

Exploring the Legal System in Saudi Arabia

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This research explores the legal system of Saudi Arabia through different stages of legal system development. The legal system of Saudi Arabia reflects the nation's religious and cultural values. Sharia classifies as one of the fundamental sources of law in the Kingdom, in addition to Statutory Law, and Royal Orders. The basic foundation of Saudi Law is the Ottoman law and Hanbali School of Thoughts. The legal system is reflected in a very minute duality due to the dominance of a few French laws in the basic of Ottoman laws, but Islamic scholars consider these laws alien to the Sharia. The Islamic scholars consider the Sharia as the legislative authority and God is the only legislator. A lot of reforms are taking place in the legal system of the Kingdom according the modern age, but these all are following the basic principles of Sharia.

Key words: *Legal system, Sharia, Hanbali School of Thoughts, Saudi Arabia.*

Introduction

Early in Saudi Arabian education, students learn the simple philosophy that a clear understanding of a problem is more than half its solution. For the non-Arabic speaking student studying the legal system of the Kingdom, one crucial factor must be remembered: translation does not bring understanding, accurate interpretation does. With a goal to better understand the Saudi Arabian legal system, this research will identify and examine essential events, stages of development and change, the system has undergone to bring it to its present level of expertise. The underlying assumptions and premises of law are that it's systematic nature has an underlying basis of the fact that every law essentially correlates to one or more legal groups or families (Hart et al., 2010).

In the 21st Century, it is a fundamental right and national moral duty for countries to legislate the enactment of legal systems based on their cultural values and religious beliefs. History has proven that without laws, there is only anarchy. This research is a historical analysis of

the Saudi Arabian legal system (Sharia and Civil) itself, not of its laws. The Law may be defined as a body of imperatives established quantifiably by a governing authority to institute and maintain order in any given community. Whether in a small village or an entire world, the Law is the body of rules and principles of action which are binding upon civilised people and states in their relations with one another (Glahn and Taulbee, 2013). Whether written or oral, the acceptance of Law is an agreement between peoples concerning the limitations or lack thereof for the behaviours, duties, and rights of all (Friedman, 1975). To define and understand the Law solely as a tool to preserve a civilised society and promote civil rights, it would be pertinent to understand Law only in its ideal form.

The usage of the term 'legal system' is commonly done in many legal publications. Occasionally, court decisions are utilising an incorrect utilisation of a non-technical legal phrase. However, it is primarily employed when considering the Law itself and not of its actual application. It is also an expression used in books of jurisprudence or comparative law but not in those of property, tort or copyright law. The concept of the legal system presumes the existence of a quantifiable union involving the characteristics of its laws and the manner in which they are applied. It may be assumed that attainment of a formal unity of laws and legal institutions does establish a complete legal system. The term 'legal system' signifies an attempt to establish all-pervasive principles, a traditional institutional structure with practices that permeate the system and lend to its distinctive character. It is not utilised as a means of delineating every regulation. Traditional canons may play a role in the structure of a modern legal system to provide an accurate portrayal of its identity as expressed in legislative processes, court procedures, substantive customs and resolution of disputes (Raz, 1971).

The appreciation of the identity of a legal system is dependent upon the content of a complete and precise register of laws and the spirit of that system. It is also committed to the culture and practices of its most important legal institutions. The identity of a national legal system is meant to be an acknowledged procedure by which laws are codified within a specific legal classification of applicability or logic. More specifically, the problem of identity is relevant to the aspect of the scope of a legal system in terms of when it ceases to exist and the aspect of its continuity. Legal philosophers are interested in systemic identity regarding their inquiries as designed to further this purpose. But, they were not interested in finding or actively creating criteria for identifying the laws of any legal system. They also considered the problem of identity as a distinct one of general jurisprudence (Raz, 1971).

In the case of Saudi Arabia, there is a belief that the identity of the legal system has been forming since before the establishment of the actual Kingdom. These same efforts continue with the enlightenment and reformation of the government in the process of enacting the laws. Saudi Arabian legislators have listened to Saudi society and acted to develop a strong and modern legal identity with meticulous attention to legal detail. However, it appears to be

a common misconception of the overall classification of the Saudi legal system and research has shown there to be an apparent bias within both domestic and foreign legal communities that it is strictly a religious system.

The past studies show that before the unification of the Kingdom, Sharia was the dominant driving force of law on the Arabian Peninsula. It was and remained an influential model for legal theories and debate in the structuring of a state-of-the-art system of jurisprudence patterned after contemporary western legal systems to meet the demands of the Kingdom. In the early years of the Kingdom, Saudi authorities recognised that Law is an unavoidable necessity for a civilised country and its people to survive. Modern states grounded in the Rule of Law separate the powers of government authorities to protect civil liberties. The supremacy of Law accepts the premise that all public authorities are subject to the Constitution of the country and it is duly enacted, and there are legally binding laws to provide guarantees of legal protection of citizens' rights and the pursuit of legitimate interests (Vogel, 1999).

It is significant to note that the philosophy of Islam does not always bind the opinions (fatwa) of Muslim scholars on all matters pertaining to purely religious acts and viewpoints as law (Kabanni, 2017). However, those same opinions do become statutory if related to transactions or laws legislated by the government. Therefore, the fatwa can take on a life of its own by encompassing many potential situations, whereas a judge's decision demonstrates its authority in each specific judgment (Vogel, 1999).

“A favourite contemporary western concept of law is that it is a system of formal, objective, publicly known, generally applicable, compulsory rules, whether determined from general, published legislation, from the decisions of courts interpreting legal materials and applying them, or from authoritative scholarly analyses of legislation, court decisions, and other sources of law. So far we have seen little in Sharia law that resembles this concept. What one form of Sharia law is perhaps falling within, is a rule stated categorically and clearly in a Quranic verse or an authentic hadith—for example, that a wife divorced for the third time must not remarry her husband without an intervening marriage to someone else. Such a rule, as stated in the abstract, is binding, generally applicable, universally known, and so forth. Perhaps another form of law resembling this western notion of law is the law of a legal school, insofar as it is seen as a fixed legal corpus of rules that is binding on the school's adherents. (However, as mentioned above, for Saudi Arabian judges the Hanbali School does not perform this function.) Otherwise, we have seen nothing that resembles western law as Westerners view it” (Vogel, 1999).

Duality of Law: 21st Century Saudi Arabia

Baamir (2008) argues that the west heavily influenced Saudi law following the fall of the Ottoman Empire and the birth of the Kingdom. He states that the French legal system imposed on Egypt and other Arab countries during its occupation in the 18th and 19th centuries resulted in their universities teaching French Law rather than their own. The subsequent effect on those young Saudi legal scholars who received their training in countries like Egypt, Lebanon, and France was a duality of Law within the Kingdom. Moreover, many of the consultants of the Saudi Kings were Egyptians or Syrians either by birth, origin or education and countries profoundly influenced by the French legal system. Those consultants imported the Egyptian laws, which are direct translations of French laws. However, to be adopted in Saudi Arabia, all these regulations do not conflict with the Sharia principles. For instance, in 1966, Saudi Arabia enacted by Royal Decree No. (M/6) dated 24/02/1386 H. (Jun 13, 1966) an entitled Regulation Governing Bids for Government Procurement, Sales, and Leases. In essence, this was a copy of the Egyptian Bid Regulation of 1957, which was a textual translation of the French regulation of 1953. Another example of the French influence is the Saudi Companies Law enacted by Royal Decree No. (M/6) dated 22/03/1385 H. (July 20, 1965). The law is copied from the Egyptian code which itself was directly patterned after the French company law (1953). The French influence can even be seen in the case when the Government representatives in the Aramco arbitration cited some French administrative laws to support their arguments. The list of such borrowed regulations is long and regulates most of the aspects of the Saudi law such as the Banking Control Law of 1966, Labour and Workers Regulation of 1969 and the Law of Procedure before Sharia Courts of 2000. These laws had been borrowed from French law, which is, in the viewpoint of some jurists, still Islamic in the sense that they do not conflict with any of the principles of Sharia (Baamir, 2008).

Traditionally, Saudi Sharia Colleges and Departments have maintained an unreceptive stance relative to teaching Civil law legislated by the government but not included in their curricula. The irrelevancy concerning contemporary civil legal issues was occurred and created a duality in legal instruction that in turn generated conflict between Civil and Sharia principles of law. It is important to note that Sharia Colleges focus on Islamic knowledge including Islamic jurisprudence (al-fiqh), Quranic interpretation (al-Tafsir), prophetic tradition (al-Hadith), and Arabic linguistics. The curricula are based on traditional Islamic jurisprudence books which were printed at least four hundred years ago (Al-Jarbou, 2007)). Al-Jarbou (2007) further states that the jurist books are always divided into two main parts. First is religious practice or the acts of worship or Ibadat such as prayer (salah), fasting (saum), and pilgrimage (hajj). Secondly, it is corporations or transactions among people or social affairs (Mu'amalat).



These books in this aspect, for example, encompass various categories of corporate commercial activities, such as contracts in the jurist books. The problem is that the types of corporations they were written for do not exist in contemporary Saudi Arabian business. Even though other commercial corporations and contracts still do exist in the Saudi legal system, the Sharia Colleges' curricula do not include them because they were created by enacted laws such as the Corporate Law, and the Labour Law which is founded on them. That omission reflects an inadequacy of the curricula of Sharia Colleges as it makes no pedagogical sense to ignore these categories of corporations and labour contracts. Even in this age, people must deal with concerns on an everyday basis, and to focus only on the often irrelevant traditional books on a daily basis, is a disservice to the daily life of contemporary society (Al-Jarbou, 2007).

Saudi civil law schools provide knowledge-based educations structured on strict curricula similar to that of most any school of Civil Law in numerous other countries. It also gives particular attention to comparative studies of the Saudi systems and Civil Law provisions of France and Egypt. In addition to the programs above, Islamic jurisprudence (fiqh) courses such as Family law, Inheritance, and the History of Islamic jurisprudence are offered (Al-Jarbou, 2007). In the Saudi judiciary system, judiciary positions are exclusive to sharia graduates. However, in 2014, an initiative was presented to, and discussed by the Consultative Council (Majlis al-Shura) supporting the appointment of law graduates to vacant courts and that judicial positions should not be exclusive to Sharia graduates. It was felt the Civil Law graduates are qualified to hear and rule on cases based on their intense training which includes participation in more than a hundred semi-judicial committees adjudicated by Civil Law graduates. The supporters of this proposal pointed out that judges without legal backgrounds often decide issues that involve hearing and debating cases even if they do not have a formal legal education in the field of the law argued. It was further stated that cases relating to employment, commercial, criminal and banking require Civil Law graduates more than graduates of Sharia (Alkhalawi, 2015).

A proposal was presented and debated by members of the Consultative Council “Majlis al-Shura” in the year 2017 that endeavoured to change the paragraph (b) of Article 34, of the Judiciary Law, which specifies the appointment of graduates of Sharia colleges to serve in the judiciary. The Shura Council approved the appropriateness of studying the amendment of this Article to allow the law graduates to be appointed to the judiciary after passing a two-year qualification program, that is implemented by the Supreme Jurisdiction Institute at Al-Imam Mohammad Ibn Saud Islamic University or any of Sharia colleges in the Kingdom.

Sources of Law

Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference for the laws of the State. Therefore, after the annexation of the Hijaz January 8, 1926, the Saudi government issued the Sublime Order that stated; “The legal rulings of Ottoman law are still in effect up to the present for we have not issued our order for repealing them and setting down new ones in their place. Therefore, we accede to your suggestion concerning the continuance of the ruling of said laws” (Solaim, 1978).

In 1927, the Saudi government announced that all Sharia Courts are required to comply with the principles of Sharia without being bound to a specific school of Islamic jurisprudence and should utilise the legal principles of all schools (mada`hib), without preferential treatment to any single one. Furthermore, it is definitively understood that all courts would operate in compliance with mandated sources for judgments within the Kingdom, those being in Holy Qur`an, Sunna of Prophet “PBUH” and laws enacted by the state. The Basic Law of Governance states that the religion is Islam and it’s constitution should be the Book of God and the Sunna (Traditions) of His Messenger (PBUH). Moreover, the courts should apply to cases only the provisions of Islamic Sharia, as indicated by the Qur`an and the Sunna, and whatever laws are not in conflict with the Qur`an and the Sunna, which the authorities may promulgate. The basic Law is more cautious when combining the main Islamic legal resources of Sharia (Qur`an and the Sunna) with the national laws issued by the Saudi authorities. It underlines the mandate that national laws should not conflict with Sharia. This law should not only address itself to the active practice of law, but also to a particular intellectual experience and concomitant cultural identity of the society.

It should also be noted that the law reflects tensions that exist between unofficial traditionalists and modernist movements in the country which have strongly affected the development of the existing laws (Al-Jarbou, 2007). Since, the discovery of oil in the 1930s, the country has taken steps to rapidly reform the legal system, while working in unison to maintain its Islamic character and heritage. The tension between these two objectives created a split within the Saudi legal system that the government has struggled to repair, by finding the best way to bring an acceptable equilibrium between Islamic principles vis-à-vis calls for progress and legal reform (Otto, 2010). The Banking Control Law of 1966 demonstrates a system by which Saudi regulators deal with prohibited activities under Sharia. The Law is silent in regards to legalising the practice of giving/charging interest in banking transactions, as it was historically considered to be in violation of the Saudi Constitution. However, the law did leave the option to regulate such activities so long as they are not considered usurious.

Adoption of the Hanbali School

Basically, Saudi legal authority follows the Ottoman laws. The government regards them to be in interpretational conflict relative to what constitutes legally binding Ottoman law or Islamic jurisprudence that is adhered to in the various regions of the Kingdom. The initial alliance between Muhammad Ibn Saud and Ibn Abd al-Wahhab in the eighteenth century promoted the agenda of the religious authority remaining in the hands of the religious scholars ('ulama aldiyn) who were responsible for Islamic education and the interpretation of Sharia. They remained qualified, as specialists of interpretation of the Word of God, to give the ruler (al ha'kim) religious advice (fatwa) on any relevant topic. As authorised by the religious consultants, the Saudi authorities selected the Hanbali fiqh books as a primary foundation for the interpretation (tafseer) of Sharia.

In Najd, the homeland of the Wahhabi reform movement, a different judicial system had continued to exist until the unification in the late 1950s. Traditionally, the ruler (al ha'kim) appointed a single judge to each significant town who worked closely with the local governor (ameer). The judge became involved only after the attempts by the governor failed to resolve a conflict amicably. The governor would then refer the case(s) to the judge for a ruling according to Sharia. Once the judgment had been made, the case would be re-submitted to the governor for enforcement if necessary. Appeals were only possible through a complaint to the local governor, who would often refer them to the senior scholars (al-Mufti) (Vogel, 1999).

In 1928, a royal decree was issued mandating judges adjudicate cases following the Hanbali school (mad'hab) of jurisprudence madhhab. In case of dissent from the (mad'hab), evidence and the documents are required to give reasons. The superior committee of justice was early in the formation of the Saudi legal system that judges had been attempting to codify established legal principles to meet the requirement of consistency in applying the rule. For the judges to remain in compliance throughout the country, they are bound to follow one school of jurisprudence (mad'hab) which is the Hanbali and are committed to referring to just six books of Hanbali jurisprudence. The sources adopted in the judicial system are Sharh Muntaha al-Iraadaat, Sharh al-Iqna, al-Rawd al-Murbi, Sharh Manar, al-Mughni and Sharh al-Kabir.

The Traditional Norms of Participatory

The Saudi Kingdom promotes itself as the cradle of Islam and, as such, the guardian of the holy sites. Likewise, the Saudi legal system claimed an age-old, untainted continuity, without interference from Western rulers. This claim appears to be justified to a certain extent. For example, Saudi Arabia had adopted some to none of the Western legislation, with one exception being the Ottoman Code of Commerce of 1850. The Code, based on the 1807

French Commercial Code, was stripped of all references to the charging of interest and then implemented in the Hijaz in 1931 in an adjusted form. However, Western legal principles have impacted a large number of regulations and laws since the foundation of the Kingdom until the present time. It was especially true of the laws enacted by the Council of Deputies (1932) and Council of Ministers. Also, since the 1930s, the specialised tribunals have applied new laws, most of which are based on Western law. The religious scholars ('ulama), however, have resisted the implementation of these human-made laws. Therefore, the Commercial Court Regulation "Nizam al-Mahakim al-Tijariyyah" and the Sharia courts refused to apply them (Vogel, 1999).

Despite the archaic language of this old law, it was considered by some Saudi academics to be a comprehensive source because it dealt with diverse commercial law subjects (Al-Jaber, 1987). The regulation makes provisions for procedural rules, the effects of judgments and enforcement in matters concerning the Commercial Court (Anthony, 2006). In 1962, the court was dissolved then superseded by the Committee for the Settlement of Commercial Disputes (hayy'at hasam al-Munaza'at al-Tijariyyah), which is a more structured form. In 1967, the structure consisted of a first level of litigation consisting of (two) Sharia judges and (one) legal counsel. The second level of litigation consisted of three members. The undersecretary of the Ministry of Commerce and Industry is the chairman of the committee with two legal counsels. The legal counsel necessitates holding a law degree from any law school. In turn, this was succeeded in 1988 by the expansion of the Board of Grievances (Diwan al-Mazalem) (Anthony, 2006). The Board of Grievances was authorised to hear commercial disputes within the Kingdom. Eventually, the court was abolished. But, provisions of its regulations remained in effect in commercial disputes in Saudi Arabia. The new court system was established in 2007, which created the Commercial Courts that have a jurisdiction over commercial matters.

According to the Saudi scholars' ('ulama) doctrine, the rulers were proficient enough to promulgate necessary legislation for government policy (Siyasa Shar'iyya) based on Ibn Taymiyya's theory, provided it was complementary to and not in contradiction with Sharia and served the public interest. In Saudi Arabia, such legislations (an'zimah), which are products of written statutes, are passed by a royal order 'ordinance' (amr' malaki), or by a royal decree' (marsum' malaki). In the processing of enactment of legislation, the royal order (amr' malaki) expresses the King's will directly and solely to pass a law (nizam), and the royal decree (marsum' malaki) expresses the King's approval of regulation passed based on the recommendation of the Council of Ministers and the Shura Council.

It became effective after publishing in the official government gazette (Um Al-Qura). It is a term commonly used to refer to codified human-made law. Many Saudi 'ulama consider it to be a Western concept and alien to Islamic Sharia. Also, the term 'regulatory authority' is used

instead of 'legislative authority' because the latter term can only be used to refer to God, the only legislature. It is important to bear this in mind when looking at the effects of the new regulations on the legal structure.

Beginning in the 1930s, many specialised tribunals or 'committees' to adjudicate matters in specific areas, such as labour law and commercial law, were created to apply the new laws and regulations, under the supervision of particular ministries. For example, these include the Committee for Commercial Paper Disputes (1963), the Committee for the Settlement of Labour Disputes (1969), the Committee for the Settlement of Banking Disputes (CSBD) (1981), the Committee for the Resolution of Securities Disputes (CRSD) (2004) and the Committees for resolution of Insurance Disputes and Violations (2005). The government was forced to create these special tribunals because the 'ulama opposed the new human-made legislation and the Sharia judges refused to apply it (Vogel, 1999).

Conclusion

An understanding of the identity of the legal system is mandatory for any law scholar to propose the reforms. This research is focused on understanding the identity of the legal system in the Kingdom of Saudi Arabia through different stages of legal system development. Generally, the legal system should be derived from the core cultural values and religion of the country, because the system represents the basic norms of any society. Before unification of the Kingdom, Sharia was the dominant source of law in the Arabian Peninsula. The Saudi Law is formulated of Royal Decrees, regulations, executive regulations, ministerial decisions; in addition to Sharia which mostly depends on the Book of Allah and Sunna of the Prophet (PBUH). From history, the Ottoman laws are the foundation of Saudi law. After an alliance between Muhammad Ibn Saud and Ibn Abd al-Wahhab in the eighteenth century, the Hanbali School of Thoughts remained dominant in Najd, a homeland of the Wahhabi reform movement. Further, a royal decree was issued in 1928 to follow the six books of Hanbali jurisprudence for judicial system which are Sharh Muntaha al-Iraadaat, Sharh al-Iqna, al-Rawd al-Murbi, Sharh Manar, al-Mughni and Sharh al-Kabir. On the other hand, some duality is also observed as some laws are borrowed from French Laws, because of French dominance on some Arab countries during the 18th and 19th centuries i.e. 1807 French Commercial Code. However, Islamic scholars consider the western law as alien to the Islamic Sharia. That is why, the Islamic scholars consider the Sharia as legislative authority as God as the only legislator. Saudi civil law schools are trying to convey knowledge-based structured law education based on the specified curricula. In the processing of enactment of legislation, the royal order expresses the King's will directly and solely to pass a law and the royal decree expresses the King's approval of regulation passed based on the recommendation of the Council of Ministers and the Shura Council.



REFERENCES

- Al-Jarbou, A.M. (2007). The Role of Traditionalists and Modernists on the Development of the Saudi Legal System. *Arab Law Quarterly*, 21(3), 191-229.
- Alkhalawi, R. (2015). *Legal education reform in Saudi Arabia: a case study of Taibah University*. Diss. Maurer School of Law: Indiana University, Theses and Dissertations. 15. <https://www.repository.law.indiana.edu/etd/15>
- Anthony, S. (2006). *Doing business with Saudi Arabia*. Third ed. GMC publications Ltd. London, United Kingdom.
- Baamir, A.Y. (2008). *Saudi Law and Judicial Practice in Commercial and Banking Arbitration*. A thesis submitted for the degree of Doctor of Philosophy: School of Law, Brunel University. <http://bura.brunel.ac.uk/bitstream/2438/6599/1/FullTextThesis.pdf> (last visited Nov 20, 2017)
- Friedman, L.M. (1975). *The legal system: a social science perspective*. New York: Russell Sage
- Glahn, G. & Taulbee, J.L. (2013). *Law among nations*. 10th edition, Rutledge.
- Hart, H.L.A. (2010). *The Concept of Law*. New Ad Edition, Oxford University Press.
- Kabanni, S.M.H. (2017). *What is a Fatwa?*, Islamicsupremecouncil.org. Available at: <http://islamicsupremecouncil.org/understanding-islam/legal-rulings/44-what-is-a-fatwa.html> (Accessed: 14 November 2017)
- Otto, J.M. (2010). *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Leiden University Press, Leiden, Netherlands.
- Raz, J. (1971). The identity of legal systems. *California Law Review*, 59(3), 795.
- Solaim, S.A. (1978). *Constitutional and Judicial Organization in Saudi Arabia*. A Dissertation submitted for the Degree of Ph.D. to the Johns Hopkins University, University Microfilms International, Ann Arbor, Michigan.
- Vogel, F. (1999). *Islamic law in the modern world: the legal system of Saudi Arabia*. Leiden: Brill.