

The historical relevance of religion in the development of Omani legal system

Abdulkareem Azeez

Senior Lecturer, Faculty of Commercial Law, Modern College of Business and Science, Uganda

Abstract

The jurisprudential and historical development of Omani legal, political and socio-economic system has been substantially influenced by the religious belief of its ancestors. Notwithstanding the overbearing influence and domination of foreign invaders especially the Persians and Portuguese, the Sultanate of Oman has survived the religious influence of its invaders. This research is an attempt to provide a succinct history of Oman and how Islamic religion has influenced the legal landscape and system of the country. The scope of this research is limited to the examination of few Articles or provision in the Omani Constitution, Social Security Law and Labour Law in contradistinction with relevant provision from the primary source of Islamic law (Holy Quran and Hadiths) and draw a conclusion on how the religious history has contributed to the development of legal jurisprudence in Oman.

Keywords: historical, jurisprudential, Oman, socio-economic

Introduction

The Sultanate of Oman is located on the southeast coast of the Arabian Peninsula, bordering the United Arab Emirates (UAE) in the northwest, Saudi Arabia in the west and Yemen in the southwest. These land borders merge into the great desert of the Rub al-Khali, otherwise known as the Empty Quarter of the Arabian Peninsula ^[1]. Oman is the oldest independent state in the Arab world wherein in 751, Ibadi Muslims, a moderate branch of the kharijites established an imamate in Oman. Despite several interruptions from invaders, the Ibadi imamate survived until the mid-20th century.

Oman is currently the only country with a majority Ibadi population. The philosophy of Ibadism has a reputation for its "moderate conservatism" with one of its distinguishing features being the choice of its ruler by communal consensus and consent rather than pure hereditary ^[2]. The introduction of Ibadism vested power in the Imam who is considered as both worldly and spiritual leader and he is nominated by the council of scholars ^[3]. The Imam's position is said to be confirmed when having gained the allegiance of the tribal sheikhs, received the bay'ah (oath of allegiance) from the public ^[4].

By the 18th century, the Omani Empire stretched from present day Oman down the east coast of Africa ^[5]. It is an Islamic country and virtually all non-Muslims residing in Oman are foreign workers. Non-Muslim religious communities include various groups of Jains, Buddhists, Zoroastrians, Sikhs, Jews, Hindus and Christians. For much of its history, most contact with Oman has been by sea. In the east Oman borders the Arabian Sea, the Gulf of Oman and in the north, the Arabian Gulf. Archaeological evidence has suggested an industrial presence around Aybut Al Auwal dating to around 100,000 years ago. Oman is also the location of one of the world's earliest inhabited cities at Al Wattih, which dates back 10,000 years. Until the coming of Islam in the 7th century, Oman was dominated by the Assyrians, Babylonians and Persians ^[6]. Each sought to use Oman's strategic location for

trade with the wider world. Oman's strategic coastal location linked its early fortunes to the sea and to maritime trade. Communities along the coast and in the interior, however, developed at a different pace, and balancing their competing interests was one of the challenges of governing the Sultanate ^[7]. Like Yemen to the southwest, the territory of Oman has always benefited from its fine trading position at the southern extremity of the Arabian Peninsula. From here merchants, without needing to sail far from land, could make easy contact with Persia to the north, India to the east and Africa to the south for purposes such as trading, tourism, etc.

Sumerian tablets refer to a country called Magan and Akkadian, a name which links Oman's ancient copper resources. Over centuries, tribes from the west settled in Oman, making a living by fishing, farming, herding or stock breeding, and many present-day Omani families trace their ancestral roots to other parts of Arabia. Archaeological evidence suggests that trading, farming and fishing existed in Oman as far back as the 4th millennium BC ^[8]. In the middle ages, Oman was a thriving centre of commercial activity with a flourishing trade in copper and frankincense ^[9]. Between the 7th and the 15th centuries, Oman's maritime trade flourished and its dominance on sea trade routes was extended to Africa and as far as China to the East and Europe to the West. Due to its key position on lucrative trade routes, the Portuguese conquered Oman in 1507. Oman was reconquered in 1650 by Sultan Bin Saif Al Yarubi, who established colonial possessions in East Africa ^[10]. In the first half of the 19th century, under Sayyid Said Bin Sultan's rule, its maritime trade grew, and diplomatic relations were established with several countries. Historically, Muscat was the principal trading port of the Persian Gulf region. Muscat was also among the most important trading ports of the Indian Ocean, hence the capital city of Oman.

In 2010, the United Nations Development Programme ranked Oman as the most improved nation in the world in terms of development during the preceding 40

years^[11]. The Sultanate of Oman is the second-largest state in the GCC and possesses a wider range of natural resources than most other Gulf nations. Oman plays a leading role in the Arabian peninsulas external trade, and the private sector is driving the continuing development of the country. The Sultanate of Oman is using its resources to spur growth and expand the economy. Many development programs and policies were put in place to increase production, free the market, keep products competitive, and make the services sector an important part of the economy. A significant portion of its economy involves tourism and trade of fish, dates and certain agricultural produce^[12]. With these Oman has been able to take care of its citizens with a population of nearly 5 million and about one third of the workforce being expatriates^[13].

In 1970, when His Majesty Sultan Qaboos bin Said assumed power, it was a turning point in the history and development of Oman. Ever since this 'renaissance', the Sultan and his government guided by the provisions of Islamic law endeavored and worked hard to promote economic development and stability for the country's rapidly growing population, undertaking a wide range of political reforms and wide-ranging modernization programmes, funded largely by oil revenues and supported by international partners^[14]. Most of its legislation contained specific provision from the primary and secondary sources of Islamic law with the letter and spirit of those laws in conformity with the teachings of the Quran and Hadith. This research therefore will examine the influence of Quran and Hadith in the legislative framework of Oman using the Constitution, Social Security Law and Labor law as case study.

Omani Constitution

In 1996, His Majesty, the late Sultan Qaboos bin Said announced the establishment of the Basic Law of the State, the country's first written constitution, which outlined a new system of government that included a bicameral legislature, the Council of Oman. In addition, it clarified the succession process and extended the right to serve to all Omani women. The Council of Oman consists of the Consultative Council as its lower chamber and, as the upper chamber, a new Council of State (Majlis al-Dawlah)^[15]. The following are some of the unique provisions in the Constitution influenced by the country's believe in Allah and the teachings of Islamic law.

Article one to three of the constitution are to the effect that the Sultanate of Oman is an Arab, Islamic, Independent State with full sovereignty and Muscat is its Capital. That the religion of the State is Islam and Islamic Sharia shall be the basis for legislation and that the official language of the State is the Arabic language which is the language of the Quran. It is important to note the constitutional condition failing which the Sultan cannot exercise powers. Article seven provides that *"The Sultan, before exercising his powers, shall, in a joint session of Majlis Oman and the Defence Council, take the following oath: "I swear by Allah the Almighty to honour the Basic Statute of the State and the Laws and to fully safeguard the interests of the Citizens and their freedom and to preserve the independence of the Country and its territorial integrity"*. The most striking part of the above provision is the content of the oath is swearing by Allah which is in accordance with the hadith of the prophet^[16] and making a pledge to fully safeguard the

interests of the Citizens and their freedom and to preserve the independence of the Country and its territorial integrity which are some of the qualities as explained in the Quran^[17].

Similarly, the provisions of Articles 12, clause 3-5 provide *"The family is the basis of the society and the Law regulates the means for protecting it, preserving its legitimate entity, strengthening its ties and values, safeguarding its members and providing suitable conditions to develop their potential and capabilities. The State guarantees aid for the Citizen and his family in cases of emergency, sickness, disability, and old age according to the social security scheme. The State shall work for the solidarity of the Society in bearing the burdens resulting from national disasters and catastrophes. The State is responsible for public health and the means of prevention and treatment of diseases and epidemics. The State endeavors to provide healthcare for every Citizen and encourages the establishment of private hospitals, polyclinics and medical institutions to be under its supervision and in accordance with regulations determined by the Law. The State also works for the conservation of the environment, its protection, and the prevention of pollution"*^[18].

Furthermore, Article 13 clause 1-3 stipulate that *"Education is a cornerstone for the progress of the Society which the State fosters and endeavors to disseminate and make accessible to all. • Education aims to raise and develop the general cultural standard, promote scientific thought, kindle the spirit of research, respond to the requirements of economic and social plans, and build a generation that is physically and morally strong, which takes pride in its Nation, Country, and heritage and preserves its achievements. • The State shall provide public education, work to combat illiteracy, and encourage the establishment of private schools and institutes under its supervision in accordance with the provisions of the Law"*. This provision finds its root in the first verse of the Quran that was revealed^[19] which emphasizes education and the hadith of the Prophet explaining that seeking for knowledge is compulsory for both Muslim male and female^[20].

Oman Social Security Law

The Oman social security law was promulgated via the Royal decree 72 of 1991. The law aims at providing financial security against old age, disability, death or occupational or industrial injury and disease^[21], thereby ensuring a social stability for the insured and their dependents in case of any of the aforementioned conditions. Whereas, the law only applies to Omani nationals employed in the Sultanate of Oman, similar provision exists to take care of expatriate worker. Some of the exceptional provision in the law are Articles 19, 20 and 51

Article 19 is to the effect that employers who have a pension scheme at the time this Law comes into effect should notify the Authority with a complete statement giving the terms of this scheme and the privileges fixed therein for the employees. If it is clear to the Authority that the system as managed by the Owner offers better privileges than those offered by the Authority, the Minister shall issue a Decision, in accordance with the Administrative Council's recommendation, excluding the Owner from having to implement the provisions of the Law. The Decision shall include the rules required to supervise that scheme and review its accounts on a regular basis to ensure that it covers

the liabilities consequent thereupon. The provision shows the sincerity of the government in providing for its citizens and equally demonstrate the willingness of the leaders to sacrifice the provision of Article 19 for any existing practices considered better.

Article 20 is unique in the sense that it provides for the percentage an employer, employee and the State will contribute to the social security funds. That the employer pay to the Authority a sum amounting to 8% of the Insured's monthly earnings; the Insured or employee must pay a sum amounting to 5% of his monthly earnings and the amount which the Public Treasury is obliged to pay amounting to 5% of the monthly earnings of the Insured, payable to the Authority on the first of the month following the date the payment was due. What is unique is the willingness of the Government to contribute five percent for every citizen. Such attempt is in accordance with Article 7 of the Constitution, 1996 (as amended) and with the dictates of Islamic law.

Article 51 is to the effect that if the person receiving the pension dies, the beneficiaries shall be in the following order with their respective shares: Sons and daughters sharing equally half the allowance due; widows or widower with the proportion equals to a quarter of the allowance due; the father, mother, brothers and sisters sharing a quarter of the allowance due and shall be divided equally if there be more than one. This provision is directly lifted from the Quran ^[22] save for the parties sharing equally.

Oman Labor Law

Pursuant to the enactment of Royal Decree 35 of 2003, there exist a law aim at enhancing and protecting the interest of employees and regulate the relationship between employers and employees in Oman. Of utmost importance in the law are Articles 3, 6, 12, 80, 81 and 84 respectively.

Article 3 provides for the supremacy of the law with an exception that in the event of any existing conditions which are considered more favorable to the employee according to the laws, regulations and decisions in force on the date this law comes into force shall be applicable. This provision is in accordance with Islamic teachings that a Muslim should acknowledge the truth wherever he sees it and must strive for what is always best ^[23]. Such provision depicts sincerity of purpose, acknowledge the possibility of an existing labor practices being better than what is provided in the new law and allows the employers to ignore the provisions of the law and continue with the existing practices. Similar provision exist under Article 6 where the law provides that an employer may establish schemes by which his employees acquire benefits more generous than those awarded by this law, or may provide his employee with other benefits or may enter into agreements with them the conditions of which are more generous than those provided for in this law. If a condition in this law contradicts Oman Labour Law with any of the conditions in such schemes or agreements, the condition, which is more generous to the employee, shall be applicable.

Article 12 is unique because it provides a platform for any unemployed Omani to access the relevant Ministry and submit their academic documents and qualifications. Thereafter the line Ministry is expected to receive employers information about vacant jobs, occupations and conditions required for their filling; nominate employees to jobs and occupations if they satisfy the required conditions

of them; give advice and assistance to applicants in respect of vocational training and guidance in order to facilitate their registration for vacant jobs and occupations; any other matters to be specified by the Minister. Nominations of this line Ministry shall be binding on employers except in respect of some activities or regions to be specified by a decision from the Minister ^[24]. Making the nomination or recommendation of the Ministry binding shows the level of seriousness and commitment of the government in providing jobs for its citizens.

Articles 80 to 84 make special protection for women. The provisions reiterate the unique attributes of women as the backbone of every family and the need for them to receive special attention. That a woman should not be employed to work between 6:00am and 6:00pm. The logic behind this provision in my view is to protect the family. 6:00am is too early for a woman who must take care of the children and the husband. Ensure the kids are fed and prepared for school. While 6:00pm in the evening is late because she is expected to go back home and prepare dinner for the family, catch up with the kids and assist them with their assignment. Such provisions are in line with the position of women in Islam and that explains why Allah revealed a complete chapter names after women ^[25].

Similarly, an employer is not permitted to dismiss a female employee for being absent due to sickness, which will be proved by a medical certificate to be attributable to pregnancy or delivery, and that she cannot resume her work, provided however that such a period of absence shall not in total exceed six months ^[26]. A female employee is allowed under the law in exceptional cases such as pregnancy or delivery to be away from work for a maximum period of half a year with the protection that her employer cannot dismiss her. While this may sound unfavorable to an employer, such provision is understandable against the backdrop of protecting the family.

In conclusion, the role and significance of history in the legal framework of a country cannot be underestimated. It provides a vivid account of what transpired prior to the enactment and how past experiences are used to shape the present while providing for the future. It serves as a learning platform for the younger generation to understand some of the reasons why certain provisions are contained in the law and the need to sustain same without condemning their forefathers unknowingly. It equally shows how far a country has come, the situation of things back then, what was done to address same and the level of thinking and understanding of the then leaders. Most importantly, it relates the dream, vision, mission and aspirations of the forefathers to the present and future generations. Therefore, the understanding of Islamic law as a way of life has substantially shaped and influence the legal and policy framework in Oman. It has provided basis and justifications for certain provisions in the law which are only unique to Oman or any country with similar history.

References

1. A Fellow at the African Institute for Leadership & Good Governance, Senior Lecturer, Faculty of Commercial Law, Modern College of Business and Science, Oman. He is the immediate Head of Department, Public & Comparative Law, School of Law, Kampala International University, Kampala-Uganda. Tel: +968- 7119 7523 Email:

- Azeez.Abdulkareem@mcbs.edu.om
abdulkareemazeez@yahoo.com
2. Majid Al-Busafi "Oman: An Emerging Sport Nation, History & Future Direction" International Journal of Sport Studies, 2012, 2(5). See also <https://en.wikipedia.org/wiki/Oman>
 3. Donald Hawley "Oman" Jubilee Edition @ page 201.
 4. A Country Study of Oman: Government and Politics, section: Historical Patterns of Governance. United States Library of Congree, 1993.
 5. The Imamate of Oman Faction. Available at www.honga.net
 6. Zanzibar in Tanzania
 7. RAF Museum "History of Oman available at <https://www.rafmuseum.org.uk/research/online-exhibitions/an-enduring-relationship-a-history-of-friendship-between-the-royal-air-force-and-the-royal-air-force-of-oman/a-history-of-oman.aspx>
 8. Bayliss Associates Property Limited "Business Guide to Arab Gulf" Council for Australia Ara Relation. See also <https://dfat.gov.au/about-us/publications/Documents/business-guide-oman.rtf>
 9. Mary Sophie "Neolithic Material Cultures of Oman and the Gulf Seashores from 5500-4500 BCE" Arabian Archeology and Epigraphy, 2010.
 10. <https://extra.timesofoman.com/creative/a-history-of-trade-in-oman/index.html>
 11. History of Oman. See <http://www.historyworld.net/wrldhis/plaintexthistories.asp?historyid=ad54>
 12. "Five Arab states among top leaders in long-term development gains". Hdr.undp.org. 4 November 2010.
 13. Doing Business in Oman, Ministry Van Buitenlandse Zaken, 2017. See also Davis Kallukaran, Doing Business in Oman, Page 5 www.crowe.om
 14. See <https://www.meed.com/employment-law-in-oman/> around 44% of Oman's population are expatriates. See also <https://www.gov.uk/government/publications/exporting-to-oman/doing-business-in-oman-oman-trade-and-export-guide>
 15. Doing Business in Oman, Ministry Van Buitenlandse Zaken, 2017.
 16. ¹ Petterson J.E & Jill Ann Cryster "Oman" Encyclopedia Britannica Jan 24, 2020. See also Article 6 of the Constitution 1996 (As Amended)
 17. Sayyiduna Abd Allah ibn Umar (Allah be pleased with him) narrates that the Messenger of Allah (Allah bless him & give him peace) said: "He who takes an Oath, must not take an oath but by Allah." (Sahih Muslim, no. 1646)
 18. Quran 4V135 and Quran 5 V 8
 19. Several provisions of the Quran discuss Women and the role of a family to the success of the society
 20. Suratul Alaq. Quran 96 V 1
 21. Sunan Ibn Majah, 224
 22. Article 1 of the Social Security Law
 23. Quran 4 V 11
 24. Quran 11 V 112
 25. Article 13 of the Oman Labor Law
 26. Suratul Nisa. Quran 4
 27. Article 84 of the Labor Law