000[44] codifies the '*Khul* law' to enable women to access divorce without having to prove any harm from the husband, so long as she forfeits her financial right of the *Mahr*[45] – the *Mahr* is the sum of money provided by the groom to the bride during the wedding ceremony. Significantly, this codification 'marks a radical discontinuity with extant family law'[46] and empowers women to access divorce through the interpretative power of *Ijtihad,* which can address gender inequalities within the

[38] Amira Mashhour, 'Islamic Law and Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt' [2005] 27(2) Human Rights Quarterly 562-596.
[39] Maria Reiss, 'The materialization of legal pluralism in Britain: Why Sharia Council decisions should be non-Binding' [2009] 26(3) Arizona Journal of International & Comparative Law 748.
[40] Amira Mashhour, 'Islamic Law and Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt' [2005] 27(2) Human Rights Quarterly 572.
[41] Ashraf Booley, 'Divorce and the law of khul: A type of no fault divorce found within an Islamic legal framework' [2014] 18(1) Law, Democracy and Development 37-57.
[42] Pascale Fournier, 'In the (Canadian) shadow of Islamic law: Translating mahr as a bargaining endowment' [2006] 44(4) Osgoode Hall Law Journal 650-677.
[43] Qur'an, surah al-Baqarah 2:229.
[44] Personal Status Law No. 1 of 2000, Art 20.
[45] Aliaa Zakaria and Alaa Abouahmed, 'Constitutional protection of Egyptian women's rights in personal affairs' [2023] 9(1) Cogent social sciences.
[46] Oussama Arabi, 'The Dawning of the Third Millennium on Shari'a: Egypt's Law no 1 of 2000, or Women May Divorce at Will' [2001] 16(1) Arab Law Quarterly 2-21.

law whilst maintaining within the framework of Sharia, through the aforementioned 'exertion'[47] of interpretation granted to qualified jurists.[48] However, women's rights remain significantly constrained by the requirement attached to *Khul*, given that the condition to forfeit the *Mahr* results in the loss of such a foundational financial right for women in Islam.[49] Requiring women to relinquish this right as a condition of obtaining divorce is therefore inconsistent with the pursuit of full gender equality within Egyptian law. The Personal Status laws ultimately remain somewhat problematic since women must still forfeit their financial rights simply to separate – men are not held to the same requirements.

Additionally, this law was not passed without serious scrutiny. As acknowledged by Mashhour, 34 parliamentary members approved the law and 17 rejected it after a contentious debate regarding the judiciary, the consent of the two partners, and any social effects the *Khul* may have.[50] This is interesting, as despite the personal status law demonstrating an, albeit flawed, progression of gender equality, alongside marking attempts to tackle the influence of Sharia based inequalities, it is clear that many within the Egyptian parliament remain stifled by an 'adherence to a conservative interpretation of the Sharia'.[51]

An interesting comparison can be drawn here to the divorce laws in Tunisia. In comparison to Egypt's rather conservative laws on divorce, Tunisia has granted equal divorce rights to both men and women. Article 49 of Tunisia's 2014 Constitution[52] commits the state to protecting

[47] Sajila Kausar, 'Collective Ijtihad: History and Current Perspective' [2017] III(V) International Journal of Humanities & Social Science Studies 151-152.
[48] Sajila Kausar, 'Collective Ijtihad: History and Current Perspective' [2017] III(V) International Journal of Humanities & Social Science Studies 151-152.
[49] Jihan Safar, The Dower (Mahr) and Wedding Ceremony among the Shi'a of Oman: Religion, Class, and Ethnicity. in Yafa Shanneik and Annelies Moors (eds), Global Dynamics of Shi'a Marriages: Religion, Gender, and Belonging (Rutgers University Press 2022) 59-84
[50] Amira Mashhour, 'Islamic Law and Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt' [2005] 27(2) Human Rights Quarterly 572.
[51] Amira Mashhour, 'Islamic Law and Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt' [2005] 27(2) Human Rights Quarterly 584.
[52] Constitution of the Tunisian Republic 2014, art 49.

and promoting women's rights, with equal access to divorce, codified in Article 31 of Tunisia's code of personal status.[53] This even requires the divorce to take place before a court 'in the interest of justice and equality among women and men'.[54] This is a prime example of *Ijtihad* being used to interpret Islam to maintain alignment with the Qur'an whilst promoting equal rights amongst men and women; on this basis, Morse and Sayeh recognise the divorce laws in Tunisia as 'an example of social engineering'.[55]

The 2004 Moudawana[56] (Family Code) of Morocco expanded divorce rights for women by replacing the 1958 Personal Status Code,[57] but it fell short of matching the full equality achieved by Tunisia. Significantly, the 2004 Moudawana improved women's rights by permitting two new categories of divorce: mutual consent[58] and irreconcilable differences[59] (Shiqaq). This is particularly important because women were granted greater accessibility to initiate divorce proceedings and indeed can now do so without requiring explicit justification.[60] As acknowledged by Yavuz, this change within divorce law is one part of a series of reforms within Morocco, widely observed to be one of the 'most progressive and egalitarian Muslim family laws'[61] within the Arab world. Crucially, such a change had once again been facilitated by the exercise of 'innovative *Ijtihad',*[62] wherein the law interprets Islam through the principles of gender equality. Whilst by no means the sole influencing factor, with the role of King Mohammed VI having been equally as influential on the enhancement of women's rights with

[53] Tunisian Code of Personal Status, art 31.
[54] Adrian Morse and Leila Sayeh, 'Tunisia: Marriage, Divorce, and Foreign Recognition' [1995] 29(3) Family Law Quarterly 701-720.
[55] Adrian Morse and Leila Sayeh, 'Tunisia: Marriage, Divorce, and Foreign Recognition' [1995] 29(3) Family Law Quarterly 701-720.
[56] Moroccan Family code (Moudawana) 2004.
[57] Moroccan Personal Status Code (Moudawana) 1958.
[58] Moroccan Family code (Moudawana) 2004, art 114.
[59] Moroccan Family code (Moudawana) 2004, arts 94-97.
[60] Katie Zoglin, 'Morocco's Family Code: Improving Equality for Women' [2009] 31(4) Human Rights Quarterly 964-984.
[61] Miyase Yavuz, 'Allah (God), al-Watan (the Nation), al-Malik (the King), and the role of ijtihād in the family law reforms of Morocco' [2016] 7(2) The Journal of the Middle East and Africa 208.
[62] Miyase Yavuz, 'Allah (God), al-Watan (the Nation), al-Malik (the King), and the role of ijtihād in the family law reforms of Morocco' [2016] 7(2) The Journal of the Middle East and Africa 214.

his pledge to improve gender equality in 1999[63], *Ijtihad* undeniably aided here in such significant reform of Moroccan law.

However, whilst these divorce laws do somewhat align with Morocco's constitutional declaration of committing the state to gender equality and eliminating discrimination (Article 19),[64] the Code fails to achieve the greater substantive equality of Tunisia. Within the 2004 Moudawana[65], the *Khul* procedure maintains that women must sacrifice financial compensation to their husband (in the form of the *Mahr*), and men retain the power to *Talaq*. Despite the Moudawana attempting to reduce such an imbalance in divorce law by requiring judicial oversights of the public prosecutor,[66] Morocco ultimately retains a rather conservative application of Islamic jurisprudence.

Islam and the Law: Polygamy

In Sharia law, polygamy is permitted under specific conditions, in particular the requirement of justice between wives. This is enforced in the Qur'an, where monogamy is encouraged if justice cannot be ensured; *Surah an Nisa* 4:3 states 'if you were to marry them, then marry other women of your choice – two, three, or four. But if you are afraid you will fail to maintain justice, then content yourselves with one.'[67]

In Tunisia, this verse of the Qur'an is interpreted as a justification to ban polygamy entirely within Article 18 of its Code of Personal Status 1956.[68] Indeed, Tunisia's prohibition of polygamy has its legal basis in *Surah An Nisa* 4:3 where it finds its 'juristic justification'[69] to

[63] Selman Zahid Özdemir, 'Islamic Law in Morocco: Historical developments and Reforms' [2025] 16(1) DergiPark Akademik 116.
[64] Morocco Constitution 2011, art 19.
[65] Moroccan Family code (Moudawana) 2004.
[66] Katie Zoglin, 'Morocco's Family Code: Improving Equality for Women' [2009] 31(4) Human Rights Quarterly 970.
[67] Surah An Nisa, 4:3.
[68] Code of Personal Status 1956, Article 18.
[69] JND Anderson, 'The Tunisian Law of Personal Status' [1958] 7(2) The International and Comparative Law Quarterly 262-279.

ban polygamy in the 'impossibility of fulfilling the Quranic injunction that a plurality of wives must be given equal treatment'.[70] Once again, the interpretive power of *Ijtihad* to align Sharia with modern views of gender equality is profound, enabling Tunisia to become the first Islamic country to ban polygamy within state law.[71] However, it is interesting to briefly consider Chusnayaini's argument that this progression may not solely be down to the influence of Islamic Sharia law and the interpretative power of *Ijtihad,* but equally the result of Western influences on Tunisian President Bourgiba, and the emergence of secularisation of Islamic law at the time.[72]

The Syrian laws on Polygamy in its Personal Status Law of 1953 sharply contrast the revolutionary Tunisian laws on polygamy in the 1956 Code of Personal Status[73]. In Syrian Personal Status Law No.59 of 1953, Article 17[74] permits polygamy, but remains silent on the requirement for consent of the first wife. Whilst permitted, the Syrian Qādī is empowered to restrict polygamous practises where the husband cannot prove his financial capacity to support both his current wife and any potential additional wives. As observed by Anderson, this provision of Syrian law is 'outstandingly interesting',[75] considering that it imposes a restriction on polygamous practises in accordance with a traditional interpretation of Hanafi Sharia in *Surah – An-Nisa* 4:3, contrasting the progressive interpretation taken by Tunisia. The Syrian interpretation appears to balance the historically strict adherence to Islamic religious practise within the law by retaining access to polygamy, alongside the emerging external pressures to increase women's rights. In doing so, Article 17 takes account of the economic consideration

[70] JND Anderson, 'The Tunisian Law of Personal Status' [1958] 7(2) The International and Comparative Law Quarterly 262-279.
[71] Mufliha Wijayati, 'FAMILY LAW REFORM IN TUNISIA (Reading the Rules of Polygamy in The Tunisian Code of Personal Status 1957)' [2021] 8(1) Jurnal Ilmiah MIZANI 133-141.
[72] Ayyus Chusnayaini, 'Dynamics of Tunisian Polygamy Law in Gender perspective' [2014] 5(2) Jurisdictie 133.
[73] Tunisian Code of Personal Status 1956.
[74] Syrian Personal Status Law 1953, Art 17.
[75] JND Anderson 'The Syrian Law of Personal Status' [1955] 17(1) Bulletin of the School of Oriental and African Studies 36.

of equal treatment in an effort to safeguard the economic well-being of all wives. However, despite providing an obstacle to polygamy through the potential for interference by the Syrian judiciary, in reality very little has changed with regard to the number of polygamous marriages that continue to occur within Syria.[76] Further reform is therefore required, perhaps through the power of Ijtihad, to reconsider traditional interpretations of Islamic principles underpinning polygamy and facilitate further legal reform towards gender equality.

It is worth acknowledging that despite making progressive change with regard to divorce, Morocco's 2004 Moudawana remains silent on both the 'delicate issues of polygamy and inheritance'[77] due to continuing 'socio-political tensions'[78] within Morocco at the time of the Codes inception. Thus, despite progressive reform within the Tunisian state regarding the abolition of the practise of polygamy, the strong influence of Islam within Morocco appears to continue to restrict women's rights within the law.

Islam and the Law: Inheritance

It is particularly interesting to pay attention to women's rights in the laws on inheritance within the Arab countries. Inheritance laws within Egypt and Tunisia in particular are deeply rooted in Islamic jurisprudence, reflecting Sharia principles of the traditional role of women in the family.

Despite the Arab Spring further solidifying Tunisia's reputation as being at the 'forefront of 'women friendly' legislative changes in the Arab-Muslim world',[79] the uprisings nevertheless

[76] Freedom House, Women's Rights in the Middle East and North Africa 2010: Syria (Freedom House, 3 March 2010) https://www.refworld.org/reference/countryrep/freehou/2010/71621?utm_source=chatgpt.com accessed 9 July 2026.
[77] Miyase Yavuz, 'Allah (God), al-Watan (the Nation), al-Malik (the King), and the role of ijtihād in the family law reforms of Morocco' [2016] 7(2) The Journal of the Middle East and Africa 219.
[78] Miyase Yavuz, 'Allah (God), al-Watan (the Nation), al-Malik (the King), and the role of ijtihād in the family law reforms of Morocco' [2016] 7(2) The Journal of the Middle East and Africa 208.
[79] Mounira Charrad, 'Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation ' [2007] 64(4) Washington and Lee Law Review.

left inheritance law largely unchanged, with its provisions remaining grounded in traditional Islamic principles as reflected in the 1956 Code of Personal Status. Inheritance is directly regulated by the Qur'an itself. *Sura An-Nisa* 4:11 establishes inheritance allocations, stating that 'Allah commands you regarding your children: for the male, what is equal to the share of two females'.[80] However, the Qur'anic framework for inheritance contains an apparent tension between the recognition of women's inheritance rights, and the differentiation of shares between men and women. *Sura An- Nisa* 4:7, provides significant recognition of women's legal status by establishing that both men and women, 'be it little or much' are entitled to inherit 'an obligatory share'[81]. Despite this recognition of women as legal heirs, Tunisia's personal status laws have largely maintained the traditional Qur'anic, unequal allocation—when girls inherit from their parents, they inherit half the share of boys. This allocation is codified in the personal status laws, Article 103[82]. This codification is unfortunately representative of the 'out-dated system that Islam has not replaced completely',[83] and in this context the views of Haddad are particularly significant. This paper affirms Haddad's advocations for the elimination of the patriarchal interpretation of the Qur'an that enables boys to inherit double the share of their sisters.[84] Crucially, such an elimination may be achieved through the use of interpretive power of *Ijtihad* to emphasise the broader principle expressed in *Sura An-Nisa* 4:7, and to reconsider the allocation in *Sura An-Nisa* 4:11 in light of wider principles of gender equality.

Similarly to Tunisia, inheritance in Egypt is primarily governed by Islamic Sharia law, as highlighted by Article 2 of the Egyptian constitution 2014.[85] Where both states continue to restrict the daughters share of inheritance to half that of the son, it is clear that the area of

[80] Surah An- Nisa, 4:11.
[81] Surah An- Nisa, 4:7.
[82] Tunisian Code of Personal Status 1956, Art 103.
[83] Abdulmajeed Hassan bello, 'Islamic Law of Inheritance: Ultimate Solution to Social Inequality against Women' [2015] 29(3) Arab Law Quarterly 261-273.
[84] Tahar Haddid, Our women in the Sharia and society (1st edn, 1930).
[85] Constitution of the Arab Republic of Egypt 2014, art 2.

inheritance law in the MENA region as a whole is one that requires a significant amount of progression. Perhaps the interpretive power of *Ijtihad* may be applied to modernise these areas of inheritance law whilst retaining Islam as the national identity of Tunisia and Egypt.

The influence of Islam on discrimination of non-Muslims

The influence of Islam in constitutional texts and personal status laws in many Arab countries often perpetuates systemic discrimination against non-Muslims. Despite new constitutions following the Arab Spring emphasising equality, many principles remain tied to Sharia, which upholds inherently discriminatory practises against women and non-Muslims. Sharia divides people into Muslims, "People of the book" (Christians and Jews) and non-believers. Unfortunately, the constitutional reforms that followed the Arab Spring did not consistently translate into substantive equality for non-Muslim groups in practice.[86]

Inequalities between religious groups trace back to shifts in Quranic periods, and this article will focus on interpretations of only the late Meccan period (c.619-622 CE) and the Medinan period (c.622- 632 CE) for clarity. The Meccan period promoted religious unity; 'Indeed this, your religion, is one religion, and I am your Lord, so worship Me'.[87] Whereas the later Medinan period reflects the emergence of Islam as a distinct religious community, resulting in more defined legal and social distinctions between Muslims and non-Muslims, including the People of the Book. It is particularly interesting to consider Sura 3, verse 110, which stresses the sentiment that 'Among [people of the book] are believers, but most of them are defiantly disobedient'.[88] Indeed, certain interpretations of this reading from within the Medinan have contributed to current legal frameworks that are discriminatory towards those who do not

[86] Francesco Biagi, Constitution-Building After the Arab Spring: A comparative perspective (Cambridge University Press 2025) 189-267.
[87] Surah Al- Anbya, 21:92-93.
[88] Surah Ali 'imran, 3:110.

conform to dominant Islamic legal norms. An-Na'im articulates this concern by simply observing that 'Muslim males are the only full citizens of the Islamic state'.[89]

It is interesting to observe how constitutional texts within the Arab countries are influenced by Islam to reflect inequalities and discrimination against non-Muslims, despite *de facto* claims of equality. For instance, Article 3 of the 2014 Egyptian Constitution grants the People of the Book the freedom to openly practice their religion and apply their own religious principles.[90] However, the omission to reference other religions (such as Buddhism and Hinduism) inherently excludes adherents of non-Abrahamic faiths from the same rights, effectively limiting these freedoms to Muslims, Christians, and Jews. Resultingly, Egypt appears to have made 'little progress'[91] with regard to the tangible improvement of human rights for non-Muslims of non-Abrahamic faiths. It is interesting to consider how the influence of Islam, and in particular the Medinan period has materialised within these constitutional texts, as the absence of recognition of other religions and belief systems reflects a constitution that institutionalizes discrimination.

Furthermore, Article 64 of the Egyptian constitution[92] guarantees freedom of belief, but the right to establish places of worship and practise religion is afforded only to those who follow the divinely revealed religions; unfortunately, this right does not extend equally to followers of non-Abrahamic faiths. Despite claims of this freedom of belief being 'absolute',[93] the failure to provide non-Abrahamic religious communities with mechanisms or guarantees to build places of worships inherently inhibits their ability to practice their faith. On this basis, the Egyptian constitution demonstrates significant disparity in protection of freedom of belief,

[89] Abdullahi A An-Na'im, 'Religious Minorities under Islamic Law and the Limits of Cultural Relativism' [1987] 9(1) Human Rights Quarterly 1-18.
[90] Constitution of the Arab Republic of Egypt 2014, Art 3.
[91] Barbara Ann Rieffer- Flanagan, 'Statism, Tolerance and Religious Freedom in Egypt' [2016] 13(1) Muslim World Journal of Human Rights 1.
[92] Constitution of the Arab Republic of Egypt 2014, Art 64.
[93] Constitution of the Arab Republic of Egypt 2014, Art 69.

reflecting the substantial influence of traditional interpretations of Sharia within Egypt's legal framework.

The deficiencies of the Egyptian constitution to include language pertaining to the freedom of belief of all religions can be directly contrasted with the Tunisian constitution of 2014, particularly Article 6. Here, the state explicitly guarantees the importance of freedom of religion; 'The state is the guardian of religion. It guarantees freedom of conscience and belief, the free exercise of religious practises and the neutrality of mosques and places of worship from all partisan instrumentalization'.[94] Despite not explicitly stating the inclusion of non-Abrahamic religions, Article 6 provides an 'ostensibly'[95] broad protection of the freedom of religion, demonstrating Tunisia's significant commitment to non-discriminatory practices and contrasting with the more restrictive approach of Egypt. It would however be ignorant to assert that Tunisia has entirely solved all issues of legal equality and freedom of religion based on traditional religious discrimination within Sharia. Article 74 of Tunisia's 2014 constitution retains preference to those of Islamic faith, by stipulating that '[e]very male and female voter… whose religion is Islam shall have the right to stand for election to the position of President of the Republic'.[96] By enforcing this exclusion to candidates outside of the Islamic faith, Tunisia continues to retain religious bias as based in Sharia.

Conclusion

To conclude, it is undeniable that the relationship between religion and the law remains deeply rooted in Islam, which influences the constitutional texts and personal status laws of the countries within the MENA region. This intertwining of religion and the law can be traced historically through the development of the Arab countries, often reinforcing traditional

[94] Constitution of the Tunisian Republic 2014, art 6.
[95] Allison Bitz, 'Freedom of Religion in the 2014 Tunisian Constitution' [2019] 100 International Immersion Program Papers 2.
[96] Constitution of the Tunisian Republic 2014, art 74.

interpretations encompassing gender inequalities and discrimination against non-Muslims. However, it is clear that governmental reform in recent years, in particular the use of *Ijtihad*, has demonstrated the potential for reinterpretation and progressive change. In the areas of polygamy and divorce, women in Tunisia have enjoyed the full extent of the potential of this 'exercising independent juristic reasoning',[97] used to propel women's rights by aligning Islamic principles with modern notions of equality. This is crucial for understanding that Islamic jurisprudence *can* be employed to promote gender justice whilst retaining the verses of the Qur'an and the Sunna, and without abandoning religious foundations. However, it remains disheartening to acknowledge the persistence of patriarchal norms in inheritance law, the continuation of conservative divorce procedures, and the reluctance to facilitate non-Muslim religious practises within many Arab states, all of which significantly inhibit meaningful progress: as Johansson-Nogués observes in relation to Egypt, 'the prospect for a breakthrough anytime soon appears remote, given the new constitution'.[98] Ultimately, the evolution of laws in the Arab countries reveals that Islam's influence is not monolithic, and that, through the use of *Ijtihad* to reinterpret Sharia, a balance between religious principles and the principles of equality and non-discrimination can be achieved, albeit not without difficulty.

[97] Amira Mashhour, 'Islamic Law and Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt' [2005] 27(2) Human Rights Quarterly 562-596.
[98] Elisabeth Johansson-Nogués, 'Gendering the Arab Spring? Rights and (in)security of Tunisian, Egyptian and Libyan women' [2013] 44(5/6) Security Dialogue 405.