

## FEMALE AWARENESS IN THE CRIME OF ADULTERY: DIFFERENCES BETWEEN THE SHARIA AND ARAB GULF STATE LAWS

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### Abstract

*This study examines the differences between the criteria used in Islamic Sharia and the Arab Gulf states' laws to determine the age of women's criminal responsibility and awareness of the crime of adultery, while highlighting how such variations affect international cooperation among these countries to combat adultery. Accordingly, we adopt the comparative-analytical approach to examine the legislative texts of the Gulf Cooperation Council countries and the Sharia. The Sharia is clear on its stance wherein awareness is determined either by a physiological criterion or through a mathematical standard for both men and women. Some have adopted the Islamic rules, while others, their own rules, leading to a divergence. Consequently, a woman can be criminally responsible in one country while being considered a victim in another. These differences in the legal requirements for female awareness may hinder the extradition and mutual legal assistance required to address adultery offences in Gulf Arab states.*

**Keywords:** *adultery; Sharia; female awareness; Gulf Arab states; comparative analysis.*

Before the present-day Gulf Arab states were established in their current form per the concepts of international law, they have been connected by many ties amongst their people. Through these links, these states have formed close relationships at the social, cultural, religious, and economic levels, leading to the cementing of such ties in a political form, that is, the Gulf Cooperation Council (GCC) in 1981. The GCC aims to achieve high integration and development in all areas of state and societies. Article 3 of the Charter of the GCC refers to the cooperation and integration among the members across various levels and areas, including the legislative and administrative affairs, which would also help strengthen the interdependence of GCC countries' internal laws.

These states share almost identical cultural, social, and religious ties; as such, these similarities have been reflected in the philosophy of their national legislations in the creation of internal laws, specifically regarding their system of values and interests. Consequently, the contents of these internal laws have converged, particularly regarding the Penal Code. Sexual crimes are at the forefront of this convergence, with two main considerations. The first is the Gulf Arab states' adherence to religious texts that prohibit sexual intercourse outside marriage. The second is the regulation of women's presence in public in Gulf societies and its association with social concepts such as innocence and purity. These considerations have been commonly observed in the criminal remedies for adultery crimes in the penal laws of these countries.

Right after its establishment, the GCC, sought to bring its penal laws into practice. However, adultery was already considered a criminal offence in the penal laws of the member states, even before the Council was established. The Gulf Arab states started establishing their own penal codes since the end of the 1950s, as can be seen with Bahrain's Penal Code of 1955, which was repealed by the subsequent Penal Code of 1976; the Kuwaiti Penal Code of 1960; and the Federal Penal Code of the United Arab Emirates (UAE) of 1987. The UAE Penal Code and the Omani Penal Code of 1974 were repealed by the current Penal Code of 2018, and the Qatari Penal Code of 1971 was

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repealed by the Penal Code of 2004. Saudi Arabia also adopted the 1902 Islamic law, as established in the Qur'an, Sunnah, and the opinions of the jurists.

All these penal laws contain direct provisions that criminalise adultery between men and women. Nevertheless, this legislative convergence that stemmed from the proximity of the community culture among the Gulf Arab states, could not be fully practiced owing to the following reasons.

First, the basis of the legislative system of the Gulf Arab states varies, as some of these countries (e.g., Saudi Arabia) strictly follow the Sharia, while other states (the UAE and Qatar) may have their own legal systems but may still follow definitions and punishments of the Islamic law, as in the case of adultery. By contrast, Kuwait, Bahrain, and Oman's stance on adultery is not at all linked to Islamic law.

Second, because of the difference in the countries' legislative systems, the concept of adultery in the penal laws of the Gulf Arab states also varies. There is a fundamental difference in the legal basis of the penal laws in the Gulf Arab states, whereby adultery, is more broadly defined in Islamic laws than in positive laws. Islamic law includes all sexual contact between men and women. By contrast, adultery in positive laws requires the offender (male or female) to be in a marital relationship, which can be persecuted by a different punishment category from crimes of similar weightage in the Gulf Arab countries.

Third, the minimum age at which criminal responsibility for adultery can be assigned for women differs among the Gulf Arab states. Countries that have adopted the Islamic law in their treatment of adultery consider physiological puberty while determining criminal responsibility, increasing the possibility of prosecuting the offender criminally. Meanwhile, the states that have adopted positive laws consider the age of the accused during criminal prosecution. This difference in approach has led to a discrepancy between the adultery laws between different countries. That is a woman can be held criminally responsible in one country but deemed not responsible or even a victim in another country if puberty and age requirements do not coincide. This discrepancy can erect legal barriers for international cooperation among Arab Gulf states.

Some Gulf Arab states have a distinct criminal treatment for women accused in sexual crimes, including adultery. For example, a different age could be set, crossing which a woman is considered responsible for her sexual behaviour. This approach has been adopted in the laws of Kuwait and Bahrain; while criminal responsibility is set at the age of 18, adultery laws do not consider the consent of a woman who has not reached the age of 21. The same applies to the laws of the UAE, Qatar, Oman, and Saudi Arabia, which do not consider women's age in adultery crimes but follow mixed standards between Sharia and other laws. Consequently, the achievement of symmetry and convergence in the penal legislation of the Gulf Arab states is hindered. Given this context, we highlight three major studies in the literature discussing the discrepancy in the penal legislation of different Gulf Arab countries. The first study compared the general differences between the penal code and Islamic law without delving deeply into adultery and sexual crimes. [1] The second study dealt with the relationship between the Kuwaiti penal law and Islamic law regarding the crime of adultery without referring to the difference in their positions on the issue of female perception during the crime and differences with other Gulf countries legislations. [2] The third study dealt with the issue of adultery from the perspective that the treatment of this crime in the country's penal code overlaps with that of other sexual crimes, but without considering the issue

of female perception or referring to the position of other Gulf countries. [3] However, not a single study has addressed the issue of female awareness in adultery. Thus, this study contributes to the literature by filling the gap in knowledge on women's awareness in the crime of adultery and the differences between the Sharia law and Arab countries' penal codes.

By addressing the aforementioned gap in the literature, this study answers questions that have not previously been answered in jurisprudence, whether Arab or Islamic or others and, through its findings, hopes to offer the GCC some guidelines for future legislative amendments and unified solutions for this issue. The study's findings would also help understand the dimensions involved in adopting an Islamic legislative rule within the context of positive laws.

Accordingly, we adopt a comparative analytical approach to highlight the difference in women's age for criminal responsibility in adultery crimes between Islamic law and the laws of the Gulf Arab states, to investigate the rapprochement sought between the GCC countries, and the extent to which these countries converge with respect to their internal laws. Such an investigation requires us to look into the age of criminal responsibility for women in adultery crimes under Islamic laws and under the positive laws of the Gulf Arab states.

## **I. FACTORS FOR DETERMINING PUNISHMENT FOR WOMEN IN ADULTERY CASES IN ISLAMIC LAW**

Islamic Jurisprudence provides the following conditions for defining the limits of adultery: (1) engaging in penetrative sex and other sexual acts outside of marriage, (2) the persons involved must have reached puberty, (3) the person involved must have been aware of the prohibitions against adultery while engaging in the act, and (4) the person is guilty unless there is adequate testimony proving otherwise. [4] We focus on the second condition, which is based on puberty and reason (mental capacity), from which it follows that the laws of adultery will not be imposed on children and insane people. The Messenger of Allah, peace and blessings be upon him, said, "The responsibility is lifted from three people: a sleeping person until he awakens, a child until he becomes an adult, and an insane person until he regains his sanity" [5].

Generally, puberty considered as the beginning of adolescence. However, in Islam, it is a time when boys and girls attain maturity and assume complete responsibility for their actions as adults. Puberty is marked by signs that are apparent and natural. In Islamic law, the common signs for boys and girls in their respective order are wet dreams, germination of pubic hair, puberty. [6] In addition to those common signs, girls' signs also include menstruation and pregnancy. Notably, these signs are definite (e.g., age) and not subject to differences, and some of them vary according to the differences among individuals (e.g., birth, germination, menstruation, and pregnancy). Puberty or maturity is considered to begin when someone starts experiencing nightfall, and this usually occurs no later than the age of 15. Moreover, if teenagers do not experience nightfall until this period, this is considered a birth defect. However, in terms of the legal and the penal system, 15 years is considered the threshold for assigning criminal responsibility in cases involving adultery, because late onset of puberty does not mean that the person is insane (in whose case the laws on adultery are not imposed). Accordingly, there are two main criteria for determining the age of puberty in Sharia law. The first is physiological and the second is based on age.

## 1. RELATIVE SIGNS OF PUBERTY: THE PHYSIOLOGICAL STANDARD

The relative puberty signs in jurisprudence are nocturnal emissions, germination of pubic hair, menstruation and pregnancy (for girls), with semen drop [7] being a sign of puberty for both boys and girls [8]. This point is supported by consensus among scholars such as Muhammad bin Daoud al-Dhaheri, Ibn al-Munther, and Ibn Qdamaa. [9] Pubic hair growth is also considered a sign of puberty based on the doctrines of Maliki and Hanbali, and a treatise about Abu Yusuf by Hanafi, which provides sayings from the ancestors of the sect chosen by Ibn Hazm, al-Shoukani, al-Shangiti, Ibn Baz, and Ibn Othimeen. [10]

The evidence on the signs of puberty mentioned above, first came from the **Sunnah** about Attia al-Qurazi, who said: "I was a prisoner of war, so whoever had hair in the pubic area was killed, and whoever had no hair was not killed." [11] Therefore, it may be inferred that pubic hair is a sign of puberty in Muslims and non-Muslims alike. Further, it is pointed out that the conclusion from this was an achievement against Muslims, specifically regarding Islam and age. [12] Second, germination of pubic hair is a process that is presented at the time of puberty and is associated with semen production. [13]

The next sign of puberty among girls is menstruation. If a teenage girl is menstruating, she is considered to have reached puberty and womanhood and thus, is answerable petitions as evidenced by the consensus conveyed by Muhammad bin Daoud al-Dhaheri, Ibn al-Munther, and Ibn Imama. [14] Finally, pregnancy is considered a sign of puberty in women as agreed in four jurisprudential doctrines: Hanafi, Maliki, Shafi and Hanbali because these doctrines provide proof of relegation. [15] From this stage, women are considered, according to the Islamic physiological criterion, fully aware and criminally responsible for the crime of adultery, regardless of their age. Given that the physiological criterion is subject to the structure of the human body and its hormonal and physiological aspects, the difference in criminal responsibility in the crime of adultery between women and men in the Islamic perspective is not surprising. This is because the signs of puberty differ between men and women and are more prominent in the case of women. This impacts the age of puberty and who is liable to criminal responsibility.

## 2. DETERMINING THE SIGNS OF PUBERTY (BASED ON AGE)

In Islamic law, if a boy or girl does not show signs of puberty by the age of 15, he or she will still be considered an adult when he or she becomes 15. This ruling is based on the age criteria, as per the doctrine of the Shafi'is, Hanbali and Hanafi leaders such as Abu Yusuf, and Mohammed. Abu Hanifa, may God rest his soul. provides evidence for this doctrine based on an incident of Ibn Omar, may God rest his soul, who said: "The Messenger of Allah inspected me on the battlefield on the Day of Uhud, and I was fourteen years old. He did not allow me (to take part in the fight). He inspected me on the Day of Khandaq-and I was fifteen years old, and he permitted me (to fight)." In agreement with this point, Ibn Qdamaa said: "As for age, puberty is [reached when someone is] 15 years old."

In Kitab ul Umm, al-Shafei said: "The boy does not have to perform Hajj until the boy reaches puberty, and the slave girl menstruates at any age they have reached, or they have completed fifteen years of age." In Kanz Aldaqayiq, he said: "The male[s] and the female[s] are 15 years old." This statement has the agreement of Abu Yusuf and Muhammad (may God bless them), al-Shafei as well as a novel about Abu Hanifa.

However, al-Maliki argued that puberty, when there are no other signs, is reached at 18 years of age. Khalil said in his abbreviation: "The boy or girl reaches 18, or wet dreams, and for girls the puberty signs are menstruating and pregnancy" In his other novel, Abu Hanifa argued that when there are no signs, puberty is reached when a male (female) is 18 (17) years old, as mentioned by the author.

It has been previously mentioned that those who have reached this age are considered reasonable and responsible for all the words and actions they commit. The wisdom in doing so, has been provided by al-Suyuti, who said:

The wisdom in declaring [them] responsible at the age of fifteen: It is the age of marriage, and the desires like lust, eating and other are increased in this age. The desires urge the person to commit sins and stop from good deeds, unless he controls himself and avoid[s] them. Wisdom gets complete and man has full strength in this age. So, according to God's wisdom he should be responsible and if he commits the crime with all his wisdom and strength he should be punished.

Thus, we conclude that the limit of puberty is the completion of 15 years, both for male and female individuals, based on the doctrine of Shafi and Hanbali, and the saying of Abu Yusuf and Muhammad bin al-Hassan from Hanafi texts, wherein, some of the ancestors were said to have chosen by Sanani, Showkani, Ibn Baz [16], and ibn Othimeen. [17] The evidence from the Sunnah, ibn Omar, may God bless them, is that the Messenger of God (peace be upon him) offered him on Sunday, the son of 14 years; he said, "He did not reward me and then he offered me the day of the trench, and I am fifteen years old, so he passed me." [5] Second, the influencing factor is in the fact that the mind is the "origin in the door." [7] Based on the mathematical standard in Islamic Sharia, it is arguable that a woman at the age of 15 is accountable for the crime of adultery, regardless of the appearance of the signs of puberty.

Based on Islamic rules, whichever criterion fits first, would lead to the consideration that the woman is fully aware of her actions and is thus responsible for the crime of adultery. On the one hand, this would make the standard flexible and vary from one female to another in terms of responsibility and awareness. On the other hand, the signs of puberty may appear before the age of 15.

## **II. ADULTERY IN THE CONTEXT OF ISLAMIC LAWS**

In contrast to the context of Islamic law, the Gulf Arab states did not follow a specific methodology to determine the age of responsibility of women accused of adultery. This situation can be attributed to the differences between these states regarding the sources of legislation governing the crime of adultery. Even in their internal laws, they are not clear in determining the age when a female is responsible for the crime of adultery. Some Gulf Arab states (e.g., Qatar and the UAE) apply the Islamic law on the crime of adultery. Other states (e.g., Kuwaiti and Bahrain) do not follow the Islamic law in dealing with the crime of adultery [18], while Oman takes the guidance of Islamic law's provisions without clearly or explicitly adopting them in the provisions against adultery in law no. 7. [19]

Although the laws of all the Gulf Arab states criminalise adultery and agree on the same punishment, their definitions of the term adultery vary. Therefore, there are both similarities and differences between sexual intercourse-related offenses in adultery in accordance with Islamic laws and that in accordance with positive laws (see Table 1 for a summarized list of differences). Consequently, this affects the determination of the required age of responsibility for women in adultery offenses in states that have adop-

ted positive laws, those that have adopted the Islamic law (subsection 1), and those that have introduced status texts for such crimes (subsection 2).

Table 1: Differences in female awareness in adultery cases between the laws of the Gulf countries and Islamic law

Country	Responsibility Criteria	Awareness Criteria	Awareness Signs
Kuwait	Awareness	Age Standard	<b>Adultery:</b> (15 years) <b>Other sexual offenses:</b> (21 years)
Bahrain	Awareness	Age Standard	<b>Adultery:</b> (21 years) <b>Other sexual offenses:</b> (21 years)
Qatar	Awareness	Adultery: signs of puberty Other sexual offenses: Age standard	<b>Adultery:</b> Signs of puberty or 15 years of age, whichever comes first. <b>Other sexual offenses:</b> (16 years)
United Arab Emirates	Awareness	Adultery: signs of puberty Other sexual offenses: Age standard	<b>Adultery:</b> Signs of puberty or 18 years of age, whichever comes first. <b>Other sexual offenses:</b> (14 years)
Oman	Awareness	Age Standard	<b>Adultery:</b> (15 years old) <b>Other sexual offenses:</b> (15 years)
Islamic law	Awareness	Age Standard/ signs of puberty	<b>All sexual offenses:</b> puberty by signs such as wet dreams, menstruation, pregnancy, germination, or reaching 15 years of age whichever comes first.

#### 1. WOMEN'S CRIMINAL RESPONSIBILITY AGE IN ADULTERY CASES: STATES ADOPTING ISLAMIC LAW PROVISIONS

The Qatari laws have adopted a dual methodology for determining women's age of criminal responsibility in sexual crimes. The first methodology relates to sexual intercourse crimes in which the age of 16 is set as the basis for differentiating crimes involving women's consent. The second methodology deals with crimes involving force or coercion, in which the consent of a female aged below 16 years is not considered. This is stipulated in Article 281 of Qatar's Penal Code No. 11 of 2004, which reads, "Anyone who has sex with a female that has reached the age of 16 without coercion, threat or trick,

shall be punishable with imprisonment up to seven years.” However, this provision limits punishment to men but not women because a female is considered a victim and not an offender. This conclusion is based on Article 282, which criminalizes incest and punishes any male who has sex with a female aged below 16 years. The second paragraph of the article says, “Punish female by the same punishment if she accepted to be subjected to Actus Reus, knowing that it is forbidden.”

The second legislative treatment is for adultery offences: Article (1) of the Qatari Penal Code stipulates that “The provisions of Islamic law apply in relation to the following offences if the accused or victim is Muslim: 1-Hudod offences relating to theft, robbery, adultery, libel, drinking and apostasy.” In this text, the term “Islamic law” has been used in a general sense, encompassing both sides of the crime: the conduct of the criminal and the applicable punishment. The provisions of Sharia (Islamic law) have been interpreted through the four doctrines of jurisprudence, which shed light on how to determine the age at which a female is considered criminally liable, as discussed in the first section. Qatari law has adopted in all its provisions the Islamic doctrine of Hanbali, stated through the text of Article III of Law No. 22 of 2006 on the Family Code. The law states that “In what is not contained in this law, it shall act under the provisions of the *Hanbali Law*, unless the court considers the introduction of others, for reasons indicated by the court” [emphasis added]. The Hanbali doctrine has several standards to determine female puberty, including physiological signs such as wet dreams, hair growth, menstruation, and pregnancy, or mathematical standards according to the age. Moreover, most jurists say that the Qatari law shall be in accordance with the doctrine of the Hanbali, setting the age of 15 as the age when women reach the stage of full legal responsibility. [1, p.298]

However, it seems that the Qatari judiciary is not in agreement with the Qatari law because based on Article 281, the Qatari judiciary views the approved age for female responsibility to be 16 years for crimes of sexual intercourse with consent [20]. Thus, the Qatari judiciary has excluded the female age from being subject to the provisions of Islamic law according to Article 1 of the Qatari Penal Code and applies the positive law treatment in accordance with the principle of *Tazir* crimes (crimes created by the ruler based on God’s delegation).

The same applies to the UAE’s Federal Penal Code No. 3 of 1987, where a specific age (i.e., 14 years) is stipulated to justify the consent of the perpetrator (female or male) of a sexual offence. Therefore, consent of those under the age of 14 is not considered and thus, having sex with them would constitute a crime of coercion or indecent assault.

As for adultery offences, the UAE Penal Code applies the provisions of Islamic law and its first article states that “The Islamic rules should apply to Hudod crimes, Tazir and Qusas crimes, and the Tazir crimes and its punishments are determined in accordance with the provisions of this law and other penal laws.” The Emirati law adopts the doctrine of Imam Malik, then the doctrine of Imam Ahmed, then Shafi and then Abu Hanifa, as stated in the third paragraph of Article II of the Federal Law No. 28 of 2005 in relation to personal status. Since Imam Malik’s doctrine is based upon the female responsibility according to the signs of puberty such as wet dreams, hair growth, menstruation, and pregnancy, he also identified a definite standard in the absence of such signs at the age of 18. Therefore, the UAE law establishes two criteria for female responsibility for adultery: either a physiological criterion of puberty or a mathematical

standard of 18 years of age according to Imam Malik's doctrine. The UAE judiciary confirms that the legislative standard is based upon the physiological criterion as an application of the Islamic law. [21]

## 2. WOMEN'S AGE IN THE CRIME OF ADULTERY: STATES NOT ADOPTING ISLAMIC LAW PROVISIONS

Contrary to the penal laws of Qatar and the UAE, the penal laws in Kuwait, Bahrain, and Oman are quite different with regard to determining women's age for sexual offences in general and in adultery in particular. The first of these differences is that the penal laws in Kuwait, Bahrain, and Oman have not adopted the physiological signs of puberty for punishment but rather follow a definitive and clear standard focusing solely based on age. However, some of these laws came about in a state of ambiguity that was reinforced by the differences between the jurisprudence and judiciary.

Kuwait's Penal Code No. 16 of 1960 deals with the age of women in sexual offences on two scales. First, the age criminal responsibility of a women considered in sexual intercourse offenses is set at 21 years, based on which, they can be held accountable as perpetrators both in the crime of sexual intercourse with consent (Article 194) or the crime of incest (Article 189). Second, in its general rules, Kuwaiti law considers the age of criminal responsibility to be set at the age of 18 years and establishes special criminal treatment for women based on age under the rules of civil liability by raising the age of responsibility for sexual offences to 21 years. [2, p.556]

As for adultery, which is used by Kuwaiti and Bahraini law to describe sexual intercourse amongst those in which at least one person is married, Kuwaiti law is more ambiguous in its article 195 of the Kuwaiti Penal Code, which states that "Every married person who has sex with a female that is not his/her wife, and is satisfied with this, and is caught in the act is punishable by imprisonment not exceeding five years and a fine of not more than three hundred and seventy-five dinars or one of these punishments." Notably, the Kuwaiti Penal Code, when establishing a woman's responsibility for the crime of adultery, did not indicate her age in the crime of sexual intercourse (among unmarried parties). This raises the question of whether a married woman who has not reached the age of 21 is responsible for the crime of adultery.

Adultery crimes in which the female was a minor has not been tried before the Kuwaiti judiciary except in rare sentences that considered the crime of adultery involving a minor female who had not reached the age of 21. Some jurists support the position adopted by the Kuwaiti Court of Cassation based on Article 195 of the Kuwaiti Penal Code, which does not mention the age of the woman unlike the law governing the crime of sexual intercourse with an adult female's consent that considers age responsibility. [3]

As per the Kuwaiti law, a woman below the age of 21 is not liable for the crime of adultery. In such cases, the legislator, based on article (197) of the Kuwaiti Penal Code, gives a victim's husband the right to suspend the proceedings in a case or suspend the execution of the sentence. Suspension of the execution of the final sentence also does not go through the provisions of article 194 when the Kuwaiti law does not allow the victim's husband to be prosecuted in accordance with another description of the act, namely, the crime of having sex with an adult female despite her consent. The law is explicit, as it limits the prohibition of the offence of an adult female to her consent if the victim's husband makes a waiver without article 188 addressing the position of a female



who is under 21 years old. This means that the law was made without envisaging the crime of adultery committed by a married female under the age of 21 that is in accordance with the provisions of the crime of adultery in Kuwaiti law. [23]

Bahrain's Penal Code No. 15 of 1976 does not differ from the Kuwaiti penal code, especially since Bahrain's previous penal code of 1955 is the historical source of Kuwait's penal code [28]. These penal codes have established the offence of adultery in accordance with article 316 and the law of consent, based on article 345 of the Penal Code. They do not specify the female's age for the crime of adultery, in contrast to situations that deal with the crime of position with consent, where the article stipulates that:

Anyone who has sexual intercourse with a female who has completed fourteen [years] and has not completed sixteen years with her consent shall be punished with imprisonment for a period not exceeding twenty years. Anyone who has sexual intercourse with a female who has completed sixteen years and has not completed twenty-one years with her consent shall be punished with imprisonment for a period not exceeding ten years.

Bahrain's penal code also does not criminalise sexual intercourse between adults aged above 21 years.

Regarding the crime of adultery, the first paragraph of article 316 of Bahrain's Penal Code stipulates that, "An adulterous husband [24] shall be punished with a maximum of two years' imprisonment" without specifying the age of both the female and the male. From the aforementioned article, it is unclear whether Bahrain's penal code assesses the responsibility of a 21-year-old woman for adultery? In fact, a female under the age of 21 is not considered for the crime of adultery according to article 345 on the position of consent. This article is used for the consent of women older than 16 but younger than 21 years, but this reliance is not for establishing responsibility for the crime. It is the criminal's responsibility as an actor in the crime to assess the punishment for the male perpetrator, which is referred by the Bahraini judiciary. This judiciary condemned a perpetrator in a crime of sexual activity of a female younger than 21 years of age without assessing her criminal responsibility, as the provisions of the Bahraini Penal Code - regarding women who have not reached this age and but were active participants in the crime of position - was not taken into account [25].

Since a woman under the age of 21 is not an actor in a crime of consent, she is accordingly not supposed to be responsible for the crime of adultery. Therefore, for the same reason, the Bahraini legislator (similar to the Kuwaiti legislator) does not provide completeness. How a woman under the age of 21 is perceived in any sexual intercourse does not change how the female nature is perceived because the legislator has created a definitive offence depending on age and not on personal experiences for both situations; in marriage or outside of it.

In Omani law, the treatment of a woman's age is different from that in the Omani Penal Code issued by Royal Decree No. 7/2018. It limits the wording of sexual intercourse offences carried out with consent with the word adultery as the title of Chapter 5 of section 5 of the Law in accordance with the provisions of articles 225 and 226. Article 225 stipulates that, "Every man and woman who committed the act of intercourse without having a proper marriage shall be punishable by a minimum of three months' imprisonment and not more than one year for any man and woman who committed the act of intercourse without having a legally valid marriage contract." Article 226

stipulates that, "Any married person who has sexually contacted other than his spouse shall be sentenced to at least one year's imprisonment and not more than three years' imprisonment. The partner is punishable by the same penalty." It is assumed that marriage will take hold unless otherwise proven.

The Omani law also does not specify a woman's age for accountability in both types of adultery, whether married or unmarried, which raises the question of the age at which she can be proven criminally liable. However, the Omani Penal Code has a provision regarding what is punishable by imprisonment for any person, without specifying the gender, if he or she is under the age of 15 in accordance with article 218, paragraph 3: "An act shall be punishable by *five to fifteen years' imprisonment*: 3: *anyone who has committed debauchery in a person under the age of 15 or who has a physical or mental deficiency, even if the act occurs without coercion, threat or trickery*" [Emphasis ours]. Accordingly, Oman's Penal Code has addressed the age of women during sexual intercourse from two perspectives:

-It does not consider the consent of a woman under the age of 15 in any sexual contact, and

- It does not specify the age for a woman to be held criminally responsible for any sexual contact with consent.

When referring to the rules for determining the criminal liability in the Omani Penal Code, we find that it has established a reduced penal liability regarding punishment for juveniles in accordance with different Sunni controls. The first one is for juveniles who have reached the age of 13 and have not completed the age of 15, where this age is considered to be the basis for inflicting a reduced sentence on the juvenile based on article 106 [26]. The second one is for juveniles who have reached the age of 15 and have not completed 18 years of age, where they are subject to a greater reduction of penalties than those based on article 107 [27]. Accordingly, the female is criminally responsible at the age of 13 in accordance with the general rules of the Omani Penal Code, but the Omani legislator does not consider the age for sexual offences, and a 15-year-old female is deemed accountable for adultery offences. Therefore, the female is responsible for the crime of adultery once she reaches the age of 15, but she is not punished for the full crime as long as she is not 18 years old.

### **III. CONCLUSIONS**

This study showed that the Arab Gulf states' cultural, social, and religious ties have led to the general framework for the criminal treatment of certain sexual offences in these countries. Moreover, relative convergence of the laws has been achieved but without conformity in the punitive policy concerning women's age of criminal responsibility in adultery cases, for several reasons. The first is the difference in the basis of the penal laws of these countries. The second is the mixed application of Sharia and positive law texts in some countries such as the UAE and Qatar. This has generated an inconsistent hybrid treatment, which is the main problem in determining the women's age in specific crimes. In addition, the age of criminal responsibility for female sexual offences has been raised in some countries such as Kuwait and the Kingdom of Bahrain, which increased the gap between them and other Gulf Arab states, hindering the convergence in their punitive policy regarding this crime.

Specifically, the different conceptions of the term "adultery" among the Arab Gulf states' laws and the discrepancy in the standard of awareness in the crime of adultery adopted in these countries impede international cooperation with respect to extradition

and judicial delegations. This stems from the fact that judicial cooperation can only take place when the state from which extradition or cooperation is required recognises a person as an “accused.” However, as mentioned above, the same woman may or may not be considered the “accused” between these countries, and the discrepancy in the standard of awareness may lead to recognising a female as criminally responsible in one country while being a victim in another. As a result, the consequences of judicial applications of legislative texts will be different from one state to another state and creating a kind of instability regarding legal positions and an escalation of disputes among the GCC countries regarding cases of extradition and judicial delegations.

Undoubtedly, this study has limited its scope to the issue of women's awareness in adultery crime, but the reality proves that many other differences at the level of criminal policy in other legal texts (crimes) need future and comprehensive studies to find integrated solutions to the problem of incompatibility. Consequently, without reconciling this issue, international cooperation between Arab Gulf states regarding the crime of adultery is likely to fail

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4. The term “suspicion” refers to the situation in which the matter is in the circle of, and there is no certainty in it.
5. M.A. Bukhari, *Sahih al-Bukhari*, Dar Toq Alnjaat: Syria, 2001. p. 533.
6. Puberty is the time in life when a boy or girl becomes sexually mature. It is a process that usually happens between ages 10 and 14 for girls and ages 12 and 16 for boys. It causes physical changes, and affects boys and girls differently.
7. Semen drop while sleeping means to drop semen in a dream, and in his judgment, to drop in vigilance, whether by intercourse or otherwise.
8. A.A. al-Kesaniee, *Badea al-Snaaea*, Dar Al-Kotob al-Elmia: Lebanon, 1986, p. 435.
9. D. Al-Dhaheri, 2004; M.I. Al-Munther, *Al-Egmaa*, Dar Al- Muslim Publishers: Saudi Arabia, 2004, p. 411; M.I. Qdamaa, *Al Mognee*, Cairo Library Publishers, 1968, p. 312.
10. Qdamaa, *supra* note 8, p. 313–314; M.I. Abedin, *Hashit Ibin Abedin*, Dar al-Feker: Lebanon, 1992, p. 123; Hajar 2008, A.I. Hazm, *Al-Mohala*, Al-Muneria Library Publishers, 1933, p. 711; M.I. al-Shawkani, *Fateh al-Qadeer*, Al-Marefaa Publishers: Cairo, 2013, p. 423; M.A. al-Shangiti, *Adwaa Albian*, Mojama Jeddah al-Feqhee al-Islamee: Saudi Arabia - 1996. P. 344; M.S.I Othimeen, *Al-Shrh al-mumtea*, Dar Ibn al-Jawzi: Saudi Arabia, 2002. p. 125; Imam Ibn Baz said, “Puberty is reached in three circumstances. First..., Second: the germination of rough hair around the vulva, which is called pubic hair. As a result, if the man or woman has gained this bodily sign, he or she becomes an adult and must pray, fast Ramadan, do Hajj if he can (finically and healthily). A.A. I. Baz -Fatwas Noor Ala Adrb, Voice Recorder Program, Al-Mktaaba al-Shmelah, 1992, p. 33–34.
11. Hazm, *supra* note 9, p. 712; S.A. Daoud, *Snan Abu Daoud*, Dar al-Resaala al-Almiya: Saudi Arabia, 2009, p. 320.
12. Z. al-Nwowie, *Rouzat Atalbeen*, Al-Maktaab Al-Islamee Publishers: Jordan, 1991, p. 112.
13. S. al-Qrafiee, *Al-Zakeera*, Dar al-Garab al-Islamee Publishers: Lebanon, 1994, p. 578.
14. Daheri, *supra* note 8; Al Munther, *supra* note 8; I. Imama, 1968.
15. Abedin, *supra* note 9; O. al-Qurtobee, *Alkafé*, Riyadh Modern Library Publishers, 1980, p. 212; Al-Nwowie, *supra* note 10, p. 113; Qadamaa, *supra* note 8.

16. Ibn Baz said, "Reaching the puberty through three signs: one of which is to complete fifteen years, if he completes fifteen years, he becomes a man, and so is the woman" (see Baz, supra note, 9, p. 33-34).

17. A. al-Maroodee, Al-Hawee, Dar Al-Kotob al-Elmia: Lebanon, 1999, p. 75-76; Al-Kesianee said, "The scholars differed regarding the lowest age to which puberty relates." He added that "Abu Yusuf and Muhammad, and Shafi'i, may God rest their soul, said: reaching fifteen years is the standard to distinguish between a child and adult" (Al-Kesianee, supra note 7, p. 172); Al-Qurtobee, supra note, p. 123; M. al-Sanani, Sobal Aslam, Dar al-Hadeeth, n.d., p. 277; Al-Shawkani, supra note, p. 413; Ibn Baz said, "Reaching the puberty through three signs: one of which is to complete fifteen years, if he completes fifteen years, he becomes a man, and so is the woman" (see Baz, supra note p. 33-34); Qthimeen, supra note, p. 124.

18. Kuwaiti law contains three provisions that criminalise adultery in accordance with Law No. 16 of 1960, namely, articles of 195-197. Bahraini law also deals with adultery in one text, article 316 of Law No. 15, 1976

19. Omani Law No. 7 of 2018 deals with adultery offences in three articles, namely, 225-227

20. This is according to the Qatari Court of Cassation. The Criminal Division is ruled under no. 431/2015.

21. Ras al-Khaimah Court of Cassation, Criminal Chamber, Appeal No. 14 session on September 30, 2007

22. A. Almanee, "The fact of incomplete awareness of the female in the crime of sexual intercourse with a female who has reached the age of fifteen and has not yet reached the age of twenty-one with consent - Commentary on Constitutional Court Judgment No. 4 of 2007 Issued on June 10, 2008", Kuwait University Law Journal, 2015, Issue 3, p. 35.

23. This is based on an explanatory note of the Kuwaiti Penal Code

24. It should be noted that the term "husband" refers to either the wife or husband in the Arabic language.

25. Judgment of the Bahraini Court of Cassation, Criminal Appeal No. 29 of 2005, session 12 December 2005

26. Article 106 of the Omani Penal Code

27. Article 107 of the Omani Penal Code

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