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# The Interplay between Sharia and Gender Equality

A Comparative Study of Women's Rights in Divorce  
Regulations in Iraq and Tunisia

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## **Abstract**

In the Middle East and North Africa region, many family laws are based on Sharia principles, where different interpretations of Sharia result in varying implications for human rights. This study explores the impact of divorce regulations in the personal status laws of Iraq and Tunisia on women's rights. While Tunisia stands out for its extensive legal rights for women, surpassing its regional counterparts, Iraq falls behind in advancing women's rights - particularly in family law. Despite experiencing similar political changes, women in Iraq and Tunisia face different situations and opportunities in terms of accessing divorce. Using a comparative case study methodology, this study examines the expression of divorce laws in Iraq and Tunisia, as well as their intersection with Sharia. The study incorporates a content analysis of relevant laws, along with a review of secondary data on the countries' history to examine the role of women in shaping these laws. Drawing on feminist theories by Amina Wadud and Kecia Ali, the study highlights the role of patriarchy and male-dominated interpretations of Islam in restricting women's empowerment. The findings reveal that women's rights are shaped by social and cultural structures, rather than solely by Islamic principles. Both countries incorporate Sharia in their laws, although Tunisia interprets it more favourably for women, Iraq adopts a more conservative and restrictive interpretation. Tunisia's successful alignment of Sharia with women's rights demonstrates the adaptability of Islamic law and the importance of contextual interpretations of Sharia. Internal and external factors, including diverse populations, different Islamic schools of law, and grassroots movements, contribute to different approaches to democratic transition and varying situations for women in Iraq and Tunisia in terms of human rights.

**Key words:** Iraq, Tunisia, Sharia, gender equality, Islamic Law, women's rights, divorce, interpretation, patriarchy, Shia, Sunni, women's agency, Qu'ran

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## **Abbreviations**

AFTD - Tunisian Association of Democratic Women

AWID - Association for Women's Rights in Development

CPS - Code of Personal Status

COVID-19 - Coronavirus Disease 2019

IGC - The Interim Governing Council

MENA - Middle East and North Africa Region

PSL - Personal Status Law

SCIRI - Supreme Council for the Islamic Revolution in Iraq

UGTT - Tunisian General Labour Union

U.S - The United States of America

UN Women - United Nations Entity for Gender Equality and the Empowerment of Women

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## **1. Introduction**

Islamic law, also called Sharia, is the primary source of legislation in many parts of the Middle East and North Africa (MENA) region. While civil and criminal laws in some MENA countries may follow European jurisprudence, most of the family laws in the MENA region are based on Sharia principles. These laws, referred to as personal status laws, address issues such as marriage, divorce, child custody, property rights, and inheritance rights. Personal status laws have a significant impact on women's empowerment and self-determination, as they dictate women's rights in relation to their families. Women's roles within the family and society may already be predetermined by the provisions set forth in their religion, which restricts their individual rights to varying degrees. This makes personal status laws one of the most effective tools used by patriarchal societies to control women's opportunities for self-determination and empowerment.

Nevertheless, the personal status laws in the MENA region vary greatly, depending on the country and religion, and are often a selective codification of religious law. Muslim countries have different interpretations of Sharia and follow different schools of Islamic law. While some nations have made progress in granting women more rights, others continue to adopt a more limiting perspective, perpetuating patriarchal societal norms.

### **1.1 Research objective and purpose**

When it comes to freedom and women's rights across different Arab countries, Tunisia is widely regarded as the most progressive nation in the region for women to live in, with legal rights for women that are often ranked the highest in the area. Despite the fact that discriminatory laws against women still exist in Tunisia, the country's treatment of women's rights within family law is significantly more advanced than that of other nations in the region. According to statistics and reports - by UN Women, Freedom House, and Amnesty International - on gender equality in the MENA region, Tunisia is usually classified as an equal country in terms of women's legal rights. While Iraq is not typically viewed as the most unequal country in the MENA region, it is nowhere near Tunisia in terms of advancements made regarding women's rights, particularly within family law regulations (UN Women 2020) (Freedom House, 2023) (Amnesty International, 2023).

In both Tunisia and Iraq, Islam is declared as the state religion, yet the countries exhibit contrasting approaches to the treatment of women's rights under Islamic law. Iraq has adopted a typically conservative interpretation of Islam and Sharia principles in its legislation. As a result, family laws have been adapted accordingly in Iraq, with the consequence of limited women's rights. Despite limited rights for women to obtain divorce, the divorce rate is increasing in the country. In contrast, Tunisia has adopted a more progressive interpretation of Islam and Sharia principles in its family laws, leading to significantly expanded rights for women. Men and women enjoy equal divorce rights in Tunisia, making its family law a progressive system that favours women. Both countries have faced major political changes in recent years that have also had significant impacts on the judiciary, the situation of women, and the role of religion in political and social life.

The purpose of this study is to provide a comparative analysis of the divorce regulations in the personal status laws of Iraq and Tunisia. Given that the laws concerning family and personal status issues cannot be separated from gender, the aim of this study is to explore the impact of divorce laws on women's rights, and highlight the consequences of divorce for women. By examining the differences in the interpretation of Sharia, the effects of the laws on women's lives, and their distinct effects on women's rights, the study aims to clarify what the divorce laws in Iraq and Tunisia signify for women. By examining the convergence between the laws and Sharia, this study seeks to demonstrate how Sharia can be interpreted differently, and how it can either limit or enhance women's rights. Additionally, through the study of key historical events in both countries, the study aims to further investigate how the laws were shaped, and the reasons the outcome for women's situation is distinctly different in Iraq and Tunisia. Through the examination of theories of Islamic feminism, the study explores women's involvement in shaping the laws. The research questions treated in this study are the following:

1. How are the divorce laws expressed in Iraq and Tunisia, and how do they intersect with Sharia?
2. To what extent are women's rights affected by the divorce laws in Iraq and Tunisia?



## **1.2 Justification of the study**

Previous research has conducted comparative studies of Tunisia's family law and divorce regulations with other countries in the MENA region. Nevertheless, a comparative analysis specifically focusing on the divorce laws between Iraq and Tunisia has been notably absent in the existing literature. The choice of Iraq and Tunisia as the subjects for this case study was due to the similar political changes that both countries have experienced, around the same time period. Despite sharing some commonalities, such as a predominantly Muslim population, a history of colonialism, secular post-colonial regimes, the rise of Islamism, and the implementation of democracy, the two countries differ significantly concerning women's rights and the status of women in the family. Tunisia was chosen as a contrast to Iraq in this study, since Iraq is not as advanced as Tunisia regarding the improvement of women's rights. The analysis of divorce regulations was chosen in order to narrow the focus within family law. Since divorce has a broad definition in Sharia and Islamic law, and can have a significant impact on women's rights, it was deemed as a crucial aspect of this study.

## **1.3 Thesis structure**

This thesis is divided into several chapters. It begins with an introduction that outlines the research objective, purpose, and research questions. Chapter two describes the methodology employed for the study, including details about data collection and delimitations. Chapter three offers background information on Islam and Sharia, covering different discourses within Islam, the Islamic schools of law in Iraq and Tunisia, and the stance on divorce according to Sharia. Chapter four presents previous research on the topic, followed by an exploration of the theories utilised, their similarities, and possible criticism against them in chapter five. Chapter six delves into the historical development of personal status laws in the two countries, tracing their evolution from the period of decolonization to the present, laying the foundation for subsequent analysis. The results of the study are presented in chapter seven, which is the section on divorce in the personal status laws of Iraq and Tunisia. Chapter eight analyses the results by examining their alignment with Sharia and applying Wadud and Ali's theories of Gender Jihad and Sexual ethics in Islam. Finally, the thesis concludes with a summary of findings, a concluding remark, and a discussion on future research possibilities.

## **2. Methodology**

This study employs a comparative case study approach, which includes a content analysis that will examine the relevant laws in both Iraq and Tunisia. By comparing and contrasting the laws, this study seeks to analyse their respective impacts on women's rights.

The research design utilised in this study is a qualitative method, which involves the collection and analysis of non-numerical data, such as words, to achieve a deeper understanding of the processes that lead to a particular phenomenon. Qualitative research is known for its flexibility and less structured nature, allowing research questions to emerge in an exploratory and open-minded manner that later can be interpreted by the researcher. The aim is to uncover the underlying causes of effects by closely examining and understanding the processes that give rise to the phenomenon under study, rather than solely focusing on the outcome itself (Bryman&Bell 2011, 392-393). There are various types of qualitative research methods, one of which is the case study research design. Case studies focus on a specific context or subject, aiming to gain a comprehensive understanding of a real-life phenomenon. This method involves examining relevant contextual conditions that are highly pertinent to the phenomenon under study, and it is particularly suited for situations where the boundaries between the phenomenon and its context are not clearly defined (Yin, 2009:47). What distinguishes case study research from other methods is its combination of contextual analysis with the study of real-life phenomena and contemporary events, which are often limited or isolated by other approaches like experiments and surveys. As a result, the case study method is particularly effective in addressing “how” and “why” questions (Yin, 2009:47).

This study will employ a comparative case study method to closely examine two cases: the divorce laws of Iraq and Tunisia. Comparative case studies focus on analysing and identifying similarities, differences, and patterns in cases. To ensure that the cases share a specific goal or objective, detailed information about each cases' specific features must be provided at the beginning of the study. By presenting a background to each case, a foundation can be established and used for cross-case comparisons (Goodrick, 2014:1). In this study, the background of Sharia and Islamic law is presented, followed by a detailed background of women's rights and their role in shaping the personal status laws in both Iraq and Tunisia. This enables an understanding of the emergence and formation of present laws, and examines

historical events that have impacted women's rights and their role in the family. Furthermore, by analysing the historical development of personal status laws, it is possible to understand societal patterns and political structures that have shaped the laws, as well as their connection to Sharia. This information is vital to connect the cross-case comparison of the laws to the background, and when applying theories to the results. The use of theory is essential in defining the appropriate research design and data collection in case studies, as well as for generalising the results of the case study (Yin, 2009:74). When conducting case studies that involve multiple cases, the cases should be selected so that they either predict similar results, what Yin calls "a literal replication", or so that they predict contrasting results but for anticipatable reasons, called "a theoretical replication". The results can later, through a theoretical framework, be generalised to new cases. However, if the empirical cases do not work as predicted, the theory must be modified (Yin, 2009:95). In this study, a theoretical replication is employed, and the choice of theories is crucial for the interpretation of the divorce laws in Iraq and Tunisia. The study will test the theories of Amina Wadud's Gender Jihad and Kecia Ali's Sexual Ethics and Islam, both of whom advocate for a feminist interpretation of Sharia and Islamic law, but with different perspectives. If different theories were used, the results would differ. Similarly, if other countries were chosen, but with the same theories, the results would also differ. Therefore, the findings of this study are context-specific and tied to the specific laws of Iraq and Tunisia, but also to the history, cultural norms, and social structures of both countries. Furthermore, the interpretation and analysis of the laws are tied to the critical theories of Wadud and Ali, and the researcher's interpretation plays a significant role in the findings. Considering the study's purpose, a content analysis is deemed the most appropriate method for examining the expression of the different laws and their effects on women's rights.

Content analysis can be approached using different methods, with a distinction made between qualitative and quantitative content analysis. The quantitative method involves counting the occurrence, or measuring certain phenomena in a text. This method is suitable for studies where patterns in larger materials are measured, such as newspapers, books, or interviews (Boréus&Bergström, 2012:50-51). On the other hand, qualitative content analysis is an analysis of a text or other content where nothing is counted or measured. This method is more appropriate for studying the coherence of a text, in order to understand the big picture and the context in which it is presented. Qualitative text analysis will be used in this study, since it focuses on analysis and interpretation, and different ways of finding meaning within a text.

Some passages in the text that is being studied are usually considered more important than others - in this case the divorce laws and the parts that impact women. Qualitative content analysis is also useful for uncovering meaning behind the content, which requires intensive reading of the text and the use of analytical tools (Esaïsson et al., 2017:211-212). In qualitative content analysis, there are two main types of textual analysis: systematising the content of the texts, and critically examining it. The systematising surveys aim to clarify the structure of ideas and highlight meaning by organising the content of the texts into simpler categories. This method is useful when identifying if the laws have a connection to Sharia, by categorising keywords mentioned in Sharia when referring to divorce and women's role in the family, and presenting how they are used in the laws. On the other hand, critical studies go one step further and also examine ideas in the text and scrutinise them. This can be done through argumentation analysis or critical analysis. The latter exposes power relations conveyed in the text, which is useful in applying Wadud and Ali's theories in this study. By using a critical analysis, this study can enable other ways of thinking when analysing a text and provide a deeper understanding of the context and human interpretation of the laws (Esaïsson et al., 2017:213-215).

Therefore, this study will use both systematising analysis and critical textual analysis to investigate the power of language and meaning behind the content of the divorce laws in Iraq and Tunisia. By combining these methods, the study aims to provide a more comprehensive analysis of the laws that is context-specific and acknowledges the role of human interpretation in shaping them.

## **2.1 Data collection**

Data collection for research can take two forms: primary or secondary. Primary data is collected by the researcher through interviews, observations, or questionnaires. Secondary data refers to data that has already been collected by someone else, such as literature, reports, documents, or articles (Bryman & Bell 2011).

For this study, the analysis will rely on secondary data as the primary source of information. Specifically, the analysis will be based on the Personal Status Law in Iraq, and the Code of Personal Status in Tunisia. In Iraq, the law is a standalone piece of legislation focused on a specific area of law, whereas in Tunisia, the code consists of multiple laws and legal

principles that govern personal status matters. The sections and chapters pertaining to divorce in both the Iraqi law and Tunisian code will be utilised for this study. Additionally, relevant information from other sections detailing the consequences of divorce will be incorporated - with a focus on summarising the most significant aspects that affect women's rights. The analysis will be conducted using the original Arabic versions of the laws. In the case of the Tunisian code, which is available in both Arabic and French, only the Arabic version was utilised and translated. An English translation has been provided by the author of this study, and has been complemented by other non-official translations and sources writing about the law in English. The translation has been proof-read. Nevertheless, it is important to recognize that, as with any translation, some nuances and contextual elements may be lost during the process, and the translated version may not encompass all the technical details and legal implications found in the original text.

Since this paper includes analysis of the history and women's rights movements in respective countries, previous research on the topic will also be used as primary material. The previous research includes topics related to Sharia, women's rights, and the two countries' history. Some of the relevant previous research on the topic includes the works of Juan Cole, Amira Mashour, Monira Charrad, and Noga Efrati. The previous research of Amina Wadud and Kecia Ali will also be used when describing background to the study, in addition to their theories used in the analysis. Reports, statistics and compilations from women's rights organisations working with family law and divorce issues will also be utilised to gain a better understanding of how the laws are expressed, and their impact on women's rights. While this makes the background section in this study rather lengthy, it is necessary for comprehending the historical context of women's roles in both countries and the underlying factors contributing to the current state of human rights, particularly women's rights.

The use of secondary data provides an opportunity to analyse existing data that may not have been available through primary data collection, such as studies on how women have been part of the shaping of the personal status laws. By using secondary data, it allows for a wider range of sources to be included, and provides a more comprehensive and nuanced analysis of the topic at hand. It is, however, important to note that secondary data may not always be completely reliable, as it may have been collected for different purposes, and may also be biased or even outdated. A period of familiarisation is necessary when conducting studies based on data collected by others. Therefore, a careful evaluation has been done of the

sources used in order to ensure the validity and reliability of the study (Bryman & Bell, 2011:328-329).

## **2.2 Delimitations**

This case study focuses on using content analysis to explore how divorce laws in Iraq and Tunisia impact women's rights. Alternative approaches, such as interviews or questionnaires with the target group to gather women's real-life experiences of the law and its impact in practice, would have been ideal. However, due to the limited scope and time constraints of this master's thesis, it was not feasible to conduct these interviews with women in both countries. Therefore, the study's scope is restricted to analysing the text of the laws and related documents, without direct input from the affected individuals.

While other methods could provide valuable insights, content analysis allows for a comprehensive examination of the laws themselves, and how they are written, which can provide a strong foundation for further research on the topic. It is important to note that each research method has its strengths and weaknesses. In this case, based on the research questions, available resources, and time constraints, content analysis was deemed the most feasible and effective approach to answering the research questions at hand.

## **3. Background**

For the Abrahamic faiths (i.e., Islam, Christianity and Judaism), God is the ultimate source of law and humans are to apply God's law. All legal matters must conform to the source, which is the Sharia for Muslims. In order to get a better understanding of what Islamic law actually is and how it is connected to women's rights, this thesis will present a short background to Sharia, the different schools of Islamic law, and how divorce is treated within Islam.

Sharia is a set of general principles and moral guidelines that are derived from the teachings of the Qur'an, the Prophet's sayings (Hadith), and his deeds (Sunnah). The Qur'an is what Muslims believe to be God's words. These principles are regarded by Muslims as having divine origins and have been legitimised within the Muslim community. Sharia encompasses a wide spectrum of norms, including worship practices, moral rules, and societal laws. It addresses the obligations individuals and collectives have towards each other and towards God, and covers all aspects of life, including economic dealings, domestic and foreign

relations, criminal justice, and family matters. Sharia is thus not merely a system of law, but also a comprehensive code of conduct that encompasses both private and public activities. As its core, Sharia upholds principles of fairness, equality, and the protection of human dignity (Bassiouni, 2014:40). In this way, Sharia is subject to interpretation and does not inherently prohibit modern codifications of laws, or the development of secular judicial systems. Nonetheless, the underlying concept of Islamic law rests on the belief that it represents the expression of God's will. The study of Islamic law, known as "Fiqh", involves examining the practical application, interpretation, and implementation of Sharia. Islamic scholars use various methodologies to derive legal opinions from the primary sources, including analogical reasoning (qiyas), consensus (ijma), and independent rational reasoning (ijtihad) (Bassiouni, 2014:41-44). It is important to note the distinction between Sharia and Fiqh. Ziba Mir-Hosseini explains that Fiqh is not considered a revelation, but rather a legal science that aims to extract Sharia legal rules from the Qur'an and Sunnah (Hosseini, 2003 in Wadud, 2006:49). Feisal Abdul Rauf emphasises the distinction between Sharia as an immutable divine order, Fiqh as the human interaction between those sources, and their actual implementations. Fiqh requires human endeavours (Rauf, 2000 in Wadud, 2006:49).

### **3.1 Different orientations of Islam**

The differentiation between Sunni and Shia-Islam has to do with politics after the Prophet Muhammad's death. The majority of the Prophet's followers believed that his close associates Abu Bakr, Umar, Uthman, and Ali were the right successors. There was a smaller group of followers who thought that only Ali ibn Abi Talib, who was also the Prophet's cousin and son-in-law, was the legitimate successor. This group formed their own community and called themselves "Shiat Ali", meaning the partisans of Ali. The Shia has evolved from being a political group to a religious sect with distinctive rituals, and different interpretations of Islamic law (Efrati, 2012:3).

The authority to interpret Islamic law was limited to certain qualified individuals who had a substantial knowledge of the Qur'an, its norms and ethics. There was a need for legal scholars to dispense legal advice, whenever there were no fixed sources of law available. These scholars had to rely on their own reasoning to make judgements, and different interpretations of the Prophet's sunnah. There was also a need to stay neutral and dedicated, have the consensus of Muslims, and to listen to divergent opinions (Rohe, 2014:33-34). This

would ultimately form the development of different schools of law, also called “madhahib” which were the Sunni legal doctrine. The Sunnis most important schools of law are the so-called “four schools”, named after their founders Abu Hanifa (Hanafite school), Malik ibn Ana (Malikite school), Muhammad ibn Idris al-Shafi’i (Shafi’ite school), and Ahmad ibn Hanbal (Hanbalite school). The Shia legal doctrine developed three significant schools called the Twelver Shia (Jaafariyah/Imamiyah), the Fiver Shia (Zaydiyyah), and the Sevens Shia (Ismailiyya). There are also other minor schools of law in both Sunni and Shia, but these are the most dominant schools and their application takes place in different Muslim countries. The Shi’ite and Sunni doctrine is in a critical debate with each other concerning several areas, including their understanding of state and law. There is also a variety of opinions within the same schools, and manifestations of violent disagreements between the followers of the different schools (Rohe, 2014:35-38).

### **3.2 Iraq and Tunisia**

The majority of Muslims in Iraq follows the Shia Jaafari school of law, named after the sixth Shia imam, out of twelve, Jaafar al-Sadiq (705-765), who contributed to the shaping of the Shii’te theology. The Jaafari school is characterised by its emphasis on reason (aql), intellectualism and the role of human intellect in interpreting Islamic law. It upholds principles of social justice and equality, and recognizes the authority of qualified scholars to issue legal opinions, known as fatwas (Hallaq, 2009:188-190). Nevertheless, there is a distinction within the Jaafari school that revolves around the interplay of faith and reason. This distinction is between the reason-oriented group called the Usulis and the traditionalist group called the Akhbaris. These orientations were named after the places where they had a dominant position - the Akhbaris in Qom in Iran (the Qom-school), and the Usulis in Baghdad in Iraq (the Baghdad-school) (Fazlhashemi, 2011:224). The Akhbaris primarily rely on traditional thought and hold the belief that guidance should be sought through the Prophet’s and the Shia Imams’ sayings, considering them as sources of revelation. Conversely, the Usulis argue for a complementary approach that combines revelation with the interpretation of legal scholars, using reason (ijtihad) and consensus (ijma). According to the Usulis, human beings are endowed with reason by God and should employ it in seeking answers to their questions. This differs from the Akhbaris, who view human reason as limited and consider the reason of the Prophet and the twelve Shia Imams as complete. The Akhbaris assert that attempting to supplement the complex content of the Qur’an and the teachings of



the Imams with reason-based interpretation is superfluous, and even impossible. They argue that divine revelation is tailored to the reasoning capacity of the Prophet (Fazlhashemi, 2011:225-227). The debate between these two groups has engendered a struggle between faith and reason, which also resonates in the realm of politics and the interpretation of Sharia in contemporary Iraq.

Among the Sunni Muslims in Iraq, the Hanafi school is the most followed. Originating in the city of Kufa, which is located in present-day Iraq, the Hanafi school quickly gained influence across the region and in Central Asia. In addition to relying on the Qu'ran and Hadiths as sources of guidance, the Hanafi school is distinguished by its emphasis on reason (ijtihad), analogical reasoning (qiyas), and personal option in legal interpretation. Furthermore, it incorporates local customs and practices (urf) when interpreting legal texts (Hallaq, 2009:91-95).

In Tunisia the most followed school of law is the Maliki school. The Maliki school is characterised by its relatively flexible approach to Islamic law. What sets it apart from other schools of law is its high regard for local practices. It also prioritises the principles of public interest (maslaha), the avoidance of harm (darar), and acknowledges the role of consensus (ijma) in formulating legal rulings, alongside the Qu'ran and Hadith (Mashour, 2005:575) (Olsson, 2021:103-104).

Each of the Jaafari, Hanafi, and Maliki schools has its own methodologies for interpreting the sources of Islamic law. Their teachings and practices have evolved over time, shaped by the contexts and cultures in which they have been implemented. How these variations manifest within the personal status laws of Iraq and Tunisia will be shown in this thesis, considering that the legal frameworks based on Sharia in these countries are predominantly influenced by these distinct schools of Islamic jurisprudence.

### **3.3 Divorce in Sharia**

Divorce is allowed in Islam and women have the right to seek a divorce under certain circumstances. It is however generally discouraged, and the Prophet Muhammad emphasised the importance of reconciliation over severance of the marriage. The Prophet has stated (according to Hadith) that, “out of all the lawful things, divorce is the most disliked by God”.

The Qu'ran, Sunnah, and the opinions of various commentators and jurists encourage spouses to seek reconciliation whenever possible, emphasising that marital disharmony should not immediately lead to divorce (Ali, 2006:24).

Marriage within Islam involves financial obligations that also play a significant role during divorce proceedings. One such obligation is the dowry, known as “mahr”, which can manifest in various forms. The origin of the dowry dates back to ancient Arabia, where it served as a means for the wife's tribe to relinquish their rights to her and her future children, by receiving a gift or prize from the husband. John L Esposito, professor of religion and author, notes that this practice had the effect of resembling marriage to a transaction, wherein the woman became the property of her husband and his tribe (Esposito, 2001:101). Another financial obligation associated with marriage and divorce is the husband's responsibility to provide financial support to his wife, referred to as “nafaqah”. The concept of nafaqah says that the husband is obligated to earn the living in the family, while the wife attends to household responsibilities and, if applicable, child rearing. Nafaqah continues after the marriage has ended as well and takes various forms, which are later addressed in the theory and results section (Ali, 2005:5-6).

There are various forms of divorce within Islamic tradition, and different opinions about it within Islamic jurisprudence. One such form is “talaq”, meaning repudiation, which grants the husband the unilateral right to dissolve the marriage without requiring the wife's consent. Upon divorcing his wife, the husband assumes the responsibility of providing maintenance during her waiting period, known as “iddah”. The iddah spans three menstrual cycles or three months, and the purpose of it is to give time for reflection and reconsideration of the husband's decision, and time for reconciliation between the spouses. Throughout iddah, sexual relations between the husband and wife are prohibited. It also serves to ascertain whether the wife is pregnant or, in the case of death, allows time for mourning her deceased husband. In this way it serves to establish the paternity of any child born after divorce or death of the husband. During this waiting period, the woman is prohibited from remarrying and is expected to remain in the marital home if the marriage was consummated (Ali, 2006:26). Talaq can be either revocable and irrevocable. In the case of revocable talaq, the husband has the option of taking his wife back during the iddah period. If the iddah expires and the couple wishes to reunite, they must enter into a new contract and provide a new dowry. If the spouses have children, the husband is also obligated to provide child

maintenance. Even after two divorces, the spouses retain the option to remarry, but once the husband pronounces *talaq* three times, the divorce becomes irrevocable. After an irrevocable divorce, the only possibility for the woman to remarry would be if she marries another man and subsequently obtains a divorce. In cases where the husband misuses his right to divorce without a valid reason, compensation must be paid to the wife (Mashour, 2005:573), (Ali, 2006:26).

A debated form of divorce is the triple divorce, also called “*talaq al bidaa*”, where the husband pronounces three divorces at once, resulting in an irrevocable divorce that takes definite effect after the woman has fulfilled her *iddah*. Jurists hold varying perspectives on the use of this form of divorce, noting the moral and ethical considerations. Amira Mashour notes that *talaq al-bidaa* lacks support in the Qur’an and Sunnah, and also contradicts the underlying philosophy of the *iddah* period, as it eliminates any chance of reconciliation (Mashour, 2005:573). While widely regarded as blameworthy within the Muslim community, the practice of triple divorce still persists in many places. Sunni and Shia jurists differ in their views on this matter, with the majority of Sunni scholars deeming such divorces as blameworthy and detested (*makruh*), yet still valid. Most jurists prefer revocable divorce due to its potential for reconciliation. On the other hand, Shi’i jurists only consider one pronouncement of divorce at a time valid, and prefer the presence of witnesses for divorce to be recognized. According to Ali, these differences illustrate that Sunni and Shi’a doctrines are the results of interpretive decisions (Ali, 2006:26).

Another form of divorce recognized by all schools of Islamic law is the one known as “*talaq al-tafwid*”, which grants the wife the right to divorce, but only if the husband has delegated this authority to her. The husband also retains the ability to reconcile during the woman’s *iddah* if he desires to do so. Women also have the option of seeking divorce through “*khul*”, which is initiated by the woman, but where she must sacrifice her dowry to her husband to obtain the divorce. In the case of *khul*’, the husband cannot reconcile without her consent. The permission of *khul*’ is derived from the Qur’an, which states that a wife can request it if she fears cruelty or abandonment from her husband, and this can be achieved by exchanging something for her freedom (Qur’an 2:229,4:128, in Mashour 2005:574). Divorce can also be obtained through judicial authority, although the acceptable grounds for it vary greatly among the different legal schools. The Maliki school of law is the most liberal in this aspect, as it allows divorce on the grounds of refusal or inability to maintain the marriage, desertion or

absence for more than a year, and physical or mental defect that would make a continuation of the marriage harmful to the wife. It is also the only school of law that allows divorce on the grounds of maltreatment and harm (darar), and it utilises the concept of darar but leaves it in the hands of the judge to be assessed (Mashour, 2005:575). In contrast, the Hanafi school is generally considered the most restrictive school, as it does not recognize reasons that could lead to a non-functioning marriage as grounds for divorce, such as the husband's failure to support his wife, life imprisonment for the husband, or even abuse among the spouses. If the husband is declared missing, the wife must wait until he has completed his "natural lifespan", which could be as old as ninety years, in order to dissolve the marriage. There is however a possibility for the wife to obtain a separation with support under these circumstances, if she can convince a judge, although it would not result in a final divorce (Ali, 2006:27). Within the Jaafari school, acceptable grounds for a woman to divorce her husband are limited to specific circumstances, such as abandonment. If the husband abandons his wife, she has the right to demand his return or seek a divorce. Additionally, a wife can request a divorce if she discovers that her husband has an illness or disability that she did not know about before, or that arose after the marriage contract was signed. As long as the husband provides for his wife, the Jaafari school does not allow divorce, even if the husband is harmful to her (Al-Sistani, 2023).

Lastly, any breach of the marriage contract can be a basis for divorce. In some contracts it is included that if the husband remarries another woman, the first wife will be automatically divorced. Other conditions that can be included in marriage contracts is that divorce needs to have mutual consent between spouses, or prohibition of polygamous marriages (Mashour, 2005:576-578). The different approaches to which women can initiate divorce has developed with time, and in some Muslim nations, the legal reforms have dramatically improved women's access to divorce, and decreased men's use of repudiation (Ali, 2006:29).

#### **4. Previous research**

There is a lot of previous research about women's rights in Islam, and divorce rights in Muslim family law. Since this study is limited to the personal status laws of Iraq and Tunisia, the previous research will be about women's rights in relation to the shaping of the personal status laws in these countries, and the ways in which women's rights are protected or limited under these laws that are based on different interpretations of Sharia.

#### **4.1. Mashour**

In the book chapter “The Dynamics of Gender Justice in the Muslim Family” published by the network “Women Living Under Muslim Laws” (2005), Amira Mashour delves into the subject of Sharia and women’s rights in Tunisia and Egypt, where she explores the relationship between Islamic law and gender equality. Mashour argues that gender inequalities often associated with Sharia are, in fact, the result of patriarchal interpretations within male-dominated societies. She asserts that countries intentionally suppress women’s rights by relying on conservative interpretations of Islamic law, while feminist interpretations could be utilised to protect women’s rights. According to Mashour, the Qur’an provides ethical and moral guidelines, but their application in line with cultural, historical, and socioeconomic contexts is the responsibility of the society (Mashur, 2005:564-565). She contextualises Islamic law within the framework of polygamy and divorce in Tunisia and Egypt, where she characterises Tunisia’s Code of Personal Status (CPS) as progressive, as it has granted women greater rights in marriage and divorce. She uses Tunisia as a model in her text to demonstrate the feasibility of finding a common ground between Islamic law and gender equality. Mashour highlights how Tunisia has employed a liberal interpretation (ijtihad) of Islamic law, concerning polygamy and women’s right to divorce. It is worth noting that Tunisia identifies as an Islamic state, and religion holds significant importance in Tunisian tradition. Hence, the Tunisian CPS is not based on secular norms but rather on Islamic norms, Maliki law, and the principles of public welfare (Mashour, 2005:587). In her comparative analysis, Mashour contrasts Tunisia’s CPS with Egypt’s more conservative approach to divorce. Through these two cases, she underscores the diversity of interpretations of Islamic law across countries and within different contexts and eras. She argues that patriarchal societies are more likely to employ traditional literal interpretations of Sharia, underscoring the necessity for feminist ijtihad, which is interpretation of Islamic law from a feminist perspective. According to Mashour, this approach enables the promotion of gender equality within the Islamic context, as exemplified by Tunisia. She emphasises that the various schools of Islamic law possess an evolving nature, categorising them on a scale ranging from the more conservative (Hanafi school) to the moderate (Shafi’i and Hanbali school) to the most liberal (Maliki school). Finally, Mashour asserts that Sharia is partly divine and partly derived from human understanding, implying that it is not static but rather subject to evolution (Mashour, 2005:595-596).

## 4.2. Charrad

Another notable research contribution comes from Monira Charrad, whose work focuses on women's rights in postcolonial Tunisia, Algeria, and Morocco. Charrad identifies commonalities among these three neighbouring states collectively known as the "Maghreb". Geographically proximate and sharing similar historical and cultural characteristics as Arab-Islamic societies, these states gained independence from French colonisation during the mid-1950s and early 1960s. Following colonisation, family law reforms in these states were predominantly initiated through a "top-down" approach, with minimal influence from grassroots women's movements. Charrad makes a comparison between the three Maghreb-states to understand why Islamic law was reformed differently, leading to expanded women's rights in Tunisia, but more restricted rights in Morocco and Algeria. She explores the postcolonial relationship between the state and kinship groups, such as clans and tribes, highlighting their pivotal role in shaping conservative or liberal personal status codes. Charrad identifies three distinct paths to state formation and the development of family laws. In the first case, the state forms in close alliance with tribal kin groups during colonisation, resulting in the adoption of conservative family laws, as observed in Morocco. In the second case, the state forms partially aligned with tribal kin groupings, leading to indecision, and ultimately adopting conservative family laws, as observed in Algeria. In the third case, the state is formed in relative autonomy from kin groupings, enabling the promotion of liberal family laws and the expansion of women's legal rights, as observed in Tunisia (Charrad, 2001:1-2). Charrad concludes that Tunisia's personal status code was more progressive compared to Morocco and Algeria. It granted women greater individual rights and responsibilities, reduced the legal control of male kin over women in marriage, diminished the legal privileges of extended patrilineal kin groups, and emphasised the significance and longevity of marriage (Charrad, 2001:235). Tunisia distinguished itself particularly through its commitment to gender equality and the comprehensive set of laws aimed at improving women's status in its new constitution after independence. Morocco and Algeria also faced stronger opposition from conservative forces than Tunisia. Charrad attributes Tunisia's success in advancing women's rights to a combination of factors, particularly its political history, including the strength of its nationalist movement, the vision of a modern nation-state, and the leadership of President Habib Bourghiba (Charrad, 2001:233-238).

### 4.3 Efrati

Noga Efrati has extensively researched and written about women's rights in Iraq, focusing on women's rights organisations, their movements, and the challenges they have faced over the years. In her article "Negotiating Rights in Iraq: Women and the Personal Status Law", Efrati sheds light on women's rights after the fall of Saddam Hussein's regime and the controversies surrounding proposed changes to the Personal Status Law. She discusses the division among religious leaders, the impact of the U.S.-led invasion, and the subsequent violence and instability that plagued Iraq. Before 1959, women lacked legal protection regarding personal status matters, and divorce was a major concern for women activists. The introduction of the law addressed many of these concerns and imposed several restrictions on a man's ability to divorce his wife. Women were provided with more options to seek divorce through judicial proceedings, such as when the husband was injured, imprisoned, absent without lawful reason, unable to consummate the marriage, or afflicted with mental or physical illness. Failure to pay maintenance also became a valid ground for divorce (Efrati, 2005:587). Despite enabling divorce for women, some activists, including Budur Zaki, Suad Khayri, and Layla Husayn Ma'ruf, viewed the law as discriminatory. Zaki argued that women's rights to divorce should be inherent in the law itself, without requiring special stipulations in the marriage contract. In 1978, an amendment to the law expanded the situations under which women were permitted to seek judicial divorce. These included marriages contracted before the age of 18 without judicial approval, forced and consummated marriage, and second marriage without court consent. The length of time to wait for the wife of a convict to request judicial dissolution of the marriage was reduced from five to three years. Activists continued to advocate for greater equality, such as removing the requirement of a "lawful cause" and granting divorce to women who suffered psychological injury (Efrati, 2005:589). During the 1980s and 1990s, the regime utilised divorce as a tool, encouraging women to seek judicial divorce if their husbands refused military service, defected to the enemy side, were found guilty of treason, or held foreign citizenship. Layla Husayn Ma'ruf sought to prevent arbitrary and repressive divorces by suggesting fines for men guilty of such behaviour (Badri 1980 in Efrati, 2005:589). Saddam Hussein eventually made changes to divorce laws, including Resolution no.77 of 1983, which allowed a divorced woman to continue living in the shared house with her ex-husband for up to three years, unless she was responsible for the separation, or had agreed to it. In 1985, an addition was made to article 39, requiring a husband to compensate his ex-wife if the divorce was deemed arbitrary and harmful, based

on the husband's financial status and the extent of abuse. In 1987, amendments allowed women to seek judicial divorce on the grounds of harm to their children, such as the husband's addictions to alcohol, drugs, or gambling in the home. Nevertheless, Efrati argues that these changes fell short of the fundamental reforms women had hoped for (2005:589-590). Efrati also highlights the campaign against Decree 137, which authorised religious courts to preside over personal status matters. Opposition to the decree from various women's activists in Iraq eventually led to its repeal. The Iraqi women who opposed the decree argued that it violated women's rights and undermined the country's legal system. While the detailed changes in family law presented opportunities for women's rights activists, there were clauses that strengthened the role of religious clerics, posing risks to women's rights. The repeal of Decree 137 is regarded as a victory for Iraqi women, as they successfully negotiated their rights through determination. Nonetheless, the challenges faced by women in the country persisted. The fight against the decree also had significant drawbacks and hindered progress on other personal status issues, such as outlawing polygamy, ensuring equal rights in divorce and inheritance, and extending maternal child custody. Efrati concludes by emphasising the influential role of religious leaders as key obstacles to women's rights progress. She emphasises the need for ongoing support and attention to the struggle of Iraqi women in their pursuit of greater equality, as they currently face the challenge of merely maintaining existing laws without room for progress on personal status issues (Efrati, 2005:594-595).

## **5. Theory**

The study takes a feminist perspective on gender equality within Islam, arguing that the oppression of women in Muslim societies is not inherent to the religion itself but rather influenced by external circumstances. Two theories that emphasise patriarchy and male-dominated interpretations of Islam as contributors to the oppression of women, will be employed to examine how women's rights are impacted by divorce laws in Iraq and Tunisia.

### **5.1 Amina Wadud's theory on Gender Jihad**

Amina Wadud is an American Islamic scholar, author, and professor of Islam and feminist theology. She has written several books on gender and Islam, including "Inside the Gender Jihad: Women's Reform in Islam" (2006), where she advocates for re-examination of Islamic



justice, re-interpretation of Sharia and Fiqh, and the concept of reform and effort to achieve gender justice in Islamic thought and practise.

Wadud advocates for new ways to interpret the two determined sources to Islamic justice, which is the Qur'an (the holy text of Islam) and Sunnah (the prophet's deeds and sayings), which she claims are based on patriarchal structures. Patriarchy, which is a system and structure in society where men have privilege and women are excluded from holding power, is, according to Wadud, a dominating structure in these sources. Through aligning an ongoing interpretation of the two determined sources with a modern global discourse and social and cultural transformations, the inclusion of gender justice can be achieved. Wadud argues that concepts of Islam, and of justice, always have been connected to historical and cultural contexts, and by adapting Islam to that thought, it can be subject to a fair re-examination (Wadud, 2006:49). Wadud emphasises that Islam must be practised by its contemporary adherents, taking into account modernity, pluralism, and the consequences of colonialism (Wadud, 2006:2). She encourages women to actively engage in reforming the Islamic framework without being accused of violating Islamic principles. There is a scepticism among many Muslims about rethinking Islamic justice in a manner that challenges male privilege, as they fear being labelled as improper Muslims. This has led many to question if there even is a way to achieve justice within Islam (Wadud, 2006:21-22).

Wadud describes how her understanding of Islam has transformed over time, where she initially felt that the primary sources were the best way to determine what Islam actually is. Nevertheless, when scrutinising how various analyses of the primary sources by Muslim scholars differ and has led to diverse conclusions, she argues that what is considered basic to Islam are actually results from the human interpretive process. Textual meaning is ultimately neither fixed nor static. Women and women's experiences are mostly left out of the dominating historical interpretative reference, leaving male interpretive privilege as key when constructing laws that govern Islamic affairs (Wadud, 2006:22). She claims that the interpretation and implementation of the Qur'an have been deeply impacted by the patriarchal norms of seventh-century Arabia, when the revelations of the prophet were written down. By choosing a more liberal and egalitarian reference when interpreting the text, Islam can be reformed and adapted after the circumstances of today, instead of being addressed at a fixed time while intending to provide eternal guidance (Wadud, 2006:22-23).

She addresses the inequality within Islamic divorce regulations between men and women, where she states that men's unilateral right of repudiation in contrast to how women can only obtain divorce through intervention of the courts, clearly reflects the subjection within marriage that existed at the time of the revelation. The fact that men can utter the words "I divorce you" to initiate the termination of the marriage contract, shows the degree of advantage men have over women in the Qur'an. Men also have the power to force women to break their waiting period (iddah). The waiting period would at the time of the revelation serve as the only way to determine paternity if a divorced woman entered another marriage. However, today there are other methods to determine paternity. Still, the verse asserts that rights owed to women and rights against them are equivalent (Wadud, 2006:25). Wadud further discusses the implications of Islamic law for women in terms of material assets, responsibility for material maintenance (also called "nafaqah"), and the role of the extended family. She writes about how within Islamic law, the wife or mother alone has no responsibility toward nafaqah, if she has her own material assets by inheritance, or by other methods. The wife is the exclusive owner of these assets. However, if her husband dies, the extended family is intended to take her in, provide for her and protect her. The law also assumes that if the woman gets a divorce, no matter who initiates the divorce, the man and his extended family are responsible for all material needs for the woman and their children. The woman is thereby protected through an entire network. The implications of this supportive environment for a mother makes it the woman's responsibility to focus on taking care of her children morally and emotionally. While the law presumes an ideal nurturing and supportive environment for women and their children, the reality for many women is different. The patriarchal structures within families and communities often limit women's agency and citizenship rights, and Wadud argues that there is a need for reconstruction of women's agency in terms of state and fiqh, to construct alternative models of family and motherhood. She emphasises the need for an analysis of gender in the construction of new policies that will take women's experiences into account, which historical Islamic law has failed to do (Wadud, 2006:144-145) In Sharia, the construction of the family conceives the woman as subject to the man, who is a degree above her as he is the maintainer and provider, and the master over her affairs. Wadud problematizes these descriptions which are considered based on divine sources, and deconstructs the presumptions that she considered are wrongly interpreted and wrongly associated with the Qur'an (Wadud, 2006:152-153).

By using the term “engaged surrender” when referring to the role of human agency in relation to Islam, Wadud points out that individuals can make conscious choices and take action as independent agents. In this way, she highlights the importance of personal conscientious participation and exercising agency in making choices. The term covers that it is not a compulsion to follow the rules of Islam, but that individuals always have a choice to resist, rephrase and make conscious choices. It however does not imply that the human response as agents will take away the ultimate power of Allah’s will, but it constructs voluntary human interaction to Islam (Wadud, 2006:23-24). She emphasised that typically within Sharia, women are not considered autonomous and independent agents in the family, but are instead viewed as a means to achieve family unity and well-being, and therefore often need to sacrifice their own personal interests. Men and sons however, are encouraged to develop ideas of manhood, which promotes their roles as masters, providers, and protectors in the family. Men’s islamic duty as leaders in both the public and private spheres, is a concept that is intertwined with autonomy and independence (Wadud, 2006:41). To achieve social justice, women’s equal participation in policy-making and in governance in the modern nation-state needs to be recognized (Wadud, 2006:50). Wadud therefore promotes the idea that Muslim women should take a role as active agents in their reform of Islamic law and practice, which will include women’s perspectives and promote women’s rights. By acting themselves on the change they want to see, women are duty-bearers for their own change and change is not solely relied on external influences or the actions of male religious authorities (Wadud, 2006:88-90). She introduces the term “Gender jihad” and describes all these efforts as part of that term. The term “jihad” refers to effort or struggle in Islamic tradition, and is also described as a “holy war”. The gender jihad is “a struggle to establish gender justice in Muslim thought and practise” (Wadud, 2006:10). In order to achieve change, agencies that strive for women’s rights within Islam, and that operate from a grassroot-level, need to have support from religious authorities and leaders of progressive Islamic discourse (Wadud, 2006:52-53).

Wadud states that the patriarchal interpretation of Islamic practice and thought has led to many Muslims not being able to distinguish between this patriarchal interpretation and the divine will, which leads to a distorted view of Allah’s nature and essence. Therefore, the patriarchal interpretation needs to be challenged in order to allow for a more transcendent understanding of Allah (Wadud, 2006:81). In order to work against the dehumanisation of female identity in Islamic thought, practice and constructions, gender jihad is necessary

(Wadud, 2006:255). The gender jihad encourages an effort, and a holy war against patriarchal structures in Islamic tradition. Wadud concludes that the main reason why gender jihad is necessary, is because Allah has granted human beings justice and full human dignity, and that has been ignored or abused due to nearly exclusive male and androcentric Islamic interpretation and codification. Women have the intellectual capacity to contribute to a holistic understanding of what it means to have a relationship with both the divine and other human beings. They have at the same time shown spiritual strength to live as Muslims, despite the lack of recognition within the religion. Wadud thinks that all women, regardless of their status, should be recognized for their capacity to lead by example, by representing power with all others. This is why gender jihad is needed (Wadud, 2006:262).

## **5.2 Kecia Ali's theory on Sexual Ethics and Islam**

Kecia Ali is an American scholar and professor of Islamic studies at Boston University, specialised in Islamic studies, gender, and ethics. Her book "Sexual ethics and Islam: Feminist Reflections on Qur'an, Hadith and Jurisprudence" (2006), will be used for this study to apply her feminist reflections on Islam. Ali argues for the need to adopt a more progressive approach to sexual ethics within Islam, and emphasises the importance of contextualising the texts within their historical and cultural contexts. She argues that interpretations should be guided by contemporary ethical principles such as justice and equality.

Ali introduces the idea of Muslim feminists pushing the boundaries and reshaping the Islamic intellectual tradition. According to her, the Qur'an itself poses a challenge for people who are committed to social and intimate relationships, such as spouses. Ali stresses that different jurisprudential methods, such as the practice of human interpretive reasoning, can be used to discuss the textual sources of the Qur'an and social custom within Islam, as well as a way to improve women's rights (Ali, 2006:151-154). Ali mentions how it is necessary for feminists, liberal, and progressive Muslims to examine the thoughts of past generations, and look for elements in the Islamic tradition that promotes gender equality. By using timeless principles instead of historical specifics, women's choices can be justified. Ali goes on to discuss the restrictions for women within Islamic teachings, such as obstacles to female education in religious institutions, how women's religious authority is limited, and the inconsistencies in the work of some Islamic authors and conventional discourses. There are a lot of Muslim

thinkers who are perceived as authorities although they have a selective and often incoherent connection to law and scriptural interpretation, but due to their maleness and ethnic background, these thinkers are not questioned. Ali aims for women to challenge these sort of dominant discourses, and also to reflect around ethics and the purpose of human life on earth. She means for women not to be defined in relation to their family and that the overall thought of the family as the bedrock of society, needs to be challenged (Ali, 2006: 154-157).

When discussing divorce, Ali describes the different ways for women to get a divorce and problematizes them in relation to their contexts. She notes how the view of marriage as a romantic union rather than a legal contract, which it in fact is, leaves women abstaining from negotiating their desired conditions within the marriage. Many marriages could be benefited if women had the knowledge of negotiating demands and adding conditions to the contracts, and were able to convince their future husbands to agree to them. This is an alternative strategy that women can use to obtain divorce, without going through a legal process. However, this strategy ultimately reinforces the use of extra-judicial divorce, and the problematic reliance on the husband's rights to repudiate their wives. Ali suggests that limiting divorce to judicial proceedings may be one possible solution, but this raises further questions about the relationship between civil and religious law that require deeper examination (Ali, 2006:27-28). Ali further criticises the idea of the husband's pronouncement of talaq and how it keeps being validated in many nations where Islamic family codes hold power, regardless if it contradicts the provisions of civil codes in those nations. The idea that divorce is a man's prerogative and woman can only obtain it for a cause, needs to be challenged in the reforms of marriage and divorce laws (Ali, 2006:34). Ali argues that the talaq-concept makes marriage a relationship built on ownership and control, where the husband has the exclusive control over it. This is further strengthened by the fact that the husband pays a dowry at the time of the marriage contract, and that it is up to the husband to relinquish the marriage (Ali, 2006:36). According to Ali, the concept of the dowry has been understood among jurists as a compensation in exchange for the wife's sexual and reproductive capacity. This logic further justifies that the husband after consummation is the one who has the right to "release" the wife from the marriage, as it is he who has paid for a type of control that ultimately makes sex lawful. If this logic was not followed, it would mean that women could marry, consummate the marriage, and then divorce while claiming the full dowry amount (Ali, 2006:5). She equates marriage in this way to the relationship of a master and a slave, and describes how the wife does not share the same power that exists in

unilateral divorce. The wife's options to dissolve the marriage are also limited to the husband's power - where judicial divorce requires a specific cause, delegated divorce needs to be authorised by her husband, and khul' is divorce for compensation. She further argues that the thought of the man as the main provider in the family, through nafaqah, does not align with the classical texts of Islam either, where it is sometimes suggested that women have a religious obligation to manage the household, but the husband's maintenance of his wife is not in exchange for household services, but more for her sexual availability to him (Ali, 2006:5-6). She also notes that this traditional division of roles does not necessarily align with the reality of Muslim women today, as many also work and contribute to their own support or that of their children (Ali, 2006:5-6). Ali suggests that in order for women to achieve rights in their marriage, reforms in divorce laws must address the norm of the husband's control over the marriage, or they will otherwise have limited effect. The basic structure of Muslim marriage needs to be challenged, including a reevaluation of the concept of the dowry and nafaqah (Ali, 2006:36).

Ali further points out how in most aspects, civil law over Islamic law has been accepted, but how the view on the rules regulating family life and sexuality are still supposedly "Islamic". This also occurs in secular states, or states that do not rely on Islamic law as the primary source of family law, but where Muslims follow Islamic law courts. She argues that such practices may not be appropriate in non-Muslim contexts because they are far removed from the historical context in which the laws were originally formulated. However, she does not object to individual Muslims choosing to follow particular legal doctrines in their personal affairs, and notes that there may be accusations of Muslims who choose not to follow Sharia, that they are not properly following Islam (Ali, 2006:37). According to Ali, the verses on divorce may be specific for the time during which they were written, which was seventh-century Arabia, and they might not be meant to be applied in every situation to this day. She further reflects on how the Qur'anic verses can be modified and to what extent this can be done (Ali, 2006:38).

Ali also reflects on the contextuality of the Qur'anic revelation, and how Islam is referred to as flexible in legal aspects, but there is an unwillingness to interfere with what is stated in the Qu'ran regarding questions of family law, such as divorce. In the Qur'anic text, men are given the authority to pronounce or take back divorces, granting them greater power in relation to their wives. While female responsibility is mentioned in the verse on divorce, it

says that “divorced women shall wait concerning themselves for three (menstrual) cycles”, which suggests women’s legal passivity (Ali, 2006:125). The narrative in the Qur’an in many verses addresses men as the hearers, using “you” when referring to them, and females as the subject or object of the revelation, using “they” when referring to them. Examples of these verses are in Sura 2, verse 232 about divorce (“When you have divorced women and they [fem. plural] have reached their term”), and verse 234 (“When any of you die leaving wives, they [fem. plural] are to wait on their own account”). Although men are the recipients of the commands in these verses, they are only addressed in a theoretical sense and the regulations convey important information about women’s right or duty to act. According to Ali, the verses provide women with the liberty to act independently in cases of divorce or widowhood, even if they are in a passive state of being divorced or widowed. Other verses, such as those stressing that the choice to remain married or to separate should be mutual, promote the relaxation of male marital and familial controls on women. The use of the dual form indicates that both spouses are addressed, and does not entirely dismiss female agency. (Ali, 2006:127-128). In this way, Ali recognizes the hierarchical forms and patriarchal contexts in which the Qur’an was written, but she shows that interpretation of the Qur’anic texts can be in favour of women. She further emphasises that the Qur’an is not primarily a rule book but has a larger purpose that captivates and engages hearts and minds. It is not to be seen as only providing regulations but its purpose is more complicated to human social and familial life. She believes that God is the creator of everything and that the Qur’an reminds us of God’s existence, mercy, and justice. The capacity of the human interpretive intelligence, and the Qur’anic text in this earthly realm, are subject to certain limitations. It can therefore only be what Ali describes as “a pale shadow of the ultimate Reality” (Ali, 2006:133-134).

### **5.3 Similarities and differences between the theories**

These theories share many similarities, such as advocating for re-interpretation of Islamic teachings in favour of women, and acknowledging patriarchal structures in Islamic sources and interpretation. Nonetheless, they differ in their focus and arguments. Wadud argues through a gender-critical perspective and examines the broader aspects of Islamic justice, Sharia and Fiqh, highlighting their patriarchal dominance and impact on women’s lives. She advocates for a gender jihad - an effort to fight the patriarchal structures within Islamic tradition to achieve gender equality for Muslim women. Wadud emphasises women’s agency and encourages women to be active agents in their own change, particularly at the grassroots

level and through interpretations of Islamic texts that incorporate women's experiences. Wadud's theory on gender jihad will be employed to analyse the expression of divorce laws, the presence of patriarchal structures in these laws, and how women in Iraq and Tunisia have been active agents in shaping personal status legislation.

Ali, on the other hand, presents a theological perspective, focusing on sexual ethics within Islam, and the legal structures that govern it. She emphasises the necessity of reshaping the Islamic intellectual tradition and reflects around the true concept of Islam and the purpose of human life on earth. Ali critically examines the role of women in the family, questioning the limitations imposed on them by marriage and divorce regulations. She aims for women to challenge the male-dominated discourses prevalent in Islam and highlights how much of Islam is connected to its historical and social contexts. Ali explores the ways that Islam can be modified and encourages women to push boundaries in order to reshape the Islamic intellectual tradition. She advocates for the use of human interpretive reasoning as a means of achieving gender justice, and she engages in a feminist interpretation of the Qu'ran. Ali's theory will be applied in the study to analyse the construction of the texts and to examine the occurrence of feminist interpretations of Sharia in the laws, and in the country's history.

#### **5.4 Criticism against the theories**

Potential criticism against the theories is the same criticism that stems from a conservative and traditionalist Islamic perspective on whether gender equality can be incorporated within Islamic jurisprudence, and if it is acceptable to reinterpret the Islamic sources in certain ways. The criticism is based on the primacy of the Word of God over what is presented as human invention. The idea of feminism is also considered by some as incompatible with Islam, with the belief that it originates from Westernised thoughts. Secular thinkers also attribute injustices against women in Muslim countries to Islam itself, making the integration of feminist thought seem impossible (Fazlhashemi, 2015:58).

Another potential criticism of Wadud's theory is its limited consideration of the structural changes required for women to be active agents in their own change. Although Wadud acknowledges that women need the support of powerful individuals to achieve this, the scale of the challenge is not fully addressed in her theory. In some Muslim countries, creating the conditions for women to act according to their own will, or to get the support of men who



hold power while doing this, can be extremely challenging. Women's choices are in some contexts constrained by social, political, and economic structures, and Wadud's theory places too much emphasis on individual agency and choice. Similarly, Ali's theory of Qu'ranic reinterpretation necessitates a change in the structure of how Islam is taught and learned, and would need to create the right conditions for women to be included in those settings. This is however answered in Ali's theory where she calls for the need to challenge these structures.

Despite these criticisms, Wadud and Ali's theories call for action and interpretations that promote gender equality within Islamic tradition. They highlight the importance of feminist struggle to dismantle patriarchal structures that are, and have been, dominating the Islamic discourse since its beginning. By acknowledging the unequal, patriarchal structures, and encouraging re-examination and re-interpretation of Islam, Muslim women can find support in their efforts to achieve change.

## **6. The shaping of the personal status laws in Iraq and Tunisia**

To provide context for the current laws pertaining to personal status in Iraq and Tunisia, this study presents key moments from the respective countries' histories and the significant political changes they have experienced over the past several decades. Due to limited space, this study provides a concise overview of events that have impacted women's rights and the involvement of female activists in shaping the current laws.

### **6.1 Background to Iraq**

Iraq is a diverse country with different ethnic, religious, and tribal loyalties. The population is approximately 43,53 million, with the majority being Muslim Arabs (World Bank, 2021). There is a notable division between Shia Muslims (60-65%) and Sunni Muslims (32-37%). The Muslim Kurdish population constitutes a significant ethnic minority (15-20%), while the remaining 5% comprises various religious groups such as Christian Armenians, Assyrians, Chaldeans, Sunni Turkmen, and other groups of different religious affiliations, such as Yazidis and Sabaeen-Mandaean (CIA World Factbook 2023). Additionally, Iraq is home to distinct tribal groups that influence the social and political dynamics of the country (Marr, 2004:18).

### **6.1.1 The 1959 Personal Status Law**

Iraq was under British rule for 18 years, from 1914 until 1932. In 1932, Iraq was officially declared independent, but the British were still present in the country and exercised authority in many spheres. The shaping of civil codes after 1932 included a combination of Islamic law with European laws. Religious Sharia-courts were established and judges of the Shia-Islamic school, who were excluded under Ottoman rule, were gradually made part of the legal system (Efrati, 2012:52). In “Women in Iraq: Past Meets Present” (2012), Noga Efrati examines the Personal Status Law proposal of 1959 in Iraq, which mainly drew from the Sunni Hanafi and Shi’i Jaafari schools of Islamic jurisprudence. While the proposal included all personal issues, a substantial portion of it dealt with divorce. Despite its intention to establish gender equality, the thought of expanding women’s rights and limiting men’s rights caused a debate between the religious schools, where the proposal was argued to deviate from both Hanafi and Jaafari law (Efrati, 2012:74). The section on divorce in the proposed law reflected how women were constructed as second-class citizens, with limited access to economic resources and no control over their lives. Women’s ability to initiate divorce was restricted, and their will was ignored by the fact that men could revoke the divorce. The proposed law also required their husband’s approval for them to work outside of the home, further marginalising them. Divorce was ultimately a risk for a woman, as it would mean losing her home, financial support, and her children (Efrati, 2012:78). The proposal was eventually abandoned and between 1952 and 1958 there seems to have been no effort to pass it or any similar proposal. Women were left unprotected from harsh treatment by male guardians and husbands and from uncompromising rulings by religious clerics who constructed them as subordinate and dependent. In abandoning its attempts to introduce a personal status law, the government had only reemphasized the marginalisation of Iraq’s female citizens (Efrati, 2012:85).

During the 1950’s, the leftist movement started influencing politics and the Communist and Baathist parties grew bigger. Supporters of the leftist movement consisted of workers, young officers and intellectuals who promoted progressive, universalist thoughts that opposed the thoughts of the conservative pro-British landlords that were established during British rule (Cole, 2009:105). The official Personal Status Law (PSL) was later introduced in 1959, by the new republic that replaced the British-installed monarchy, after a military coup. The law put all Muslims under a unified court system, but it allowed Christians to continue to follow their canon law. Women played a significant role in shaping the law that, with help from the Prime Minister at the time, Abdul-Karim Qasim, would mean better conditions for them, such

as setting a minimum age of 18 for marriage, prohibiting arbitrary divorce, and restricting polygamy. The PSL contained a number of progressive provisions that were loosely based on several schools of Islamic law, and among other issues, it required equal treatment for men and women regarding inheritance. When questioned about this from clerics, Abd al-Karim Qasim responded by stating that the verse in the Qur'an stating that a daughter's inheritance should be half that of a son's, is merely a guideline and not a requirement (Coleman 2006 in Cole, 2009:108). The revised law, that applied to both Sunnis and Shia, showed a liberal intent but caused considerable opposition among religious leaders, and did not survive intact after Qasim's regime (Marr, 2004:100). In 1963, Qasim was overthrown and executed in a coup led by the Baath Party, ending his five-year tenure as Prime Minister. Following this, the Baath party took power in 1968 and the time ahead would mean making possibilities to promote women's education and rights.

During the Baathist regime, Iraqi women were highly educated and Iraq was one of several postcolonial states in the Middle East whose leaders adopted policies of state feminism. Both boys and girls were guaranteed compulsory education, and women's rights were protected in the workplace. Changes were made to the PSL to widen the conditions for women to seek divorce, including extending the age of custody of children for mothers in cases of divorce, from 7 years for boys, and 9 years for girls (Efrati 2005 in Cole, 2009:109). These changes were based on both Sunni and Shia laws that the regime argued were more "progressive", and modified into the PSL. The changes also added the necessity of a permission from a state-employed judge before a man could marry a second wife. According to Suad Joseph, many leaders in the General Federation of Iraqi Women preferred a secularisation of the PSL, and the outlawing of polygamy, as in Tunisia. This was however difficult to achieve given the different religious opinions in Iraq. As a result, the Baath regime claimed the legitimacy of Sharia for the PSL through a selective and progressive merger of both Sunni and Shia laws (Joseph, 1996:184). In 1980, women were granted the right to vote and hold office, and some women sat in the parliament, although the Baathist elections were largely symbolic. Despite the state's efforts to promote feminism, it contributed to counter movements and ultimately served as a means for men of the working or lower-middle-class to exert control over women's lives. The Baathist government prioritised building the state and nation over promoting women's liberation (Cole, 2009:105-109). When Saddam Hussein became Iraq's leader in 1979, women's rights suffered a setback that would continue during the late 1980s and 1990s. Laws were enacted during this period that allowed honour killings of unfaithful

wives, eased the practice of polygamy, and reduced women's rights regarding inheritance and divorce. Saddam also appointed articles allowing rapists to escape punishment if marrying their victims (Sandler 2003 in Cole, 2009:109). After the Gulf War, sanctions against Iraq resulted in new restrictions on women's freedom of movement and girls' education, which had an impact on family incomes and caused a significant decline in women's literacy rates. As the state's economy weakened, patriarchal elites gained more power, leading to the marginalisation of women in the public sphere and new laws affecting their legal status in the labour code, criminal justice system, and in PSL (Cole, 2009:109-110).

### **6.1.2 Post-Baathist Iraq**

The post-Baathist period following Saddam Hussein's downfall had a significant impact on the status of women in Iraq, and the US invasion of Iraq would lead to a period of instability and the rise of religious extremism. While the fall of Saddam Hussein's regime was seen as an opportunity by secular women to gain advances in women's rights, this was not the case. The Shiite population in Iraq, which had been marginalised from political leadership for decades, became increasingly politicised and gained more power and influence in government (Fazlhashemi, 2011:270). This shift in power created conflicts between the Bush administration and Iraqi political actors over personal status legislation that was being more influenced by religion. While the Bush administration promoted the "liberation" of women and aimed to advance women's rights, religious Shiite parties such as the Islamic Da'wa Party and the Supreme Council for the Islamic Revolution in Iraq (SCIRI) favoured a conservative interpretation of Sharia. This led to conflicting interests and social forces that influenced the creation of the Transitional Administrative Law in 2004 and the permanent constitution in 2005. Women were still underrepresented in politics, despite comprising as much as 60% of the population due to the several wars and suppressions during Saddam Hussein's reign. The United States tended to favour men for important roles, often neglecting women (Deeb 2004 in Cole, 2009:106-107). As religious paramilitaries gained more power, women were more often required to veil in public. The U.S. invasion created a poor security situation in Iraq, and women were particularly affected, with an estimated four hundred women kidnapped in the fall of 2003 (Nelson 2003 in Cole, 2009:111).

### **6.1.3 Decree 137**

In an attempt to bring stability to Iraq, the Interim Governing Council (IGC) introduced a rotating presidency system in which each of the nine prominent members served for one

month. Nevertheless, the council's decision was challenged by the emergence of revolutionary Shiite movements with opposing religious views. Ayatollah Abd al-Aziz al-Hakim, the leader of the SCIRI movement, issued Decree 137 in 2003, which replaced the existing PSL with the religious canon law of each individual's religious community. Under the new decree, Shiites would be judged under Shiite religious law, Sunnis by their code, and Chaldean Catholic Uniates by canon law in matters concerning personal status. This created confusion and many Muslim Iraqis refused to recognize these courts, instead seeking guidance from clergymen for personal status matters. However, documents produced by clergymen had no official standing in the eyes of the state. The decree faced opposition from various quarters. Shia clerics criticised the decree for contradicting Islamic laws, while women's rights activists criticised it for denying women equal rights. Jalal al-Saghir, the vice president of the Shiite Endowment court, criticised the decree for granting women the right to initiate divorce and for treating women equally with men in inheritance matters. Al-Saghir also criticised the decree for forcing Iraqis to get married according to the Sunni Hanafi sect, including Christians (Haris 2004, in Cole, 2009:112). The struggle over decree 137 pitted leaders of Islamic parties against educated or notable women, who continued to fight for their rights. As the Bush Administration continued to underline women's rights among its justifications for its presence in Iraq, they did not appoint many women to high-level cabinet posts. This was highly criticised by women's groups (Cole, 2009:119). In response, activists representing 80 women's organisations demonstrated all over Baghdad to prevent the decree from becoming law. Thousands of Kurdish women and several women's rights organisations also participated in demonstrations to abolish the decree. A petition was sent to the Chief US Administrator in Iraq, Paul Bremer, and a letter of protest was addressed to Adnan Pachachi, the rotating president of the IGC at the time. Women did not only want the decision to be repealed, but also demanded an active role in the drafting of a new PSL. By protesting, women defended their goal of a democratic and equal Iraq, and protected earlier victories in the personal status question (Efrati, 2012:577-578). The PSL was once again debated during the drafting of the new constitution in 2005, with some arguing that a progressive interpretation of Sharia could benefit women in Iraq, and others wanting the legal system to be solely based on Sharia. Ultimately, the constitution recognized Islam as the state religion but did not officially enshrine Sharia law in the legal system. The constitution also included a provision that granted religious authorities some jurisdiction over family law matters. Overall, the constitution reached a compromise that reflected the competing interests and values of Iraq's diverse political factions (Fayyad 2006 in Cole, 2009: 122-123).

Despite some progress in women's rights in the past two decades, challenges persist for Iraqi women. Forced and early marriages remain widespread today, especially in the context of displacement and poverty. While Iraqi law sets a minimum marriage age of 18, girls as young as 15 can marry with parental approval. According to Freedom House, more than a quarter of Iraqi women aged 20-24 were married before 18. Domestic violence is also prevalent, with cases increasing during the COVID-19 pandemic in 2020. Women's rights organisations have pushed for a law banning gender-based violence, but so far, their efforts have not succeeded. It is still not prohibited for rapists to marry their victims and avoid prosecution, or for spousal rape to occur. Furthermore, honour killings are still prevalent, and the law allows for reduced sentences for perpetrators (Freedom House, 2021). Overall, women and girls in Iraq continue to face significant challenges in achieving gender equality and protecting their rights.

## **6.2 Background to Tunisia**

Tunisia is a North African country with a population of 12,26 million (World Bank, 2021). The majority of the population are Arabs (98%), and the remaining 2% consists of Berber, or Amazigh people, who have their distinct language and cultural traditions, and Europeans and Jews. Islam is the dominating religion in the country, with 98% Sunni Muslims. The legal system is based on both French civil law and Islamic law (Anderson & Anderson, 2014:179).

### **6.2.1 The 1956 Code of Personal Status**

Tunisia was under French rule from 1881 until 1956. Before the French era, Islam was dominating in Tunisia, and most religious courts followed the Maliki school of jurisprudence. Additionally, Jewish courts existed to serve the Jewish population, and Hanafi courts to serve the Hanafi minority that came with the Ottoman rule. During the period of French colonisation, the French administration and judiciary held control over the country, and Sharia law was put aside, except in cases related to personal status. The personal status law was divided according to religious affiliation, with Muslims following Sharia law, Jews following Mosaic law, and foreigners involved in family cases would go to a French court where French law was applied (Voorhoeve, 2014:31-32).

Upon gaining independence, Tunisia entered a new era of reform and President Habib Bourghiba issued the new Code of Personal Status (CPS) (Voorhoeve, 2014:31-32).

Bourghiba was a popular figure in Tunisia, with views influenced by the Arab liberal philosophy and the concept of Arab awakening, following the same patterns of earlier reformists like Jamal al-Din al-Afghani, Qassim Amin, and Khayr al-Din Pasha al-Tunsi. They believed that Muslims societies needed to evolve and develop to the modern era, and that there was no contradiction between Islam as a religion and the modern world. The CPS was based on unofficial draft codes of Maliki law, and greatly differed from the preexisting Islamic law in the country (Mashour, 2005:584-585). The Tunisian government argued that the new code represented a new stage of Islamic progress, emphasising Islam's flexibility and adaptability to the modern world, especially concerning family issues. One of the boldest moves in the Arab-Islamic world in 1956 was that the new code banned polygamy and the right of a man to have four wives. Although polygamy was widely disliked in the Arab world, the abolishment of it made Tunisia the only Arab-Islamic country to declare second marriage invalid, and anyone attempting to marry a second wife would face fines and imprisonment (Charrad, 2014:4). Bourghiba outlawed polygamy because he believed that the Qur'anic requirement of equal treatment of wives was deemed impossible and that polygamy was a practice related to a specific context at the time of revelation. While many Muslims disapproved of the decision, public reaction was muted (Mashour, 2005:585). The CPS also abolished men's unilateral right to repudiate their wives (*talaq*), and only allowed for divorce to take place in court, which deviates from Islamic law. According to Voorhoeve, the abolition of repudiation has been argued to follow the practice of the Tunisian urban elite, where divorce was done with the use of notaries. A divorce certificate was required, which was prepared in the presence of the wife or her father (Voorhoeve, 2014:42). Other reforms gradually included in the CPS were a minimum age for marriage of 15 years old for women and 18 years old for men, and an end to arranged marriages (Sfeir 1957 i Khedher, 2017:35).

The new CPS had significant implications for Tunisia and the role of Islam in the country, as it differed substantially from the Maliki school of law, which applied to the majority of Muslims in Tunisia. The code would ultimately have a great impact on women's rights as it prohibited extra-judicial divorce and enabled women to obtain divorces on the same grounds as men. Bourghiba also implemented a reform that granted women the right to have abortions during the first three months of pregnancy, providing a significant advantage for women in Tunisia (Hägerstam, 2016:21). Mothers' custody rights were also increased and inheritance rights expanded for daughters and granddaughters, although ultimately women's inheritance rights were still half that of men's (Charrad, 2001:1). Tunisians' reforms became a benchmark

for assessing changes in family law in other Middle Eastern countries. Nevertheless, the new reforms were also widely criticised in Tunisian society, with some arguing that divorce had become too accessible. By 2009, Tunisia had the highest divorce rate in the Arab world and the fourth highest in the world, according to the Ministry of Women and Family Affairs. The Ministry of Justice dismissed the study, arguing that it was unreliable and that the divorce rate had decreased 3 per cent in 2008 (Voorhoeve, 2014:p42-43).

### **6.2.2 Reforms after Bourghiba's presidency**

During the 1980's, political Islam began to dominate the MENA region, and the Bourghiba government aimed to balance the competing demands of different groups, including Islamists and women's rights organisations. In 1987, Bourghiba's presidency ended and Zine El Abidine Ben Ali took over as Tunisia's new president, bringing significant changes to women's activism and rights. During this time, some reforms were made to enhance women's rights, such as the 1991 law granting mothers the right to pass on their nationality to their children. This provision was new to the MENA region and was widely applauded in Tunisia and elsewhere in the region, as it granted an important citizenship right to women and protection to the children (Charrad, 2014:6). Ben Ali also enforced changes that were viewed as limiting among religious women, such as banning the veil for university students (Sonneveld, 2015:5). This was in line with Bourghiba's thoughts about the veil, where he had previously expressed repeatedly that veiling was old-fashioned clothing and it encouraged old-fashioned thinking among those wearing it, which he thought contradicted the thoughts of modernity that Tunisia stressed (Perkins, 2004:137).

During this period, Tunisia had active feminist organisations like the Tunisian Association of Democratic Women (AFTD) advocating for gender equality and denouncing religion as a tool of patriarchal oppression. Despite this, the Tunisian state instrumentalized state feminism for its own interests, rather than empowering women. The AFTD accused Ben Ali's regime of using women's rights to strengthen Tunisia's ties with the West, presenting a false image of liberation while imposing limitations. The state's control hindered civil society institutions and grassroots movements, leading to tensions between secular and religious groups. Bochra Belhaj Hmida, co-founder of the AFTD, stated in an interview that the lack of women in decision-making positions is due to the feminist movement being established through a state-driven political vision, rather than a feminist perspective (Yacoubi, 2016:263). Ben Ali's presidency contributed to a growing difficulty between secular and religious movements in



Tunisia. Despite some women holding decision-making positions, few actively advocated for women's rights. Feminist groups either complied with the state or faced censorship, particularly on issues like inheritance. This lack of feminist autonomy limited women's influence in shaping decisions during this time (Yacoubi, 2016:263). Tunisia responded to the Islamic resurgence in the region by adopting a less secular discourse on family law and women's rights, which was essentially a facade for promoting the "Islamization" process (Sonneveld, 2015:3-4). Many women supported the Islamic Party Ennahda, formed by Rached Ghannouchi in the 1970s. Ennahda later evolved into a movement that struggled between religion and secularism in Tunisia. While some women supported Ennahda, others opposed the state's restrictions on religion. This created deep divisions between Islamic feminists, governmental feminists, and non-governmental feminists in Tunisia. These frictions weakened women's movements, similar to the anticolonial struggle and the uprisings in 2011 (Yacoubi, 2016: 264).

Ben Ali's autocratic rule eventually led to corruption and economic instability in Tunisia. Privatisation of state and communal lands worsened the gap between the rich and poor, and the global economic crisis of 2008 made matters worse. Unemployment increased drastically, food costs rose, and remittances from abroad declined, leaving non-elite Tunisians vulnerable (Angrist, 2013: 547-548). It was during these difficult economic conditions that the street vendor Mohamed Bouazizi set himself on fire on December 17, 2010, in a protest against the confiscation of his wares and the humiliation he had suffered from government officials. Bouazizi's self-immolation sparked the Jasmine revolution, which was fueled by socioeconomic grievances and divisions among secularists and Islamists in the country. Tunisian women withdrew their support for the regime, and the army refused to support Ben Ali, leading to his removal after 23 years of power. The Jasmine revolution impacted the rest of the region and mobilised nationalities outside of Tunisia, which eventually led to, what the West would refer to as, the "Arab spring" (Angrist, 2013:548-550).

### **6.2.3 Post-revolution Tunisia**

After the Jasmine Revolution in 2011, Tunisia implemented democracy, putting the country's politics to the test. Ennahda won the most seats in the post-revolution elections, and became the largest party in the country's first free elections. This caused concern among many women about the fate of Tunisia's family laws. As Sharia had been excluded from much of the personal status laws, new debates started emerging about women's rights and whether the

CPS would be altered (Zaki, 2019:2). The debates revolved around new conceptions of family life, as many Muslims began to define Sharia and interpret what was considered as rightful social behaviour for men and women, and how that would translate into family law legislation (Sonneveld, 2015:8). Despite criticism for departing from Sharia principles, Ennahda had no intention of changing the CPS, stressing that it was in line with the Tunisian way of performing *ijtihad*. Ghannouci instead described Islam as a normative system that could provide a spiritual and moral dimension to a Western-style democracy, which he saw as purely materialistic (Lagervall 2021:278). Ennahda even proposed a pension for women who were housewives in order to take care of their children, but did not change or debate the abolition of polygamy, which many define as being allowed according to Sharia (Sonneveld, 2015:10).

According to Hind Ahmed Zaki, a Middle Eastern studies professor at the University of Connecticut, the evolution of women's rights after the revolution can be attributed to the military's role in post-revolution policies. In Egypt and Syria, where authoritarianism and civil war prevailed, the military held significant political power. In contrast, the Tunisian military played a weaker and non-political role during the Jasmine Revolution, enabling Ben Ali's regime to collapse. Additionally, Zaki highlights the conciliatory nature of Ennahda and the active involvement of women's rights activists in post-Ben Ali politics. Despite facing resistance from Islamists and revolutionaries sympathetic to the old regime, these activists persevered, resulting in a post-revolution environment that further advanced women's rights compared to previous regimes (Zaki, 2019:3). Tunisia also benefits from a well-organised labour movement that has played a crucial role in the country's political and social landscape. The Tunisian General Labour Union (UGTT), founded in 1946, was instrumental in the struggle for independence from French colonisation and supported Bourghiba's modernization reforms and promotion of women's rights. The UGTT's relationship with the regime strained during Ben Ali's era due to government criticism and repression of political opposition. They later played a significant role in the Jasmine Revolution by mobilising workers and pro-democracy supporters, leading to the establishment of a new democratic government. The UGTT continues to be a vital force in promoting workers' and women's rights in Tunisia (Omri, 2020:18-22).

Women's rights activists in Tunisia protested and lobbied against proposals by Ennahda that would have worsened women's conditions. One such proposal was Article 28, which caused

significant controversy when leaked before the final draft of the 2012 constitution. The article referred to women as “men’s complements” and “associates”, implying a subordinated status for women. Tunisian women, secular parties, and centre-leftists perceived this as a threat to Tunisia’s secular and progressive politics, particularly due to the rise of Ennahda. The opposition to Article 28 took the form of media campaigns and political demonstrations, where activists formed strategic alliances and advocated for the inclusion of a parity principle, ensuring equal representation of women and men in elected councils. Initially, Ennahda opposed the parity clause but eventually supported it, partly due to their desire to be seen as a moderate Islamic movement internationally and internal party dynamics. Tunisian feminist activists played a crucial role in increasing women’s political representation during the constitutional drafting process, taking place in a post-revolutionary Tunisia where Islamists held significant political influence (Zaki, 2019:3-5).

In 2017, Tunisia took significant steps in safeguarding women’s rights by passing a comprehensive law that prohibited all forms of gender-based violence, including domestic violence and sexual harassment in various settings. The law mandated the establishment of shelters for domestic violence victims, allowed survivors to obtain long-term restraining orders against their perpetrators, and required the police to refer assaulted women for medical examination (Zaki, 2019:6). Nevertheless, challenges such as limited awareness of the law’s provisions, insufficient knowledge, and logistical barriers have hindered its effectiveness in addressing domestic violence. Femicide stemming from domestic violence has also increased in Tunisia in recent years (Freedom House 2021). Tunisia also made headlines in 2017 as the first Arab country to permit Muslim women to marry non-Muslim men, sparking controversy within the region. This decision was met with criticism from Egypt’s Al-Azhar, accusing Tunisia of deviating from mainstream Sunni Islam (Zaki, 2019:2). In terms of inheritance rights, Tunisia still faces gender inequality, with women receiving only half the share of inheritance that men receive. Although efforts have been made to establish gender equality in inheritance rights, progress has been limited in the Parliament. President Essebsi introduced a draft law in 2018 proposing significant reforms to inheritance laws, but its passage is still pending. Nonetheless, the draft law has generated momentum and strong political will to enact meaningful changes (Zaki, 2019:2).

## **7. Results**

The laws presented in this section are the Iraqi Personal Status Law of 1959 and amendments, and the Tunisian Code of Personal Status of 1956 and amendments. The sections on divorce are presented, translated from Arabic and somewhat summarised. In the text, when referring to the Iraqi Personal Status Law, the shortening PSL is used, and when referring to the Tunisian Code of Personal Status, the shortening CPS is used.

### **7.1 Iraq's Personal Status Law - Section on divorce**

Law: Iraq. Law No.188 of 1959. Personal Status Law, with amendments in the 1970s, 1980s, and 1990s.

The law starts by presenting general provisions which state that the legislative texts apply to all the issues discussed in the texts. In case there is no applicable legislative text, “judgement shall be adjudicated in accordance with the Islamic Sharia principles that are most relevant to this law” (Law 188, 1959, art 1). These provisions show that when it is not possible to apply the law to the situation, reference is made to interpretation in line with Sharia. It also says that guidance can be found in the Islamic jurisprudence in Iraq and even other Islamic countries where laws are close to Iraqi ones. It is unclear how this is done since there are different approaches to Islamic jurisprudence in Iraq, which may conflict with each other. To resolve this, Article 2 specifies that the provisions of the law apply to all Iraqis, except those who are exempted by virtue of a special law. Moreover, in case of a conflict between laws due to location, articles 19-24 of the Iraqi Civil Code shall be applied. Therefore, if there is a conflict in the interpretation of Islamic jurisprudence, articles from the Iraqi Civil Code should be references to resolve the conflict (Law 188, 1959, art 2).

The law is divided into different chapters and chapter 4 deals with the dissolution of marriage and covers divorce, legal separation, voluntary separation (khul’), and the waiting period (iddah). The Iraqi PSL thus provides for three different methods of divorce. The first is through unilateral repudiation, also known as talaq. The second is through judicial divorce, also referred to as legal separation. The third method is redemptive divorce, also known as khul’.

**Section 1** of the law deals with divorce and specifies the conditions and procedures for it. Article 34 stipulates that divorce must be performed according to Sharia and can be initiated by the husband, the wife, an authorised representative, or a judge. The law does not accept divorce by proxy. Articles 35 and 36 set out the circumstances under which divorce is prohibited, such as when one party is drunk, insane, mentally deranged, coerced, or unable to make a sound judgement due to anger, a sudden disaster, age or illness. If one party has an illness that is likely to cause death, divorce cannot be granted. According to the law, if a husband dies due to an illness or a specific condition, his wife inherits his legacy. Divorce is also not allowed if it is conditional, incomplete, or given under oath (Law 188, 1959, arts 34-36).

Article 37 grants the husband's right to divorce or repudiation. According to this article, the husband may pronounce three repudiations to initiate a divorce. If the husband utters or gestures three repudiations at once, it will be considered as one divorce. Article 38 categorises divorce into two types - revocable and irrevocable. The former allows the husband to reconcile with his wife without a new contract during her waiting period (iddah). In this way, the marriage is resumed. The latter has two versions: minor irrevocable divorce or "talaq ba'in baynounatun sughra," which permits the husband to marry his divorcee, but only with a new contract; and major irrevocable divorce or "talaq ba'in baynounatun kubra", which prohibits the husband from remarrying the divorcee after pronouncing three repudiations at separate times, and after the waiting period has expired (Law 188, 1959, arts 37-38).

Article 39 outlines the process of obtaining a divorce, which requires filing a lawsuit in a Sharia court and obtaining a judgement. If a party is unable to attend the court, they must register the divorce within the waiting period. The marriage contract remains valid until invalidated by the court. If a husband initiates a divorce, and it is deemed arbitrary by the court, and the wife suffers harm as a result, the husband will be required to compensate her. The amount of compensation should correspond to the husband's financial situation and the degree of his arbitrariness. It must also cover the wife's expenses for a two-year period, in addition to her other fixed rights. This compensation is distinct from alimony paid to the wife (Law 188, 1959, art 39).

**Section 2** discusses legal separation and the rights of both spouses' to request it. Reasons for legal separation include one spouse causing injury to the other or to their children in a way that makes it impossible to continue the marriage. Substance addiction, including alcohol and drugs, can be considered an injury, but must be confirmed by an official medical committee report. Addiction to gambling in the marital house is also considered an injury. Infidelity, including homosexuality between males, is also a ground for divorce. Other grounds for divorce include marriage before the age of 18 without the judge's consent, marriage by coercion outside of court and marriage was consummated, and the husband marrying another wife without court permission (Law 188, 1959, art 40). If a disagreement arises, both spouses have the right to request separation, but all efforts must be made to reach a reconciliation, such as with the help of arbitrators from both family sides, or nominees of arbitrators from the court. If the court recognizes that a disagreement is ongoing and reconciliation has failed, and the husband refuses to grant divorce, the court may separate them. If the wife is responsible for dereliction and separation takes place after consummation, the dowry will cease to be effective and she must return no more than half of it. If both parties are responsible, the deferred dowry would be split between them according to the percentage of dereliction attributed to each one of them. If the wife is responsible for dereliction, and the separation takes place before consummation, she would be responsible for restitution of the dowry. If the court dismisses a lawsuit, and the spouses file again for the same reason, arbitration will be used in accordance with the above (Law 188, 1959, arts 41-42).

The law also presents the wife's right to request legal separation, including if the husband faces imprisonment for a minimum of three years and abandons the wife for at least two years without a legitimate reason. Other reasons are if the husband does not fulfil the wife's marital rights, does not consummate the marriage for two years after the contract, is impotent or becomes impotent (and if the court does not consider his impotence being psychological, where separation is postponed for a year). Justification for legal separation include also if the husband is infertile and the wife does not have a living child from him, has a disease that cannot be cured and makes sexual intercourse harmful, abstains from spending on his wife without a legitimate excuse, or fails to pay alimony for different reasons such as disappearance, absence, or imprisonment. The wife may request separation before consummation, and the court will adjudicate separation after she returns her entire dowry and any expenses incurred by the husband for the purpose of the marriage. The Iraqi woman may request separation if the husband has been abroad for at least three years, is a national of that

country, or is forbidden from entering Iraq. If the husband is officially declared missing, the wife must wait four years before seeking separation. After acquiring the judgement of separation, the wife must observe a waiting period of four months and ten days (Law 188, 1959, art 43).

All forms of evidence are acceptable, including witness testimony if consistent. The court has discretion in assessing the evidence, except when the law specifies certain means of proof. Separation in these cases is considered a minor irrevocable divorce (Law 188, 1959, arts 44-45).

**Section 3** discusses voluntary separation (khul'). The pronouncement of khul' must be carried out before a judge through an offer and an acceptance taking into consideration the provisions of article 39 of this law. The khul' is considered an irrevocable divorce and in order for it to be sound, the husband must be eligible for divorce and the wife must be in a position to obtain it. Khul' requires the return of the payment of compensation to the husband, such compensation could be more or less of the wife's dowry (Law 188, 1959, art 46).

**Section 4** describes the waiting period (iddah) and the conditions under which the period must be observed. The iddah must be observed if the spouses are separated after consummation, regardless of how the separation was done, and if the husband dies, even if the death occurs before consummation. The waiting period takes different forms depending on the circumstances. For a woman who has reached puberty but has never menstruated, her iddah after separation shall be three full months. If the husband dies, the iddah is four months and ten days, and if the woman is pregnant, the iddah is four months or for the period remaining until the child is delivered, whichever is longer. If the husband of a divorcee dies while she still is in her iddah, the death iddah is the one that applies and the previous iddah shall not be counted. The waiting period starts immediately after divorce, separation or death, even if the woman had no knowledge of the divorce or death (Law 188, 1959, arts 47-49). During the waiting period, the maintenance (nafaqah) for the divorced woman is the responsibility of the living husband, even if she is disobedient to him. There is no maintenance for the waiting period for the widow (Law 188, 1959, art 50).

## **7.2 Tunisia's Code of Personal Status - Section on divorce**

The Tunisian Official Code of Personal Status No.66 from 1956, with amendments. The amendments in the divorce section were made in the 1980s, 1990s, and 2000s.

The code is a legal framework that applies to all Tunisian citizens, regardless of their religion. The code starts with the Islamic phrase “Bismillah al-Rahman al-Rahim” which means “In the name of Allah, the Most Gracious, the Most Merciful.” The code is divided into various chapters, covering topics of marriage, divorce, the waiting period (iddah), and alimony. While the code also covers topics like inheritance and child custody, this study will focus on the chapters about divorce, the waiting period, and financial maintenance for divorced women. Each chapter is further divided into articles that provide specific guidance on legal issues.

**Chapter 2** outlines the rules for divorce and begins by defining divorce as the dissolution of the marriage contract, and can only be granted by the court. Unilateral divorce, also called talaq, outside of the court system is therefore not recognised in Tunisia (CPS, 1956, arts 29-30)

Article 31 states that divorce can be granted on three grounds: mutual agreement of both spouses, the request of one of the spouses on the grounds of suffered harm (“darar” in Arabic), and at the husband’s request or the wife’s demand. This means that a specific reason is not necessary for a husband to request a divorce, or a wife to demand one. In cases of divorce due to harm suffered, compensation is provided to the spouse who has been harmed, both in material and moral aspects. Furthermore, article 31 states that a woman is entitled to financial compensation for material damages after the end of the waiting period, which corresponds to the standard of living she had during the marriage, including housing standards, and is subject to adjustment if any changes occur. This compensation takes the form of regular monthly payments and continues until the woman dies, or until her social status changes through remarriage or acquiring a means of living that renders the compensation unnecessary. In case the divorced woman passes away, the compensation becomes a debt on the estate of the ex-husband, which can be settled either through mutual agreement with her heirs or through legal action by paying the full amount owed in a lump sum. The amount owed is adjusted based on the age of the beneficiary at the time of her death.



If the woman chooses to receive the compensation for material damage in the form of a lump sum of capital assigned to her in one payment, then the monthly payments are not applicable (CPS, 1956, art 31). It is important to note that if the court finds the wife has been divorced fairly by her husband, she may not receive any compensation (Musawah, 2022).

Article 32 outlines the process for divorce in Tunisian courts. The head of the court appoints a family judge from among its representatives, whose role is to try to reconcile the spouses. The judge must make every effort to reconcile the spouses before allowing a divorce to be granted. If necessary, the family judge, with the consent of the spouses, may seek assistance from family services within the framework of social development structures, to help reconcile them and find a solution that preserves family cohesion. The list of family facilitators is determined jointly by the Minister of Justice and the Minister responsible for social affairs. If the defendant does not appear or has not been served with the summons, the family judge will adjourn the case and try to personally serve the defendant or find their actual address to serve them. If there are minor children involved, the reconciliation session must be repeated three times, each at least 30 days apart, during which the judge must make further efforts to reconcile the spouses and seek assistance in doing so. The family judge has the authority to make immediate decisions about the spouses' residence, alimony, custody, and visitation of the child in custody (or visiting of the dependent, even without being requested). The two parties can agree to leave some or all of these matters, provided it does not conflict with the best interests of the minor child/children. The judge will estimate the alimony based on the information collected during the reconciliation process. Immediate decisions are executed based on the draft and are not subject to appeal or objection, but they may be reviewed by the family judge, unless the original judgement has been issued.

Following a two-month contemplation period, the court will issue a divorce judgement that addresses all related matters, including the amount of compensation the divorcee is entitled to after the waiting period has expired. The court will also determine the methods of implementing the immediate decisions made by the family judge. In cases of mutual consent, the judge may expedite the proceedings while still ensuring the best interests of any minor children involved. Despite any appeals or objections, the portions of the judgement related to custody, alimony, housing, and visitation rights will be implemented. If one of the spouses intentionally avoids receiving a summons from the other party, they may be punished with

imprisonment for one year, ensuring both parties have a fair opportunity to present their case and delaying tactics are avoided (CPS, 1956, art 32).

Article 33 stipulates that if a divorce occurs before the marriage is consummated, the wife is entitled to half of the agreed-upon dowry (CPS, 1956, art 33).

**Chapter 3** of the CPS deals with the waiting period, known as al-iddah. According to article 34, any woman whose husband has divorced her after consummation of the marriage or who has died, must observe the waiting period. The length of the waiting period depends on the circumstances. A divorced woman who is not pregnant must wait for three full menstrual cycles. A widow must wait for four months and ten days. A pregnant woman's waiting period ends with the delivery of her child, and the maximum duration of the waiting period due to pregnancy is one year from the date of divorce or death. The same rules apply to the wife of a missing person as if her husband were deceased, which is a waiting period of four months and ten days (CPS, 1956, arts 35-36).

**Chapter 4** of the CPS deals with maintenance or alimony. According to article 38, the husband is responsible for providing for his wife using his own earnings during the marriage and separation periods. If the husband is unable to provide, he is not obliged to, but the judge may reprimand him for a period of two months. If he remains unable to provide, his wife may file for divorce. If the wife was aware of his inability to provide at the time of the marriage contract, she has no right to ask for divorce. If the husband is absent from his wife, has no money, and does not leave her alimony or someone else to provide for her during his absence, the judge may give him a month to appear. If he fails to do so, the husband will be divorced, provided that the woman has sworn to do so. If the wife has spent money on herself with the intention of returning to her absent husband, she is entitled to demand it back from him, as stipulated in Article 41. Furthermore, as per article 43, the wife's right to receive alimony from her husband does not expire with time (CPS, 1956, arts 38-42).

### **7.3 Complementary information from women's rights organisations**

In Iraq, marriage and divorce registration is compulsory. The country has seen a surge in divorce rates in recent years, with reports suggesting that the rate had reached 30% by mid-2021. Most divorces are initiated by women, and according to data from the Iraqi

Judicial Council, the majority of divorces are resolved outside of court (Daraj, 2022). Musawah reports that women in Iraq give up almost all of their rights to secure a divorce due to the unbearable marriage conditions (Musawah 2017).

In Tunisia, despite legal provisions granting equal rights to men and women to initiate divorce, the process for women seeking divorce is often more time-consuming and difficult than it is for men, and is rarely concluded. In practice, some judges refuse to recognize women's rights to request a divorce, while women face practical challenges in navigating the legal system to obtain one, despite being entitled legally (Musawah, 2022). Additionally, Tunisian women face obstacles in obtaining financial maintenance after a divorce on the basis of harm within the marriage, due to the need for lengthy court proceedings and evidence of the husband's acknowledgement of harm that would lead to a criminal conviction. Although harm is defined in the law to include both physical and psychological abuse, the burden of proof rests on the woman, which can be difficult to prove and keep evidence of (UN Women, 2018).

The Tunisian law also includes some discriminatory language that does not address the reality of women's situations, according to a 2010 publication by the Association for Women's Rights in Development (AWID). Joint-decision making in Tunisian households is uncommon, and most household tasks fall on women. The husband is often responsible for the financial maintenance and the wife is not always recognized as a full partner in decision-making regarding for example major household purchases. Although women have gained some legal status through the institutionalisation of their right to consent to marriage and divorce, and other legal reforms included in the CPS, this does not reflect the real lives of Tunisian women in families. Women's actual status within families remains characterised by fewer rights than men. The practical issues with the divorce process for women have also caused couples to avoid separation (AWID, 2010).

## 8. Analysis

### 8.1 The laws connection to Sharia

The Iraqi and Tunisian law's connection to Sharia will be analysed henceforth, and whether the laws operate within the framework of these legal systems. Furthermore, how these laws relate to and intersect with the different Islamic schools of law will also be analysed.

Both the Iraqi PSL and the Tunisian CPS show a connection to Islam in their provisions. The Iraqi PSL explicitly states that if the legislative text is not applicable in a situation, then judgement shall be adjudicated in accordance with Sharia (Law 188, 1959 art 1). The Tunisian CPS on the other hand, does not state that the law is based on Sharia, but it includes the phrase "Bismillah al-Rahman al-Rahim", derived from the Qu'ran, which is commonly used as an opening phrase before undertaking a task (CPS, 1956).

**Talaq:** One significant difference between the two laws is their stance on unilateral repudiation (talaq) as a valid method for divorce. The Iraqi law permits this, whereas the Tunisian law prohibits it, allowing only for judicial divorce. Talaq is a concept derived from traditional Islamic practice, and while some Islamic scholars have debated and criticised its use, its exclusion from Tunisian law could be seen as a deviation from Sharia. The Tunisian law's requirement for court divorce ensures that both men and women have an equal opportunity to initiate the divorce process. In Iraq, however, men hold the power to repudiate their wives, while women do not have the same authority. Article 37 in the Iraqi PSL states that a husband can utter repudiation and it will be considered a divorce. This means that the Iraqi man may unilaterally repudiate a marriage without much restriction. Divorce in Iraq is also revocable, which aligns with the principles of Sharia. The marriage can be resumed if the divorced wife is still within her waiting period, and even after its expiration, the spouses can remarry with a new contract. However, if a husband repudiates his wife three times, the divorce is absolute, which is referred to as "major irrevocable divorce" in the Iraqi law (Law 188, 1959, art 38). In contrast, the Tunisian law does not recognize revocable divorce, and since divorce can only take place in court, it can never be revocable. Neither the Iraqi law nor the Tunisian law recognizes the form of divorce known as triple talaq, or talaq al-bidaa.

**Reconciliation:** According to Sharia, reconciliation is favoured over termination of the marriage, which can be achieved either through negotiated settlements between the spouses, or through arbitrators from their families. This approach is reflected in both Iraq's and Tunisia's laws, as they both provide for a period of time for reconciliation during the divorce process. In Iraq, the divorce process allows for revocable divorce, and divorce becomes irrevocable only if the husband repudiates his wife three times. This indicates that divorce should not be undertaken immediately (Law 188, 1959, art 40). Judicial divorce also includes a period for reconciliation and requires the appointment of two arbitrators from each family side or nominees of arbitrators from the court to try to reconcile the spouses (Law 188, 1959 arts 41-42). Divorce in Tunisia can also not be granted if the spouses have not attempted reconciliation, and only after the judge has conducted one to three reconciliation sessions behind closed doors, with the assistance of reconciliation services. The court can decide on a divorce judgement after a two-month contemplation period (CPS, 1956, art 32). The waiting period (iddah) is also included in both laws, the purpose of which is to allow time for reconciliation. Reconciliation is however not unique to Islam but present in most divorce laws, and its inclusion in Iraqi and Tunisian law does not necessarily indicate a connection to Sharia.

**Khul':** Divorce through khul' is also mentioned in the Iraqi PSL, which is derived from Sharia. The Iraqi law stipulates that khul' requires the payment of compensation to the husband, which may be more or less than the wife's dowry (Law 188, 1959, art 46). While khul' provides a means for women to initiate divorce, in most Islamic schools of law, the husband must also give his consent. However, the requirement for the wife to repay her dowry means that she can only obtain a divorce in exchange for money. This could leave women economically vulnerable if they do not have other income. It is also a flawed concept, as it may require the husband's consent, and it also allows men to pressure their wives to seek khul' in order to recover their dowry. The Tunisian PSC does not mention divorce through khul'.

**Iddah:** Both the Iraqi and the Tunisian laws include regulations for the iddah, which is the mandatory waiting period for a woman after separation or the death of her husband. The purpose of the iddah varies between the two laws. In most cases, it is for the wife to wait for a period of three months to consider the possibility of reconciliation and to ensure paternity from the divorced husband. During the iddah, the husband has the right to take his wife back

in a revocable divorce, which is the case in Iraq but not in Tunisia where the iddah only serves as a waiting period. As pointed out by Wadud, at the time when Sharia was formed, there were no other methods to decide on pregnancy but to wait. However, today there are faster and more accurate ways to test for pregnancy, making the three-month waiting period unnecessary. Additionally, the iddah applies in any case of divorce, even if the reason for divorce is because the spouses could not have a child or the woman could not get pregnant. This means that women's freedom is limited for another three months after the marriage, as the iddah also includes social isolation for women who are expected to stay in their homes. Meanwhile, men are not restricted to any waiting period. In the case of Iraq, the husband can take his wife back at any time during the iddah, as per his own preferences, while the wife has been restricted to him the entire time. This places further limitations on women's freedom, agency and independence.

**Nafaqah:** In Iraq, a woman is entitled to financial maintenance during this period, and may also receive compensation if she is divorced unreasonably (Law 188, 1959 arts 34, 39). Financial maintenance typically lasts for three months, and the amount of compensation a woman receives for an arbitrary divorce is based on the husband's financial status and cannot exceed two years, in addition to her other financial rights (Law 188, 1959 art 50). Nevertheless, there is no legal concept of matrimonial assets in the Iraqi law, which means that financial equality between the spouses after a divorce cannot be assured. Similarly, the Tunisian law also provides for financial maintenance with the husband being responsible for providing for his wife during the marriage and the period of separation. If the husband is unable to provide during the marriage, it constitutes grounds for divorce (CPS, 1956, arts 38-42). In Tunisia, a woman is also entitled to financial compensation for material damages after the marriage has ended too, that corresponds to the standard of living she had during the marriage. This compensation takes the form of monthly payments and continues as long as she is divorced and in need of the money (CPS, 1956, art 31).

In both countries, women's financial rights during marriage depend on their husbands, as men are typically seen as the primary providers for their families. This legal framework guarantees some financial security for women, but it also creates financial dependency on their husbands, and even their families in cases of death. The concept of nafaqah reinforces gender stereotypes, assuming that men should earn more than women and that their role is to provide for their families. This arrangement also gives husbands significant power, as they control

both spouses' incomes, and contributes to a power imbalance in the marriage. Regardless of the reason for divorce, husbands are required to pay financial maintenance, which reinforces the notion that marriage is a financial contract that begins and ends with the husband paying his wife. Both laws do allow wives to waive their right to financial maintenance voluntarily, but husbands cannot impose this decision on them. This legal framework perpetuates gender inequality by linking women's financial status to that of their husbands during and after marriage. This underscores the need for legal reforms to ensure greater financial equality between spouses.

**Different schools of Islamic law:** As mentioned in the section on divorce in this study, the grounds for divorce vary among the legal schools. The Hanafi, Maliki, and Jaafari schools of law are the most relevant to Iraqi and Tunisian laws.

Most Sunni Muslims in Iraq follow the Hanafi school, while the Shia Muslims adhere to the Jaafari school, but the Iraqi PSL includes provisions that differ from it. For example, the Hanafi school does not allow reasons such as imprisonment of the husband or absence, or abuse as grounds for a woman to obtain a divorce. This is allowed in the Iraqi PSL, and in the Jaafari school. In contrast, addiction to alcohol, drugs, and gambling are considered grounds for divorce in the Iraqi PSL, which deviates from both Hanafi and Jaafari schools. Additionally, while the Hanafi and Jaafari schools allow divorce on the grounds of infidelity, the Iraqi law also considers homosexuality as infidelity. The Iraqi law defines homosexuality as only legitimate among men, and not among women. It further provides some provisions related to financial support, but it does not explicitly state whether a husband's failure to support his wife is recognized as grounds for divorce, which is a valid reason for divorce in both Hanafi and Jaafari schools. In the Iraqi PSL, the wife has a right to receive deferred dowry in the case of divorce, and the husband has an obligation to provide maintenance during the iddah. The law also recognises various reasons related to sexual intercourse and reproduction as grounds for divorce, such as impotence and infertility, which are generally accepted across most Islamic schools of law. Additionally, the Iraqi PSL permits divorce on the grounds of sexually transmitted diseases, a provision not found in either the Hanafi or Jaafari schools. Hence, the Iraqi PSL incorporates various elements of different schools of Islamic law, predominantly the Jaafari school, while also including some provisions that deviate from traditional Islamic jurisprudence, yet still upholding key Islamic principles.

Although the Iraqi constitution of 2005 does not officially establish Sharia in the legal system, many aspects of the PSL are based on Sharia principles.

The Maliki school of law differs greatly from the Hanafi and Jaafari schools in its approach to divorce, and this influence is evident in the Tunisian CPS. The CPS allows divorce on the basis of harm, which is directly linked to the Maliki school's concept of "darar" (CPS, 1956, art 31). However, the CPS does not provide a clear definition of "darar" and fails to specify what constitutes harm beyond physical and psychological harm. This lack of clarity allows for flexibility in determining grounds for divorce based on harm, but it can also lead to potential injustices due to varying interpretations of harm, and difficulties in proving certain forms of it. Moreover, the Maliki school permits divorce through traditional Sharia rules such as repudiation and the wife's right to initiate divorce by mutual consent (khul'), along with judicial divorce. These aspects are not included in the Tunisian CPS, where divorce is limited to judicial grounds, repudiation is abolished, and divorce without a motive is allowed. These differences highlight the loose influence of the Maliki school of law and Sharia principles in the Tunisian CPS, which also incorporates strong secular elements.

## **8.2 Women's rights according to Wadud and Ali**

Analysing the Iraqi and Tunisian divorce laws through Wadud's theory would mean examining how they challenge the patriarchal structures that Wadud argues Sharia derives from, and how they have adapted their laws through a re-examination of Islamic justice (Wadud, 2006:49). Since this study established that both Iraq and Tunisia have applied Sharia principles in their laws regarding divorce and personal status issues, the results show that Iraq has taken a more conservative approach, relying on a more literal interpretation of Sharia. The status of women in Iraq (as per the legal framework) does not reflect an adjustment to a modern global discourse where gender equality is the guiding principle. This is most clearly manifested by the fact that women do not have the same rights and possibilities to initiate divorce as men do. Furthermore, the Iraqi law explicitly calls for reference to Sharia principles when the law cannot be applied in a particular situation, and then to other countries with similar laws - thus, further entrenching Sharia principles within its legal framework. In contrast, Tunisia has also incorporated Sharia principles into its family law, but the law is not completely based on it, and Sharia is aligned with an expansion of women's rights. For example, Tunisia has established equal rights for men and women to initiate divorce and



prohibited extra-judicial divorce. While critics have accused Tunisia of deviating from Islamic principles, it can be argued that Tunisia has re-examined Sharia principles, in line with Wadud's theory. The accusations of Tunisia deviating from Islam are based on the laws not responding to and protecting male privilege, which is what Wadud argues is needed for a gender jihad to occur. This is evidenced by Tunisia's inclusion of laws that allow divorce on the grounds of harm in their CPS, which is directly linked to the Maliki school of Islamic law. When Bourghiba first introduced the law, he argued that nowhere in Islamic sources does it prohibit adapting the religion to modernity. Tunisia has thus followed Wadud's advice that in order to achieve gender justice, Islam needs to be lived with adjustments after the modern, pluralistic society of today (Wadud, 2006:49).

Wadud's theory further problematizes concepts that reinforce gender inequality, such as nafaqah and iddah, which are present in both the Iraqi and Tunisian law. Although Tunisia has excluded revocable divorce from their law, iddah still exists in their legal system as a waiting period that applies exclusively to women. To advance women's rights in these countries, these concepts that perpetuate inequalities need to be re-examined and adjusted after a more equal approach. The Iraqi PSL has clear patriarchal structures in their divorce regulations, where women's only initiative to divorce involves a request for separation, and a remittance of the dowry (khul'). While the Tunisian law also has some patriarchal structures, as previously mentioned with the presence of nafaqah and iddah, it grants more rights for women to initiate divorce, and permits both spouses to obtain a divorce without requiring a specific reason. This shows a more equal approach and how Islam has been adapted to strive for equality, and to more clearly serve also the interest of women.

Wadud's theory of gender jihad advocates for women to play an active role in their own circumstances and call for change - i.e. be active agents in the reform of Islamic law and practice. This concept can be linked to the history of both Iraq and Tunisia, and how they shaped their respective family laws. In Iraq, women played a significant role in shaping the Personal Status Law before it came into effect, with the help of the then-Prime Minister, Abdul-Karim Qasim, who promoted feminist ideas. Nonetheless, during Saddam Hussein's regime, women faced a significant setback in their rights due to structural barriers that made it difficult for them to bring about change in a restrictive environment. After Saddam Hussein's fall, women demonstrated against Decree 137 and were successful in abolishing it, which gained them an active role in drafting the new Personal Status Law. This shows how

effective women were in organising themselves and fighting for their rights. Despite these gains, Iraqi women still lack equal rights to men regarding family matters, and the efforts have only been successful to a limited extent. The discussions around equal divorce rights for men and women have been dismissed due to arguments of it deviating from Hanafi and Jaafari jurisprudence too much. According to Wadud, grassroots women's rights movements need the support of religious authorities and leaders of progressive Islamic discourse to achieve change (Wadud, 2006:52-53). This is the case in Iraq, where a change in the patriarchal structure that is dominating today is also required. To enable women to play an active role in their own transformation, there must be a will to do so, and the circumstances must be conducive to it, including support from people in critical roles in Iraqi society.

The difference in the history of Tunisia and Iraq is that, in Tunisia, women's rights were protected by president Bourghiba when forming the Code of Personal Status. Unlike Abdul-Karim Qasim in Iraq, Bourghiba remained in power for an extended period, a total of 30 years, allowing him to maintain reforms for women. However, during Ben Ali's reign, women's rights were threatened, prompting feminist organisations to ally and protect and expand women's rights. In this way, women acted as active agents and the AFTD denounced the use of religion to maintain patriarchal oppression, similar to what Wadud's theory encourages. The strong labour movement in Tunisia could also have been a contributing factor to the enhancement of women's rights, as the country had a strong secular counterpart that would fight for human rights from a grassroots level. The trade unions have influenced the politics in the country ever since the anti-colonization, which did not exist in Iraq where Islamism would more easily take over the politics. Tunisian women, and the trade unions would later also play a role in the revolution, and continued fighting for their rights in post-revolution Tunisia, to prevent setbacks under the Ennahda Islamist party. Unlike Islamist parties in Iraq, Ennahda had a flexible stance on Islam, which was compatible with democratic and human rights values, which can also have played an important part for women's rights. The Ennahda movement was made famous for deviating from other Islamic fundamentalist movements, and the fact that the party's leader lived in exile in Europe might have impacted the party's attitude towards women's rights and, what many Islamist call, Westernised principles. In this way, Islam and thoughts of modernity and feminism can be stated as having impacted each other distinctly (in favour of the status of women) in Tunisia both before and after Ennahda's rise. Article 28, which would have eroded women's rights, caused women to once again take action on the change they wanted to see and they

successfully fought for their rights. These are all examples of how Wadud's theory of women as active agents in Islamic law reform, have taken place and succeeded in Tunisia.

By applying Ali's theory, the Iraqi and Tunisian divorce laws can be analysed in terms of how they interpret Sharia and affect women's rights. According to Ali, contemporary ethical principles like justice and equality should guide interpretations of Islamic justice. Through using human interpretive reasoning in favour of women, and looking for elements that promote gender equality in Islamic tradition, Muslim women can also enjoy their rights. Interpreting the Qu'ran is essential in achieving gender equality in an Islamic society. Iraq, influenced by different schools of Islamic law, interprets Sharia more literally, resulting in a more unequal approach to women's rights compared to Tunisia. In contrast, Tunisia's interpretation of Sharia aligns with a more secular approach to advance women's rights and promote gender equality, as well as a more flexible Islamic school of law (the Maliki school).

There are examples in Iraq's and Tunisia's history where a feminist interpretation has been made in favour of women in family law regulations. When Prime Minister Abd al-Karim Qasem proposed equal treatment for men and women regarding inheritance, he argued that the Qur'anic verse which states that a daughter's inheritance should be half of a son's is merely a guideline rather than a requirement. Similarly, when the Code of Personal Status was introduced in Tunisia, Bourghiba outlawed polygamy, reasoning that the Qur'anic requirement of equal treatment of several wives was unattainable and that the practice was related to a specific context at the time of revelation. Bourghiba's regime represented a form of Islamic progress, where Islam was adapted to the modern world, and issues around family also adapted to a modern context. According to Ali, the view of family life and sexuality are often still "Islamic" while in many other aspects, civil law has been accepted over Islamic law (Ali, 2006:36). In Tunisia's case, civil law has been chosen over Islamic law concerning family issues, or Islamic law has been adapted after a modern context and in favour of women's rights. Even when the Islamic party Ennahda gained more seats in the Tunisian parliament, they chose not to change the CPS, arguing that it was in line with the Tunisian way of performing *ijtihad*. They also kept the prohibition of polygamy intact, despite some arguing that it was allowed under Sharia. In this way, an interpretation of Sharia that favours women has had prominence in Tunisia's history, and Tunisia has maintained its own approach to interpreting Islam, based on what it believes is most suitable for its population.

Ali further problematizes the concept of talaq, and connects it to the payment of dowry. She states that reforms in divorce laws must address the norm of the husband's control over the marriage, which is done in Tunisia as talaq is not recognized and divorce cannot take place outside of court. Tunisia has in this case challenged the basic patriarchal structure of the man being in control of the marriage and its dissolution.

Different interpretations of Sharia frequently occur, but not all are grounded in principles of justice and equality, as Ali argues they should be. The various schools of Islamic law provide an example of differing opinions, some favouring traditional interpretations of Qu'ran and Sunnah, while others value the inclusion of reason (ijtihad). As the Tunisian law includes parts of the principles of the Maliki school in its CPS, a more flexible approach to Islamic law has been applied. Additionally, Iraq has applied parts of both Jaafari and Hanafi school principles in its PSL, aligned with overall Islamic principles, which makes the different approaches to ijtihad difficult to align. The distinction within the Jaafari school, between the traditional Akhbaris and the reason-oriented Usulis, is also an example of how approaches to interpreting the Qur'an and other Islamic jurisprudence differ. By using reason when interpreting the Qu'ran, there are greater opportunities for modifying and adapting the sources to modern contexts, in a manner consistent with justice and equality. According to the Usulis, reason should be used when interpreting the Qu'ran, but the ability to use reason is strictly limited to the educated and those who have knowledge of Islam. This ultimately creates a division according to the level of knowledge, where the line is between the knowledgeable and the ignorant. It ultimately hinders women's ability to contribute with feminist and gender-neutral interpretations of Islamic law and practice, as only men are typically allowed to participate in Islamic teaching settings. The existence of different approaches to Islamic law and interpretations of it, demonstrates that Islam is flexible and can be adapted to different situations, and if Muslims choose to, it can be used to support women's rights, as Ali and Wadud suggests. Nonetheless, women's divorce rights are currently not equal to men's in any of the schools of Islamic law. For women to have their rights fulfilled, interpretations must be adapted to achieve this, similar to what has been done in Tunisia's divorce laws.

## 9. Conclusion

In conclusion, while divorce laws in Iraq and Tunisia are both connected to Sharia, they have approached Sharia differently, which has had different impacts on women's rights. Women's rights are somewhat restricted in both laws due to different concepts that reinforce gender inequality and gender stereotypes within the family. Nevertheless, the Tunisian law grants more equal rights than the Iraqi law. This is due to the exclusion of extra-judicial divorce, repudiation, and revocable divorce from the CPS, which are ways to divorce in Sharia. Tunisia has also included the same rights for women as men to initiate divorce, and wider grounds for both women and men to obtain divorce. In Iraq, divorce is unequal between men and women, and women's opportunities to obtain divorce are restricted to specific grounds, making it difficult for them to leave e.g., an abusive marriage. Furthermore, women's opportunities to impact the laws and enjoy their rights are limited more in Iraq than in Tunisia. The structures within the practice of Islamic law that impacts Iraq's society and laws do not give women much room to achieve change.

This study has demonstrated that women's rights are shaped by the social and cultural structures in their respective countries, rather than by the Islamic principles. Evidence from previous research and the history in both countries illustrates that Sharia principles and Islam can be interpreted in such a manner that results in the promotion of women's rights and be adapted to modern contexts. This is shown in Iraq for example, which has its PSL somewhat based on Sharia, but where grounds for divorce have been added and then later removed, reflecting the adaptability of Islamic law. It is also shown in Tunisia's divorce regulations that have kept evolving to align Sharia with women's rights. It is important to note that besides social and cultural structures, the interpretation of Sharia is also influenced by various environmental factors, including political and ideological dynamics, as proved by the cases of Iraq and Tunisia. This study further illustrates that family laws in Muslim countries usually are characterised by Sharia principles, while civil laws override Sharia in other domains. As the theories suggest and Tunisia's CPS exemplified, family laws should also be adapted to specific circumstances and not solely based on Sharia, similarly to civil laws where Sharia is usually not used to the same extent. Sharia in this case needs to be adapted according to its historic and modern contexts, in order for women to fully achieve their rights. This causes a need for new interpretations of Islamic sources from women's perspectives, which has been

proven successful in a Muslim country like Tunisia in terms of securing and strengthening women's rights, although challenges remain in achieving gender equality in the legal realm.

The variation in women's rights between the two countries is due to internal and external influences that have impacted their laws throughout history. Iraq's large and diverse population is composed of different ethnic and religious affiliations. The Muslim majority is sharply divided between Shia and Sunni, which has contributed to the population following different Islamic schools of law. Conversely, Tunisia has a smaller and more homogenous population consisting of 98% Sunni Muslims who almost all follow the Maliki school, which happens to be the most flexible among the different Islamic schools of law. Despite the similar changes that both countries have undergone, these changes have resulted in different outcomes. Moreover, secularism came to dominate in both countries but the Baath regime had a tighter grip on its population than Bourghiba's and Ben Ali's regimes, who were influenced by secular grassroot movements fighting for women's rights and labour rights. Both countries eventually transitioned into democratic rule. However, a top-down approach was adopted to democracy in Iraq (in line with the US invasion), while efforts in Tunisia were driven and led by its population, from a grassroots level, during the Jasmine revolution. This has resulted in Iraq being a restrictive political environment for women that is heavily influenced by religious clerics and different, conservative interpretations of Islamic law. Tunisia, on the other hand, has Islamist parties in Parliament but is more flexible regarding mixing secularism with Islamic principles, in a way that better reflects the will of the people and that protects the rights of women.

## **9.1 Further research**

Areas for further research in this field include conducting a comparative study between Islamic countries, like Iraq and Tunisia, and European countries, to explore the differences between divorce based on Sharia principles and divorce based on secular principles or principles of other religions. Additionally, investigating the reasons behind the increasing divorce rates in countries like Iraq, despite women's restricted divorce rights, would provide valuable insights. Exploring the factors influencing women's decisions to seek divorce is another area of interest. Furthermore, it would be interesting to delve into other aspects of family law in Iraq and Tunisia, to conduct similar comparisons regarding other issues concerning women's rights, such as inheritance rights where women in Tunisia face

inequality. As outlined in the study's delimitations, it would also be of interest to conduct research that captures the real-life experiences of women in relation to divorce laws and other aspects of family law in these countries.

## 10. Bibliography

### Litterature

- Ali, K. (2006). *Sexual Ethics and Islam - Feminist Reflections on Qu'ran, Hadith and Jurisprudence*. Oneworld Publications.
- Anderson, L. D., & Anderson, E. W. (2014). *An Atlas of Middle Eastern Affairs*. (2nd ed.) Routledge.
- Bassiouni, M. (2013). *The Shari'a and Islamic Criminal Justice in Time of War and Peace*. Cambridge: Cambridge University Press.
- Bryman, A., & Bell, E. (2011). *Business Research Methods* (3rd ed.). Oxford University Press.
- Bergström, G., & Boréus, K. (2012). *Textens mening och makt: metodbok i samhällsvetenskaplig text-och diskursanalys*. (3rd ed.) Lund: Studentlitteratur
- Charrad, Mounira. (2001). *States and Women's Rights: The making of Postcolonial Tunisia, Algeria, and Morocco*. University of California.
- Efrati, N. (2012). *Women in Iraq: Past Meets Present*. Columbia University Press.
- Esaiasson, P., Gilljam, M., Oscarsson, H., Towns, A., & Wängnerud, L. (2013). *Metodpraktikan* (5th ed.). Wolters Kluwer Sverige AB.
- Esposito, L.J. (2001) *Women in Muslim Family Law*. (2nd ed.). Syracuse University Press.
- Fazlhashemi, M. (2011). *Tro eller förnuft i politisk islam*. Norstedts Förlagsgrupp AB.
- Fazlhashemi, M. (2011). *Vems islam - de kontrastrika muslimerna*. Studentlitteratur AB, Lund.
- Hallaq, B., W. (2009). *An introduction to Islamic law*. Cambridge University Press.
- Hägerstam, F. (2016). *Det här är vår tid: fyra kvinnor efter revolutionen i Tunisien*. Natur Kultur Allmänlitteratur.
- Marr, P. (2001). *The Modern History of Iraq*. Westview Press.
- Mir-Hosseini, Z. (2003). *Islam and Gender: The Religious Debate in Contemporary Iran*. London: I.B. Tauris.



Olsson, S., & Sorgenfrei, S., (2021). *Islam - en religionsvetenskaplig introduktion* (2nd ed.). Liber AB.

Perkins, J., K. (2004). *A history of modern Tunisia*. Cambridge University Press.

Rohe, M. (2015). *Islamic Law in Past and Present*. Themes in Islamic Studies, 8. Available at [https://www.researchgate.net/publication/317448502\\_Islamic\\_law\\_in\\_past\\_and\\_present\\_by\\_Rohe\\_M](https://www.researchgate.net/publication/317448502_Islamic_law_in_past_and_present_by_Rohe_M) (Accessed 9 Mars 2023).

Voorhoeve, Maaïke. (2014). *Gender and divorce law in North Africa: Sharia, customs and the personal status code in Tunisia*. I.B. Tauris

Wadud, A. (2006) *Inside the Gender Jihad - Women's Reform in Islam*. Oneworld Publications.

Welchman, Lynn. (2007). *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*. Amsterdam University Press. Available at: <https://www.jstor.org/stable/j.ctt46mwz6>

Yin, K. R. (2009). *Case Study Research Design and Methods*. (4th ed). Applied Social Research Methods Series Vol. 5. SAGE Publications, Inc.

## **Book chapters**

Cole, Juan. (2009). "Struggles over Personal Status and Family Law in Post-Baathist Iraq". Cuno, K. M., & Desai, M. *Family, Gender, & Law in a Globalizing Middle East & South Asia*. Syracuse University Press. Chapter 6 pp. 105-125

Lagervall, R. (2021). "Modern politisk sunniislam". Olsson, S., & Sorgenfrei, S., (2021). *Islam - en religionsvetenskaplig introduktion* (2nd ed.). Liber AB.

Mashour, A. (2005). "The Dynamics of Gender Justice in the Muslim Family". *Women Living Under Muslim Laws*.

## **Articles/Papers**

Angrist, P. M. (2013). "Understanding the Success of Mass Civic Protest in Tunisia". *Middle East Journal*. 67 (4), 547-564. Available at <https://www.jstor.org/stable/43698075> (Accessed: 5 April 2023).

D'Almeida Massan, AWID (2010). "Marriage and Divorce in Tunisia: Women's Rights". *Association for Women's Rights in Development*. Available at: <https://www.awid.org/news-and-analysis/marriage-and-divorce-tunisia-womens-rights> (Accessed: 25 February 2023).

Efrati, Noga. (2005). "Negotiating Rights in Iraq: Women and the Personal Status Law", *Middle East Journal*, 59(4):577-595. Available at: <https://www.jstor.org/stable/4330185> (Accessed: 12 February 2023).

Joseph, S. (1996). "Gender and Citizenship in Middle Eastern States". *Middle East Reports*. No. 198, 4-10. Available at: <https://www.jstor.org/stable/3012867> (Accessed: 30 April 2023).

Khedher, Rayed. (2017) "Tracing the Development of the Tunisian 1956 Code of Personal Status". *Journal of International Women's Studies*. 18(4), 30-37. Available at: <https://vc.bridgew.edu/jiws/vol18/iss4/3> (Accessed: 29 April 2023).

Mashour, A. (2005). "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". *Human Rights Quarterly*, 27(2), 562-596. Available at: <https://www.jstor.org/stable/20069797> (Accessed: 17 Mars 2023).

Omri, Mohamed-Salah. (2015). "No Ordinary Union: UGTT and the Tunisian Path to Revolution and Transition", *International Journal on Strikes and Social Conflicts*. 1 (7):15-29. Available at: <https://www.researchgate.net/publication/310702858> (Accessed: 9 May 2023).

Sonneveld, Nadia, (2015). "Introduction: Shari'a in Revolution? A Comparative Overview of Pre- and Post-Revolutionary Developments in Shari'a-Based Family Law Legislation in Egypt, Indonesia, Iran, and Tunisia", *New Middle Eastern Studies* 5. Available at: <http://www.brismes.ac.uk/nmes/archives/1407> (Accessed: 17 Mars 2023).

Yacoubi, I. (2016). "Sovereignty from Below: State Feminism and Politics of Women Against Women in Tunisia". *The Arab Studies Journal*, 24(1), 254-274. Available at: <https://www.jstor.org/stable/44746854> (Accessed: 13 April 2023).

Zaki, H.A. (2019). "Why did women's rights expand in post-revolutionary Tunisia?" (No.131). *Brandeis University, Crown Center for Middle East Studies*. Available at: <https://www.brandeis.edu/crown/publications/middle-east-briefs/pdfs/101-200/meb131.pdf> (Accessed: 5 April 2023).

## Digital Material

Al Sistani (2023). *The Official Website of the Office of His Eminence Al-Sayyid Ali Al-Husseini Al-Sistani*. <https://www.sistani.org/english/> (Accessed 16 Mars 2023).

Amnesty International (2023). *Iraq: Amnesty International Report*. Available at: <https://www.amnesty.org/en/location/middle-east-and-north-africa/iraq/report-iraq/> (Accessed: 13 may 2023)

Amnesty International (2023). *Tunisia: Amnesty International Report*. Available at: <https://www.amnesty.org/en/location/middle-east-and-north-africa/tunisia/report-tunisia/> (Accessed: 13 May 2023)

CIA (2023) *The World Factbook*. Available at: <https://www.cia.gov/the-world-factbook/countries/tunisia/> and <https://www.cia.gov/the-world-factbook/countries/iraq/>

Daraj Media (2023). *One third of marriages end in divorce or separation*. Available at: <https://daraj.media/en/89691/> (Accessed: 12 April 2023).

Freedom House. (2022). “Iraq.” *Freedom in the World 2022*. Available at: <https://freedomhouse.org/country/iraq/freedom-world/2022> (Accessed: 22 April 2023)

Freedom House. (2022). “Tunisia.” *Freedom in the World 2022*. Available at: <https://freedomhouse.org/country/tunisia> (Accessed: 22 April 2023)

Human Rights Watch (n.d.). *Women’s Rights: Iraq*. Available at: <https://www.hrw.org/legacy/backgrounder/wrd/iraq-women.htm> (Accessed: 16 Mars 2023).

Musawah. (2022). *Mapping Muslim Family Laws: Iraq*. Available at: <https://www.musawah.org/mapping-muslim-family-laws/?location=iq> (Accessed: 25 February 2023)

Musawah. (2022). *Mapping Muslim Family Laws: Tunisia*. Available at: <https://www.musawah.org/mapping-muslim-family-laws/?location=tn> (Accessed: 25 February 2023).

United Nations Development Programme, UNDP. (2018). *Gender Justice & The Law*. New York, NY: United Nations Development Programme. Available at: <https://www.unescwa.org/sites/default/files/inline-files/tunisia-adjusted.pdf> (Accessed: 12 February 2023).

UN Women (2023). *Country fact sheet: UN Women Data Hub* (no date) *Country Fact Sheet*. Available at: <https://data.unwomen.org/country/tunisia> (Accessed: 10 May 2023).

UN Women (2023). *Country fact sheet: UN Women Data Hub* (no date) *Country Fact Sheet*. Available at: <https://data.unwomen.org/country/iraq> (Accessed: 10 May 2023).

World Bank. (2021). Available at: <https://data.worldbank.org/country/iraq> and <https://data.worldbank.org/country/tunisia> (Accessed: 14 February 2023).

## Reports

Charrad, M. M. (2012). “Family Law Reforms in the Arab World: Tunisia and Morocco”. Report for *the United Nations Department of Economic and Social Affairs (UNDESA)*

*Division for Social Policy and Development Expert Group Meeting*, New York, 15-17 May 2012. Available at:

<https://www.un.org/esa/socdev/family/docs/egm12/PAPER-CHARRAD.pdf> (Accessed: 2 April 2023).

Goodrick, Delwyn (2014). *Comparative Case Studies: Methodological Briefs - Impact Evaluation No. 9, Methodological Briefs*, No. 9, Available at:

[https://www.unicef-irc.org/publications/pdf/brief\\_9\\_comparativecasestudies\\_eng.pdf](https://www.unicef-irc.org/publications/pdf/brief_9_comparativecasestudies_eng.pdf) (Accessed: 14 April 2023).

## **Laws**

Iraq (1959). *Personal Status Law*, Law No. 188, Divorce Section. Article 34-50.

Tunisia (1956). *Code of Personal Status. Divorce Section. Chapter 2,3,4. Article 29-36, 38-42.*