

The Complementary Relationship Between the Legal and Customary Rules of Aflaj in the Sultanate of Oman

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Abstract

Resorting to adopting interdisciplinary studies has become urgent in light of the rapid developments in various aspects of life in the world, including social, economic, cultural and others, in addition to the legislative and regulatory vacuum for some sectors and services, especially those that depend on the prevailing societal norms in each environment and society, based on the sovereignty of those norms in families, organizations and societies. Among the sectors that are linked to the fabric of life in the Sultanate of Oman is Aflaj system, which is considered the first water resource in terms of economic, social and livelihood importance in the Sultanate. The governing norms for regulating the exploitation of this resource in the Sultanate have varied according to what is palatable to villages and countries, as attention to it in Omani jurisprudential encyclopedias was clearly evident. In light of the modern legal legislation in the Sultanate regulating this resource, there seems to be a need to shed light and demonstrate the cognitive integration between theoretical aspects, judicial applications, and established norms in this regard, while clarifying the important relationship of the type of legal research methods appropriate in the production of this study; As an picture and manifestation of interdisciplinary studies between law and other sciences, we ask Allah for success and guidance.

Keywords: *Complementary Relationship, Legal and Customary Rules, Sultanate of Oman.*

Introduction

Our Omani history is characterized by its concern for its customary constants and comprehensive regulatory legal rules that have achieved, over the ages, a balance in the tribal system and governed disputes related to water rights and their exploitation in various fields, especially the agricultural aspect and its ownership systems.

Importance of the Research

Most of the studies related to Aflaj revolved around the historical, engineering and geographical aspects of them, as there is a scarcity of studying the customary rules and linking them to the new rules regarding Aflaj; therefore, these customary constants and legal rules have become a rich material for study and research to determine the nature and diversity of these rules and the extent of their suitability for managing the water problem in the context of the Omani tribal society, and how custom was able to contribute to maintaining social balance and living stability.

Research Objectives

The research aims, through what the researchers will address, to:

- Highlight the most important Omani legislative frameworks for regulating Aflaj as a national wealth.
- Introduce some Omani customs and judicial applications of Aflaj in the Sultanate, then demonstrate their repercussions on the protection of this wealth.

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- Reveal the cognitive integration between the rules of legislation, customs, jurisprudence and Omani judiciary for Aflaj, and manifest it as a type of interdisciplinary studies between different texts.
- Enrich the Omani Arab library with specialized qualitative studies on Aflaj in the Sultanate of Oman.
- Attempt to reach applicable results for the governance of Aflaj water wealth in the Sultanate.

Research Issue

This study seeks to formulate a research issue that aims to highlight the legislative, applied and customary regulation of Aflaj and its protective aspect through a fundamental question:

Research Methods

In developing and producing this study, the researchers employed several approved methods in formulating scientific research, such as the inductive method by tracing the most important legislative texts and judicial applications of the subject and their corresponding customary rules related to Aflaj systems in the Sultanate. The descriptive method was also adopted to manage Aflaj systems as they are applied in the Omani governorates and states through various specialized studies, and the deductive method was present to extract the protective aspects in various theoretical and applied aspects of the legal and customary rules.

Objective, spatial and temporal boundaries of the research:

The objective, spatial and temporal boundaries of this study are limited to the organizational and protective aspect of Aflaj system through Omani legislation, its judicial applications and the customary rules of this system with a realistic, practical view of Omani society and its established customs in the various governorates, cities and villages, regarding Aflaj irrigation systems and methods of ownership, and the most important practices that are considered in exploiting this wealth in a way that does not harm its resources and sustainability in a way that ensures achieving a balance in rights and performing duties at the individual and societal levels.

Research Plan

Introduction.

The first section: The legislative framework of Aflaj in the Sultanate of Oman and its judicial applications.

The second section: The applied framework of the customary Aflaj rules through reality and the judiciary.

The results.

The recommendations.

The first section: The legislative framework of Aflaj in the Sultanate and its judicial applications.

The establishment of Aflaj in the Sultanate of Oman dates back to the sixth century BC (), which prompted UNESCO to include some Omani Aflaj in the World Heritage List (). Moreover, Aflaj () in the Sultanate of Oman are considered an important national wealth on which economic and social aspects are based; therefore, they have been given great attention in terms of organization and use. In fact, Islam did not provide direct provisions regarding Aflaj; since the environment of revelation in Medina or Mecca, no provisions appeared for them as was the case with wells. Aflaj, since before Islam, were governed by customs and traditions that society acquired from its experiences and expertise (). They are a social product that expressed a legal culture that matches the level of development of Omani society, as customs and

traditions are considered among the most established and influential rules in the structure of systems related to public water rights in the Sultanate of Oman. Jurisprudence has realized this, which has devoted special chapters to them in Omani jurisprudential books and encyclopedias. Administrative systems have also been created that have worked to cohesion the population, which has been embraced by Omani legal rules with various degrees of legislation and its strength. Which constitutes protection for this wealth at the domestic and international levels as well (). In this context, it is worth noting that Aflaj in the Sultanate of Oman are divided into three types: the Dawoodi Aflaj, the Ghayliyah Aflaj, and the Ainiyah Aflaj. The Dawoodi Aflaj are long channels dug underground, reaching several kilometers in length and tens of meters in depth. Water is found in these Aflaj all year round. The Ghayliyah Aflaj are water channels connected to the bottoms of valleys on whose surface fresh water flows. The amount of water in these Aflaj increases immediately after rainfall. These Aflaj usually dry up when rainfall is absent for a long period. The Ainiyah Aflaj are water channels connected directly to springs. It also created administrative systems that worked to cohesed the population, which was embraced by Omani legal rules with various levels and strengths of legislation, which constitutes protection for this wealth on the domestic and international levels as well (5).

This blending of legislative, regulatory and practical rules for Aflaj in the Sultanate constitutes a comprehensive cognitive integration in this regard, which reflects an aspect of interdisciplinary studies between various sciences.

Aflaj, with all their details, were present in the books of jurisprudence, to the point that they devoted chapters to them that dealt with what was problematic and what had emerged from the procedures surrounding them and the solution to the division of their waters () they studied the rulings on Aflaj in their various jurisprudential books and encyclopedias, and addressed a number of issues, including ():

Digging Aflaj and what is permissible and what is not.

The perimeter of Aflaj (3).

Maintenance and repair of Aflaj and irrigation canals.

Opening ajyaal and irrigation canals, and constructions.

Drinking or irrigation.

Among the issues on which the jurists differed is the perimeter of the falaj. The author of Al-Musannaf says: “The perimeter of the falaj after draining the original water is three hundred cubits. Some said: the amount that does not harm it, so it is its perimeter. Some said: five hundred cubits” (4). And according to the author of Al-Dhiya’ regarding the perimeter: “It was said: the amount that a river could be dug below it. Some of them said - including Musa bin Ali -: that it is not forbidden in the well or the river until it is known that it will decrease it, and the end is allowed if they want to dig a falaj according to the saying: five hundred cubits” (5).

One of the issues of Aflaj that the jurists established in their encyclopedias of jurisprudence are the innovations that cause harm in the matter of Aflaj and their rulings. Among the answers of the investigator Al-Khalili is the permissibility of creating a basin in the pillar of Aflaj shared by the people of the country that brings everyone together? And if it is permissible, is there a known limit to deepening and widening the basin in that? The answer: Allah knows best, and I believe that it is permissible with the consent of the owners of Aflaj if they are among those whose command is permissible, and that was on the land of the innovator or on the land of someone who is satisfied with his innovation, and he is among those whose satisfaction is permissible. Allah knows best (6).

The responsibility does not stop at protecting the falaj, but we find among the jurisprudential issues related to Aflaj and their uses what was mentioned in removing harm when creating disturbances in the falaj area.

That is, preventing encroachment on the underground reservoir that feeds it, as it was mentioned in the issue of a previous well that was close and its people wanted to serve it for a generation because the water in it was not enough and someone wanted to help them serve it, is it permissible for them to do that or not? The answer: Yes, it is permissible for him to do that, and he will be rewarded, Allah willing, unless it would cause harm to the people of al-falaj or if a Muslim ruler had stopped its service out of consideration for its benefit and to prevent corruption, then it is not permissible for anyone to go beyond the stop of the ruler who has the right to stop. And Allah knows best (7).

We will notice later that the rooting of these jurisprudential issues mostly agrees with what was framed legislatively in the provisions of Aflaj, and the use and exploitation of them, according to the givens of the reality of their society, which was built on customs and traditions dating back to the pre-Islamic era and Islamic law, as well as the protective aspect that Omani legislation gave them.

In this context, I would like to point out that Aflaj in the Sultanate of Oman are divided into three types: the Dawoodi Aflaj, the Ghayliyah Aflaj, and the Ainiyah Aflaj. The Dawoodi Aflaj are long channels dug underground, several kilometers long and tens of meters deep. Water is found in these Aflaj all year round. The Ghayliyah Aflaj are water channels connected to the bottoms of valleys on whose surface fresh water flows. The amount of water in these Aflaj increases immediately after rainfall. These Aflaj usually dry up when rainfall is interrupted for a long period. The Ainiyah Aflaj are water channels connected directly to springs. We also find that Aflaj system is known in other regions of the Arab world, but by different names. In Iraq, it is known as Akhareez, in Morocco as Khattara, and in Algeria, North Africa, as Fajara, while the term canal is used for such projects in Iran. See the footnote: Ali bin Saeed Al Balushi, Water Resources Indicators for Sustainable Development in the Sultanate of Oman, previous reference, p. 159. And Reda Jawad Al Hashemi, Aflaj from the Ancient Arab Irrigation Projects, Journal of Arts, College of Arts, University of Baghdad, Issue 25, Year 1979, pp. 21-22.

Muhammad Abdullah Ahmad Al-Qudhat and others, The Impact of Aflaj on Omani Society until the End of the 6th Century AH/12th Century AD: A Historical and Civilizational Study, previous reference, p. 202.

Salem bin Saeed Al-Bahri, The Rulings of Aflaj, Master's Thesis, submitted to the Higher Institute of Fundamentals of Religion, University of Ez-Zitouna, Tunisia, 2000 AD, p. 105.

The harem is an area completely surrounding the well from all sides, and no one may enter the harem of this digger's well, nor the harem of its eye or its channel, nor dig a well in it. See: Mahmoud Faisal Al-Rifai and others, Groundwater Investment Rights in Islam, King Abdulaziz Foundation, Volume 10, Issue 1, 1993, p. 72.

Ahmed bin Abdullah bin Musa Al-Kindi, Al-Musannaf, edited by: Mustafa Bajo, first edition, 1437 AH/2016 AD, Ministry of Endowments and Religious Affairs, Sultanate of Oman, Volume Eleven (Part 17,18), p. 18.

Salamah bin Muslim Al-Awtabi, Al-Diya, edited by: Hajj Suleiman Babzeez Al-Warjalani and Daoud bin Omar Babzeez Al-Warjalani, first edition, 1436 AH/2015 AD, Ministry of Endowments and Religious Affairs, Sultanate of Oman, Part Twenty, pp. 356-361.

Saeed bin Khalfan Al-Khalili, Answers of the Investigator Al-Khalili, edited by: Badr bin Abdullah Al-Rahbi and others, first edition, 1431 AH/2010 AD, Promising Generation Library, Sultanate of Oman, 5/467

This argument is supported by the established principles of Omani judiciary in relying on custom when addressing the issues of Aflaj and their provisions, including the principle that says: "It is necessary to search for custom in those valleys, especially through the deeds and rulings in the valley that they belong to the one in whose hand they are, as not all of the valleys of Oman have custom that they are public and for

those who came first to them or that they belong to the poor or that they belong to the public treasury” ().

Based on the above, the Omani jurists were keen to establish the protection of Aflaj. Therefore, Omani legislation, with its various degrees and strengths, complemented what was covered by previous books and encyclopedias of jurisprudence, as it dealt with the legislative framework represented in organizing their preservation and enhancing ways of their sustainability. On the other hand, we find that it deals with the mechanism of their use and benefit from them. Omani legislation also dealt with the framework of punitive aspects for violating the regulatory and protective rules, and attacking the water wealth of Aflaj.

These legislations topped the constitutional rules through the Basic Law of the State for the year (2021), where the legislator confirmed in Chapter Two, Article 14, a number of economic principles, including natural resources, and that their resources are the property of the state, which is responsible for preserving and exploiting them properly, in accordance with the provisions of the law (). This is a principle confirmed by various relevant legal rules, such as Articles (2) and (3) of the Water Resources Protection Law No. (29/2000) (), and to enhance the importance of this national wealth, the legislator paid special attention to the employees entrusted with implementing the provisions of this law by granting them the status of judicial police under Article (6) of the same law, and obligated all specialists to provide them with important facilities while carrying out their work in accordance with Article (11) of the Wells and Aflaj Regulations issued pursuant to Ministerial Resolution No. (3/2009) issued on January 7, 2009.

Here we refer to the issue of the capacity to undertake and protect and organize the wealth of al-falaj, in addition to what was mentioned in the previous legal article regarding the employees specialized in this work. The Omani judiciary also confirmed the realization of the capacity in general people to defend the interests of al-falaj and not only for the owner of a property in it, including: “The capacity is not required as long as the dispute is in the public interest and the defense of al-falaj and endowments, and these may be taken into account” ().

Accordingly, the Omani legislator addressed the regulation of the exploitation of this wealth through multiple ordinary and subsidiary legislations. He issued the Water Resources Protection Law, which we referred to previously, which came in eight articles that included reference to the provisions of water resources in the Sultanate, including Aflaj. The first article thereof referred to the definition of water as: “groundwater and surface water - except seawater - and includes water from wells, valleys, Aflaj, dams, springs, rainwater, and other waters held or produced in water facilities.”

This law was then followed by the issuance of the Regulations for the Organization of Wells and al-falaj pursuant to Ministerial Resolution No. (3/2009) referred to above. What distinguished this regulation was its discussion of the definition of al-falaj and its appendages in its first article. Al-falaj was defined as: a channel dug in the ground or on its surface to collect and transport groundwater, spring water, natural springs, or surface water for use in various purposes. umm al-falaj was also defined as: the point from which al-falaj emerges. The extension of al-falaj was defined as: extending or increasing the lengths of the feeding channels for al-falaj in any direction (). What is known in Omani custom as: water flowing through a channel dug in the ground ().

The issuance of the regulation of wells and Aflaj was followed by an amendment to it pursuant to Ministerial Resolution (123/2023) (3), which included replacing Article (30) of the regulation, adding Article (1) thereof, and adding duplicate articles in Articles (9), (30), (34) and (39).

This regulation also included the regulatory frameworks for managing and exploiting these Aflaj and preserving their levels from depletion. One of the most important forms of this organization and framing was what was indicated in Article (15) thereof, which indicated the requirement of the approval of the falaj agent certified by the governor for the issuance of licenses for new wells within the falaj’s ihram and its estimated boundaries of 3.5 km from Umm Ahad falaj. In the event of the agent’s disapproval, the Ministry shall estimate the damage or not. If it does not exist, it may issue the license (4). The images of the Omani legislative framework for the exploitation of Aflaj also became clear, as their agents or those who maintain

them are obligated to obtain the necessary licenses before any creation, extension or addition to them, in accordance with Article (28) of the same regulation and what follows.

We also note the application of the same previous legal framework for the exploitation and use of Aflaj for the types of Aflaj to which the Law on the Regulation and Protection of Aflaj Sites Listed on the World Heritage List applies, in accordance with Article (5) of the same law regarding the construction of wells within the sacred areas of the mothers of those Aflaj, with the exception of exploration wells, auxiliary wells for the falaj, and monitoring wells, as well as the regulatory provisions following the previous article regarding the sale, transfer, or modification of those Aflaj. Article (10) directly stated that the Ministry may coordinate with the falaj agent to regulate the uses of falaj water in accordance with the frameworks contained in the same law.

The Omani legislator has also been aware of the issue of events that affect the exploitation of the falaj and its lands, such as establishing projects, constructions, and residential plans, or changing the heritage sites and antiquities located within the falaj sanctuaries addressed by the provisions of the previous law, and made the implementation of the administrative plan for sustainable development of the falaj site exclusive to the competent ministry, which we find clearly in Articles (11-15) of the same law. Among the judicial principles in this regard is: "Creating seedlings that affect the falaj must be removed, and ownership of the land is not used as a pretext for that, as the damage is removed" (5). In the same context, we find that Omani legislation and its established judicial principles have addressed the governance aspect of this wealth in terms of transparency, neutrality and justice in the sale or disposal of the falaj or its funds and appurtenances, considering that there are endowments for it from the waters of the falaj, so they must be sold by auction, not by bargaining. From that established principle: "It is not permissible to sell endowment funds by public auction, and they must be sold by public auction. The effect of violating that is the invalidity of the sale" ().

Ministerial Resolution No. (10/2017) on issuing a regulation for the use of agricultural lands, issued by the Minister of Agriculture and Fisheries in the Sultanate, organized the provisions of agricultural lands that are subject to irrigation and their various fields. The resolution also framed the controls that govern the use of water resources for Aflaj and wells by specifying the scope of their use and exploitation, stating in its second article: "The provisions of this regulation apply to all agricultural lands in the Sultanate, without prejudice to the controls approved by the Supreme Council for Planning on agricultural lands," - and in the fifth article: "It is prohibited to use wells and Aflaj designated for irrigating crops, homes, green houses and service facilities within agricultural land for any other purpose" ().

Then, the issuance of the previous legislation and its amendments was followed by the issuance of the Law Regulating and Protecting Aflaj Sites Listed on the World Heritage List No. (39/2017), which came in four chapters and twenty articles, including in detail some of the names and provisions related to the falaj ().

Not only that, but the legislative framework for the use of Aflaj was organized by the Omani Civil Transactions Law No. (29/2013), through the contracts related to it, such as the lease of agricultural lands; Article (569) thereof stipulated that: "The lessor is obligated to carry out the repairs on which the intended benefit depends, and the lessee is obligated to carry out the repairs required for the usual use of the land and the maintenance of Aflaj, ponds, irrigation canals, drains, roads, bridges and wells, all of this unless otherwise agreed or customary" (). We note from this text that the legislator did not leave the assessment of the protective matter for the maintenance of Aflaj wealth in the hands of its owners or beneficiaries; Given the conflict of interests between them in agricultural contracts, the first of them may complete the duty for the other, but the legislator undertook to determine the obligation to maintain and protect the falaj himself with regard to the lessor and the lessee.

The legislator chose, through the articles of these laws and regulations, to address the provisions of Aflaj from the partial regulatory aspect of use, and the frameworks that constitute their protective aspects, leaving the mechanism of dividing them, irrigating them, and what is related to that to the prevailing customary aspects. We find this in what Article (4) of the Law on Regulating and Protecting Aflaj Sites Included in the World Heritage List stipulated, stating that: "The traditional system for distributing and managing the water

of the falaj shall be followed in accordance with the inherited customs in dividing the water and the names of its time periods and others, and the Ministry shall put in place the necessary measures to preserve this system” ().

This approach has been decided in more than one place by the principles of Omani judiciary in matters of spatial boundaries due to each well, and among those principles: "Custom has ruled that the area of each rented agricultural well is not less than two acres" ().

Also among that: "The rulings of this court have settled that the wells in which pumps are installed usually do not irrigate less than ten acres, which is what this court's rulings are heading towards in this case by increasing the area allocated to the appellant to be ten acres" (). These principles in their implications apply to Aflaj as they do to wells; because some Omani Aflaj, as we have explained, are not riverine (springs) or ghail, but rather are based on public groundwater wells that were previously extracted by the Zajarah machine known to Omanis and others, and today by modern water pumping machines, then pass through irrigation channels, and are either irrigated directly by them or collected in basins and then irrigated by them; due to the scarcity of springs and running water due to the lack of rain and increased depletion.

This is what was decided by another judicial principle, which states: “The Supreme Court sees the adoption of judicial precedents and established customs in determining the irrigation of a single well. Some rulings state that a well with one trough irrigates five acres, a well with two troughs irrigates ten acres, and a draining well irrigates two and a half acres. Although the expert has determined the type of this well, the effects found on the land exceed the limits of irrigation of a draining well, which is why the court estimates – in view of the area of the effects and what a single well can irrigate at most – that this well is one of the troughs and is one of the two troughs, that is, the draining well, and it awards the plaintiff ten acres” ().

Among the aspects that the Omani judiciary has been concerned with and has also emphasized in the matter of Aflaj, is the necessity of adopting custom and interpreting its laws correctly in Aflaj issues presented before the judiciary. The judge should not rely solely on the rules of law or make an effort based on the existence of custom if the legal rule is devoid of regulating Aflaj issues. This calls for the necessity of training judges in knowledge of Aflaj customs and laws. Among the principles in this regard: “If the judge makes a mistake in interpreting the legal text in the sense of understanding it; if he interprets the legal text incorrectly and deviates from the correct application and applies a legal rule in a place other than its correct place, the law in this regard means the law in its general sense, so it includes every general abstract legal rule, whatever its source, whether it is legislation, custom, principles of Islamic law, or rules of justice” ().

Among the legal frameworks for Aflaj in Omani legislation are the penalties established for violations and assaults committed by some in exploiting and benefiting from Aflaj, or violations of the legal provisions related to this aspect. Among these frameworks are:

What is stated in the Water Resources Protection Law in Article (8), which states that “Without prejudice to any more severe penalty stipulated by another law, anyone who violates the provisions of Article (2) and the regulations and decisions implementing them and Article (5) of this law shall be punished with imprisonment for a period not exceeding one year and a fine not exceeding two thousand Omani riyals, or with one of these two penalties. The penalty shall be doubled in the event of a repeat violation” ().

Chapter Three of the Law on the Regulation and Protection of Aflaj Sites Listed on the World Heritage List No. (39/2017) in Articles (16-18) addressed a set of administrative and criminal penalties for those who violate the provisions of this law, without prejudice to the penalties stipulated in the Omani Penal Code in this regard ().

What the Omani Penal Code addressed in terms of deterrent penalties related to the aspect of sabotage and destruction of this wealth, as Article (366) in Clause (b) stipulates that whoever intentionally commits: ... filling in wells, Aflaj or irrigation canals or committing any act that prevents the flow of water from its

sources.... The penalty shall be increased to not exceed double, if the crime is committed by (3) three or more persons.

What was stated in Article (38) of the Regulations for Organizing Wells and Aflaj, which states: “Without prejudice to any more severe penalty stipulated by another law, anyone who violates the provisions of these regulations shall be punished with the penalty stipulated in Article (8) of the Water Resources Protection Law issued by Royal Decree No. (20/2000). In the event of a ruling to remove and the violator’s refusal to implement, the Ministry may remove the violation at its own expense” ().

It is clear from these texts that they were issued in order to protect Aflaj from encroachment and to protect their water sources to maintain the continuity of Aflaj and its flow. As for the fact that the Omani legislator issued laws that affect the customs followed by the people to distribute the falaj water shares, he did not address this issue and left the situation as organized by traditions and customs ().

The pillars of the legal textual protection of the falaj wealth are complemented by what the principles of Omani jurisprudence have decided in this regard, regarding the exploitation of public wells, the mechanism for benefiting from them, and their spatial boundaries, as in the following two principles:

“Well (public property): The well is considered a public property, but the public here is limited to those who occupy the place and no one else” ().

"Well (public property - allocation): The well is organized and public as stated in the statement of its ownership, and the origin of ownership is public, so it is not valid to allocate it, even if the appellant has built it, paid its costs and maintenance, and paid the electricity costs, he has the right to refer to the respondent for the costs" ().

Where we note from the two principles that they take on the protective aspect of the wealth of the falaj and the public well, such that the person in charge of it cannot use its benefit for his personal interest, or that it be exploited in a loose public guise by those other than those living around this well, which leads to its depletion and the deterioration of its sustainability.

The second section: The practical framework of the customary rules of Aflaj through reality and the judiciary.

The practical, realistic aspect is opposite to the previous theoretical legislative aspect, to reflect the care for this vital resource through the prevailing customs and traditions in Omani society, in terms of organization and benefit, and as the judicial applications and principles issued by the Omani judiciary reflect the perspective and perspectives of the practical aspect of caring for Aflaj in the Sultanate, which constitutes an aspect of theoretical and applied cognitive integration in specialized interdisciplinary studies.

First: The practical customary rules.

The subject of custom is considered in the philosophy of legislation as a general theory that is more comprehensive than the specific rules that regulate a specific subject or aspect of life, the frameworks and provisions of which are devoid of the rules of positive legislation. The general theory is not the general rule in Islamic jurisprudence; the rules are merely controls related to an aspect of the theory. The rule of “the purposes and meanings are the basis of contracts” is only a control in a specific aspect of the origin of the contract theory. The rules of: custom is decisive, what is known by custom is like what is stipulated by a condition, and designation by custom is like designation by text, are only controls with respect to the theory of custom. Accordingly, the rule differs from the theory in two matters:

The rule includes a jurisprudential ruling in itself, and this ruling it includes is transferred to the branches included under it.

The theory consists of elements such as pillars and conditions, unlike the jurisprudential rule ().

Custom in the Sultanate is considered a reference and a judge in various aspects of life and other human specializations. This has been indicated by many Omani legal legislations, such as Article 1 of the Omani Civil Transactions Law, which states that: “The provisions of this law shall apply to all matters addressed by its texts in wording and meaning, and not regulated by special laws. If there is no text in this law, the court shall rule in accordance with the provisions of Islamic jurisprudence. If there is none, then in accordance with the general principles of Islamic law. If there is none, then in accordance with custom. (”

The divisions related to the provisions and rules of Aflaj were not regulated by the legislative legal rules in the Sultanate, but rather left the matter to the rules, customs and traditions according to the type and level of each falaj, and the nature of the agricultural geography in each village and town in the Sultanate. However, the Ministry of Regional Municipalities and Water Resources previously (the Ministry of Agriculture, Fisheries and Water Resources currently) undertook a pilot project to document the ownership, customs, traditions and data related to Aflaj in October 2009. Through it, it addressed providing an overview of the terms related to Aflaj and their history, types, ownership, ownership of agricultural lands, and the administrative organization of Aflaj in general. The project also addressed the most famous Aflaj in the Sultanate, such as Al-Khatmin Falaj, Al-Maysar Falaj, Al-Hamra Falaj, Al-Daghali Falaj, Al-Awabi Falaj, and Ain Al-Thawra Falaj ().

In relation to documenting the rights of ownership of Aflaj and their shares, how they are divided, and how they are managed, in addition to what is approved by customs and traditions, there are customary books known as “the falaj copy or the copy” that contain a statement of all the shares and amounts for each individual or each family and the mechanism for their transfer and disposal in any way that transfers ownership, whether by inheritance from fathers and grandfathers, mortgage, gift, will, or other.

Among the most important copies of Aflaj in the Sultanate are the copies of Aflaj of each of: “Al-Ma’mur, Al-Hail” from the villages of the Wilayat of Bahla, Falaj Al-Khatmin in the Wilayat of Manah, Falaj Al-Lamki in the Wilayat of Izki, and Falaj Daris in the Wilayat of Nizwa (). On the other hand, there is no copy for many Aflaj in the Sultanate, which poses a challenge in the governance and management of this wealth and the preservation of its ownership and endowments.

The prevailing agricultural and water custom () in society is also considered a reference for the legal regulation of the musaqat contract. The provisions of Sharia and its general principles are considered the first reliable references in considering the provisions of musaqat, its disputes and issues (). This is what was stated in Article 1 of the Civil Transactions Law in the event that the law is devoid of a text or legal rule regulating the provisions of the contracts or subjects contained therein, where it states: The provisions of this law apply to all matters addressed by its texts in wording and meaning, and are not regulated by laws. If there is no text in this law, the court shall rule according to the provisions of Islamic jurisprudence. If there is none, then according to the general principles of Islamic law. If there is none, then according to custom.

The author of the book says in considering custom to regulate the work of the working irrigation worker and the amount of fruit he deserves if he disagrees with the owner of the property: “If the country has a known tradition in the work, most of the people of the country follow it, in the manner of the country’s practice, unless the owner of the property confirms that he has stipulated that he has no work in the palm trees” ().

With regard to the ownership of Aflaj, their ownership today has become the responsibility of the Ministry of Agriculture, Fisheries and Water Resources, where the owner or owners of Aflaj submit a request to own Aflaj and attach whatever documents they have, such as a copy of Aflaj if it exists, or a reference to it, or the deeds Or other evidence, and a certificate of inventory is issued for the falaj or the well if its source is a well, then they submit this certificate and attachments to the Ministry of Housing to issue a title deed for the falaj after a plan and engineering drawing are issued for it.

Types of Aflaj in the Sultanate

Ownership of Aflaj and its open and closed wells varies according to their type, shape and method of formation. There are three types of Aflaj, which are ()

Al-Uyun Aflaj: These start from natural springs, such as: Ain Al-Kasfah Al-Harat in the Wilayat of Rustaq, and Falaj Al-Hammam in Bousher...etc., and some of these springs or eyes are hot, and the length of the falaj here ranges between 200 to 1000 meters, and their percentage is currently less than 1%.

Al-Ghaili Aflaj (i.e. close to the ground surface): They consist mainly of channels that are mostly exposed above the ground surface or covered in some parts at a depth of no more than 4 meters from the surface..., and today they constitute 55% of Aflaj of Oman.

Al-Udayyah or Al-Dawudiyah (deep) Aflaj: They consist of long tunnels underground for tens of kilometers, and their width ranges between half a meter and a meter, and their height ranges between half a meter and two meters, and their maximum depth from the ground surface is 50 meters where the mother well is and where it gets its water from it and from the springs and other rocky cracks through which the tunnel passes.

Ownership of water shares in Aflaj in the Sultanate

Ownership of Aflaj and proving them corresponds to the issue of ownership of water shares from them. Some have researched the issue of ownership of Aflaj and summarized it in seven ways as follows ():

The first system: the fixed share: which is (that the falaj always comes to its owner at a specific known time, and ends at a specific known time that does not change with the change of the waters and is specified by a period of time that does not exceed it).

The second system: the fluctuating share: which is (that the falaj comes to its owner at a time other than the time it came in the past day and is specified by a period of time that does not exceed it), so the time of the falaj coming to its owner fluctuates between night and day.

The third system: the fixed fluctuating share: This system is a mixture of the two previous systems, for example, it is fixed during the day, but it comes fluctuating during it, or it is fixed in the summer at a specific time and in the winter it changes to another specific time.

The fourth system: The surplus: (which is that its owner owns a fixed share or a fluctuating share of the falaj and he must irrigate from it known and specified farms until the usual satisfaction, in a known order, without paying attention to their spatial order, whether it is his or someone else's. And whatever water remains after irrigating it is his, whether it is little or much or it is freely available to dispose of it in any place). Note that the process of impregnation or irrigation of other people's farms is the responsibility of the owner of the original in most of Aflaj, but irrigation may be the responsibility of the owner of the farm himself according to the custom followed in that Aflaj, and this is rare. The two customs may come together in one share, and there is a well-known custom in most of Aflaj of this system that if the owner of the original does not want to irrigate in a certain area - if he feels that he will not have any water left for him or because he does not have time or for other reasons - then he must inform the one who is on his side in the arrangement that he does not want to irrigate and will irrigate for others and whatever is left will be yours, and as soon as he informs him of this, the second one is obligated to do this work, and the owner of the original will not have any water, and if the second one does not want to do this, then he must inform the one who is on his side and so on.

The fifth system: drinking or drinking (): is (that a known part of the land has irrigation that is cut off before it reaches the last tamping of the irrigated water, not specified by a time period, and this drinking is linked to that land and cannot be transferred without its ownership), and this system is linked to the surplus system where a person owns a share of the water (originally) as in the previous system, and he has to drink the money of others according to this system, and these two systems come together under the name (drinks) or (irrigation). As we explained previously in the surplus system, the owner of the drink is not responsible

for the irrigation process, but rather the owner of the surplus does it, and the opposite may be according to customs, and I did not say here (the owner of the original does it), but I said the owner of the surplus because the owner of the original may relinquish it to the one before him, so the latter is the owner of the surplus who is obligated to water the others.

There are some customs that stipulate that it is not permissible to plough the land more than a certain number of times per year, because the ploughed land consumes more quantities of water and the latter is harmed as it does not have any water left for it. Also, in this system, it is forbidden to overwhelm the land, which is (making the end of the plough higher than the beginning so that it consumes a larger quantity of water and exceeds the usual limit of irrigation).

The sixth system: Hitting the head: It is (that a known part of the land is irrigated until the water hits the last plough of the irrigated plough (its head) and then the water is cut off from it, not specified by a time period, and this water is linked to that land and cannot be transferred without its ownership), and this system is linked to the surplus system where a person owns a share of the water (originally) as in the surplus system, and he must irrigate the property of others who own this system, but the owner of the origin is not obligated to the irrigation process, but rather the owner of the land.

Sometimes this system stipulates that in the event of plowing the land, its owner does not have to (level it) or clean it, and this is an advantage for its owner because the land will consume a large amount of water. The opposite may be the case, where it is correct to level it and clean it, but the one who does this is the owner of the surplus and not the owner of the land, because it is in the interest of the owner of the surplus, as the water will be left for him. In general, the drinking system and hitting the head are similar in many customary rules, and they usually come together on the owner of the origin, sometimes he has a drink for another.

The seventh system: Ascending and descending: This is when a group of people share a share of the falaj, each of them irrigates his land and it is specified, and if it is not enough for everyone, he is deprived in the next year of the first irrigation and irrigates the last ones, and thus the shortage circulates among them, and the water is linked to the land and its ownership cannot be transferred without it.

It is noted from the previous divisions that the ownership of water shares in the first three systems is fixed in origin; That is, its owner has the right to withhold it, give it, sell it, donate it, and other actions that transfer ownership or benefit. As for the other sections, they are not fixed for their owners, but rather depend on what is preferred and increases from the original water. Some of them are also linked to the existence of the land designated for it, which is not a condition in the first three. All of this goes back to what is known as a social custom in every village or city in the Sultanate.

There is also a system in some villages whereby water is collected in a collective basin, so a person has a share according to what is fixed for him, such as a pada or two pada's, and it is collected in the basin and then irrigated with it. This may vary in times of fertility, season, and abundance of falaj water through rain and other things, so each person has his share. This is practiced in many Omani villages, such as the falaj of Al-Falaj village in the Wadhah area in the Wilayat of Bahla in the Ad Dakhiliyah Governorate of the Sultanate.

Units of division of Aflaj waters ():

The time units used to divide Aflaj waters differ from one Aflaj to another, but there is a great agreement between most of Aflaj in the term (athar), which is half an hour, but some types of ownership are not specified by a time period, as we explained in the drink, the head strike, and the descending tal, but these types must fall under a specific share: (Al-Maqfool: 48 athars, and the badah: 24 athars, also called (Asr) Batawi, or (Khaburah), and Bahah or Nasifa: meaning half a badah. 12 athars, and Rab'a or Rab'a or Rab'a: meaning a quarter of a badah 6 athars, and Nas Rab'a: three athars, and Athar: which is the common unit in Oman and is half an hour, if the hour is used to divide Aflaj, or the approximate time for the rest of the division methods, and it is called in Al Buraimi (Siddis) and in Ibri (Qama). The athar is divided in two

ways: The first method: Names by decimal fractions: 1- Half the athar: meaning half of it, 2- Quarter of the athar: meaning a quarter of it, and it is also called (Rab'a), 3- Sadisa: any part of six, 4- Thaminah: any part of eight. The second method: Special terms 1- Qiyas or Kayyas: The trace consists of 24 measurements, any part of twenty-four parts of the trace. 2- Mithqal: The measurement consists of eight Mithqals, any eighth of a measurement. 3- Grain: The Mithqal consists of one part of thirty-six parts of the grain. Note that these fractions cannot be used for irrigation unless they are added to others that complete half a minute or a minute according to the custom followed in the falaj. The common unit in most of the Al-Mudhahi falaj is the arrow, which lasts forty-five minutes. The arrow is divided into twenty-four Kayyas, and the Bada is a full day, night and day, and the Fardah is only a night or day. There are other divisions for many falaj, as in Izki, such as the minute, the sha'ira, and the jalila.

We note from the previous names of the divisions of the shares of Aflaj that they are mentioned and considered in establishing rights and transferring their ownership in the event of sale and purchase by various reasons of ownership such as pre-emption, for example; and what came in this from the Omani judiciary is the following text:

"- The court did not clarify whether the water is a drink or traces. If it is a drink, custom is followed in that. If the water pre-empts all terms, and if the water does not pre-empt terms, then the criterion is the reasons for pre-emption, such as the irrigation canal of five gallons, then a descendant for each generation that branches off from the main irrigation canal.

If the water is traces, then the same ruling follows the traces. Since the court did not establish the case according to custom, its ruling became invalid" ().

Methods of dividing the falaj shares:

There are four methods of dividing the falaj water, which are ():

The stars: This is an old method that relies on the rising and setting of some known stars, whose names differ from one village to another and may be similar. There is a specific period of time between one star and another during which a known portion of the water passes, and this period may differ from one star to another. One or three traces may pass, and it can be divided by other subsidiary stars. Among the disadvantages of this method is the inability to rely on it in the clouds and the lack of those who know the stars at this time.

Shadow: We can call this method a sundial, which is a straight wooden pole erected on the ground (called the lamd) that is not affected by the shadow of the neighboring one, and marks are placed with stones on the ground at distances where the shadow of the top of the wood runs at equal times. In some Aflaj, wood is not used, but rather on the shadow of a wall or the shadow of a mountain in mountainous areas where the mountains block the sun's shadow.

Water clock: This method was used in Jabal al-Akhdar, which is a vessel with holes in the bottom and divided by lines inside it and placed in a larger vessel filled with water, and thus the water enters from the bottom until it reaches the line, a known part has passed, and the time of the water flow between them is equal. This method is the most accurate method before the use of the modern clock to divide the falaj; because it is suitable for use at night and during the day and during cloudy times. As for the other methods, they cannot be relied upon in this case, but rather they resort to estimation and guesswork that may lead to the outbreak of disputes. Also, one of the advantages of this method is the fairness of the division; Because the use of the method of rising stars may differ slightly from one star to another and the effect cannot be divided by stars but rather by estimation and guesswork, and also at sunset and sunrise the share is much greater than others.

Collecting and dividing water: It is the process of collecting the water of the falaj in a basin divided from the inside by marks of equal distance between them, then the basin is opened and if a mark expires, a known portion of the water expires. This method is no less just and advantageous than the previous one.

Second: Applied judicial principles.

The judicial principles issued by the Supreme Court of the Sultanate confirm and complement the regulation of the water wealth of Aflaj with what the legal rules have gone to and what the known customs and traditions have established, whether what is related to the aspect of its arbitration and confirmation of customs and what it includes of the provisions of Aflaj and their protection and the regulation of their exploitation, or what those principles have established of judicial interpretations including the framing of the provisions of Aflaj in all its different aspects. We find confirmation of this philosophy in the report of the scholars of the jurists when they dealt with the issues of Aflaj and their provisions; They did not oblige the people of the regions to follow specific rules to control the affairs of the falaj and distribute its water, but rather left each country to follow its own custom in that, knowing that those customs developed over time with the experiences of each country, and therefore some of them said: "Every people has their own custom that they follow," and perhaps that was due to the fear of the impact of that on the public interest if they subjected the people of the country to the custom of another country. Among the customs of the people of the falaj and their maintenance and rules that were known were the works of drawing the falaj () "The known custom is followed in drawing," and the custom followed in renting for those who failed to draw, and the workers of drawing are not required to draw the large canal unless that was known among the people of the country, as well as the permissibility of sitting () of the generations () or not, where the custom of the people of the country is followed in that, and among the customs known in society in the works of drawing the falaj was that the chief () would order the announcement in the country of the specified day for drawing, so that the threshing floors () would come to work and participate ().

The real and applied cognitive integration between the customs and traditions related to Aflaj is evident, as we mentioned, by extrapolating some examples of judicial principles, as follows:

The established principle is that custom is a reference for Omani judiciary, alongside the rules of legislation, in the issue of pre-emption, which includes the sale of fixed falaj water shares to a person. The principle came to establish: "The appellant is not entitled to pre-emption because the sale took place through auction in accordance with the approved Omani custom without prejudice to the rules followed therein" (). The new buyer of the sold water share may harm the other person whose fixed water share is adjacent to that share. This is evident through the intended use of the falaj in terms of day and night, or in terms of the location that is closest to the property of the harmed neighbor in the location where his selling neighbor used to water, so the new buyer comes to water with the new water in a location farther from the place where the harmed neighbor farms.

And we find the integration between the rules of law and customs in general in the Omani judiciary, in various civil matters, including the valuation of construction, and the aforementioned fee for the irrigation of Aflaj and the valuation of the shares of the falaj are measured by it in the matter of Aflaj, and this is confirmed by the principle that states: "What has been established in the jurisprudence of the judiciary and what has become customary is that the valuation of the construction includes the valuation of the land on which it is built if there is no agreement to the contrary" ().

Among the judicial principles regarding the division of falaj water shares and considering the rule of custom in organizing and framing them is the principle that states: "Taking water from falajs by pumps is prohibited, even if a person takes from his own water. The exception is that water may be collected in a basin and then pumped from that basin" (). This is consistent with the customary systems established in the customs of some falajs in the Sultanate, as previously mentioned.

Among the judicial principles that stipulate fairness and avoiding harm to others in other falajs or to partners in the same falaj when exploiting shares and irrigation are the following:

"It is not permissible for the owners of the upper falaj to contract their falaj in a way that prevents the flow of water to other falajs that are lower than this falaj; this is due to the harm that this causes to the lower falajs, and cutting off water to the lower falajs and causing harm to their people is not permissible according to Sharia" (.). We note the judiciary's observation of the technical, objective and jurisprudential aspects related to some people causing harm to their partners in the same falaj or other falajs adjacent to their falaj when irrigating with their shares of the falaj; such that they block the upper course of their falaj that slopes down and feeds the other falajs so that others who are lower down do not fill their falaj when irrigating. This custom is often found in the falajs of mountainous regions and villages with a high geographical structure in the Sultanate.

"Any increase in the lands irrigated by the falaj or tampering with them, which results in an increase in their share of the usual water with which they are irrigated, negatively affects the share of the funds that are irrigated after that, including endowments, mosque funds, and those who do not own their own affairs, and this is not permissible under any circumstances. The effect of this is that the court must prevent this increase or tampering" (.). This principle demonstrates the cognitive integration of the legal, customary, and judicial rules that establish the removal of harm as a general theory and the subsidiary rules and practical applications that are rooted in it, such that one does not increase his agricultural areas at the expense of the interests of the group of partners in the falaj, under the pretext of exploiting the time of his share of the falaj and not going beyond it, but in reality he is depleting many times what others are depleting from irrigation with the same share as a result of his expansion into areas other than those initially established when the water ownership was established and transferred to him.

Conclusion

Each research has a conclusion in which researchers collect the results and answers they have reached to the questions raised in the problem, and the objectives intended by the study. In this study, we have reached the following:

First: Omani legislation is concerned with organizing Aflaj as a national water resource through various general and special legislations, such as the Basic Law of the State within the economic principles, the Water Resources Protection Law and its regulations, the Law on the Regulation and Protection of Aflaj Sites Listed on the World Heritage List, the Regulation on the Regulation of Wells and Aflaj, the Regulation on the Regulation of the Use of Agricultural Lands and other regulations and regulatory projects in this regard.

Second: Achieving cognitive integration between jurisprudential rules and Sharia rulings, legal and regulatory rules, established customs, and Omani judicial principles and rulings regarding the organization, exploitation and protection of Aflaj from the perspective of the national public interest, and taking into account the individual private interest in order to achieve balance and sustainability for this sector.

Third: The application of customary rules, traditions and societal customs in organizing Aflaj sector and approving it as a legal text, practical work and judicial application.

Fourth: The existence of a protective aspect for the future of Aflaj and its sustainability, and paying attention to it as a national and global wealth that must remain sustainable to achieve food security and diversify and enhance economic income for countries.

Fifth: The care for Aflaj sector and the scientific, research and practical concern regarding it at the individual level for Omani researchers and others, and at the collective institutional level represented by the Ministry of Agriculture, Fisheries and Water Resources is an authenticity that has been achieved and requires in this aspect the issuance and adoption of a guide or regulatory regulation for the customs and traditions related to Aflaj, which were addressed in the second section of the study.

Recommendations

First: Shedding light on studies and research problems on the issues of Aflaj and their provisions, and the judicial principles related to them, and their customs and traditions in a scientific manner through a global conference or symposium that adopts interdisciplinary approaches that combine various Omani legal legislations.

Second: Calling for the inclusion of rules, traditions and customs alongside judicial principles in university and school curricula to provide knowledge for the youth in caring for Aflaj and preserving their national capabilities, as they are a source of national income for countries.

Third: Coordinating between official bodies in the Sultanate to form a specialized committee that brings together specialists from individuals and institutions to prepare a national project that adopts the creation of legislation or a guide for Aflaj customs, traditions and traditions; to govern and control this sector, and to facilitate the specialists to refer to it when deciding and considering Aflaj cases and provisions.

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