

Understanding Islamic Sharī'a and the KSA legal system

Dr. Abdulatif Abdullah S Alkharji*

Abstract

The promotion of the rule of law in the Middle East, particularly in the Kingdom of Saudi Arabia (the KSA), is becoming increasingly important due to globalization. The country operates within a conventional Islamic legal framework, a non-constitutional monarchy. However, the pace of reform and change in the KSA is slow. Understanding the essence and significance of law within the legal framework is crucial for advancing a rule of law system in the KSA and other Muslim and Middle Eastern nations. This study examines the legal framework of the KSA, which is based on monarchy, tribal organization, and traditional Islamic Sharī'a. The study also investigates the feasibility of implementing change in a country like the KSA, where its legal system may be too entrenched in certain ideologies and traditions, hindering its ability to adopt necessary reforms for a rule of law system.

The keywords: the KSA legal system; Islamic Sharī'a; Primary sources; Secondary sources; statutory law.

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1. An overview of Islamic Sharī'a and the KSA legal system

In 610 CE, the Prophet Muhammed (PBUH) received the revelation of Islam in Makkah. Having had the same message conveyed to Abraham, Moses, and Jesus, this teaching was a moral and theological continuation of the earlier monotheistic faiths.¹ According to this doctrine, there is only one God, who has neither father nor son, and steadfastly rejects the idol venerated by the Arabian tribes.² As a religion, Islam aimed to change the harsh practices of the Arabian Peninsula and establish a set of standards of behaviour for everyone.³ In the Qur'ān, it is stated, 'Indeed We sent Our Messengers with clear signs, and sent down with them the book and the balance that people may uphold justice'. The interpretation of this passage could be suggesting that God sent the Islamic message to promote human welfare and foster peace.⁴

As outlined by the Qur'ān, Islam aims to protect people from injustice by advising them to do what is right and prohibiting them from doing what is wrong. Furthermore, it empowers them to overcome burdens and yokes that have been placed upon them.⁵ The KSA recognises Islam as the exclusive religious and legal foundation.

2. The Concept of Islamic Sharī'a

The word Sharī'a refers to Islamic Sharī'a. It is derived from the Arabic phrase that means 'taking the right path'⁶, in which God's rule is referred to.⁷ The concept of Islamic Sharī'a can be understood both as a legal system and as a set of guidelines that encompass the entirety of a Muslim's daily life.⁸ Hence, Islamic Sharī'a is considered to be both a religious and a secular standard.⁹ Islamic legal scholars agree that the five main sources for establishing Islamic Sharī'a are the Holy Book (The Qur'ān), the Sunna (the traditions or known practices of the Prophet Muhammad), Ijmā' (Consensus), Qiyas (Legal Analogy) and (Maqāṣid al-sharī'a and Maṣlaḥa). The Qur'ān and the Sunna are the two primary sources of Islamic Sharī'a, which are the foundations of the Saudi Legal system.¹⁰ Ijmā' is an Arabic term referring to the consensus or agreement of the Islamic community on a point of Islamic Sharī'a based on legal analogy (Qiyas). These latter sources are collectively referred to as "the striving of a legitimate scholar to reach a religious verdict" (Ijtihad).¹¹

2.1 Primary sources

2.1.1 The Qur'ān

The Holy Qur'ān is regarded as the most important scripture in the Islamic religion. A majority of scholars agree that the Qur'ān is considered to be the utterance of God, sent to the prophet Muhammad in order to guide his followers in virtuous behaviour and interpersonal relationships.¹² Consequently, the laws included in the Qur'ān regulate civil contracts and alliances, as well as religious obligations. Islam maintains a clear distinction between acts of worship, which encompass devotional obligations, and transactions, which are legal transactions governed by Islamic Sharī'a. It is widely believed that Islamic Sharī'a is a comprehensive legal framework that includes religious duties (referred to as the five pillars) and regulations governing other aspects of transactions, including contracts, torts, property, crimes, punishments, and war and peace laws. Also included are issues pertaining to family law, such as marriage, divorce, child custody, inheritance, and wills. The Qur'ān consists of a total of 6,239 verses, out of which 500 verses are dedicated to the discussion of criminal law, contracts, duties, and other facets of the legal framework. Furthermore, the Holy Qur'ān uses the phrase 'dignity' or a related

¹ Qur'ān, 14:1, 'Alif. Lam. Ra. (This is) a Scripture which We have revealed unto thee (Muhammad) that thereby thou mayst bring forth mankind from darkness unto light, by the permission of their Lord, unto the path of the Mighty, the Owner of Praise'.

² Qur'ān, 30:1, 'Say (O Muhammad (Peace be upon him)): 'He is Allah, (the) One'.

³ Wael Hallaq, 'A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-fiqh' (1999) Cambridge University Press 31.

⁴ Qur'ān, 57:25.

⁵ Qur'ān, 7:157.

⁶ Cherif Bassiouni and Gamal Badr 'The Shariah: Sources, Interpretation and Rule-Making' (2002) 1 UCLA Journal of Islamic & Near Eastern Law 135.

⁷ Majid Khadduri and Herbert Liebesny, *Origin and Development of Islamic Sharia: Law in the Middle East* (Lawbook Exchange 1955) 105.

⁸ SS Ali, 'Teaching and Learning Islamic Sharī'a in a Globalized World: Some Reflections and Perspectives' (2011) 61(2) Journal of Legal Education 207.

⁹ David Weissbrodt and others, 'International Human Rights: Law, Policy and Process' (2009) LexisNexis 239.

¹⁰ See the important research by Truluck Emilia "Using Islam to Protect the Rights of Migrant Workers: Bringing Kafala into Sharī'a Compliance in Saudi Arabia" UCLA Journal of Islamic and Near Eastern Law, 20(1) 2023 < <https://escholarship.org/uc/item/1ht6n3qz> >.

¹¹ Muhammad Ata Alsaid Sidahmad, 'The Hudūd: the hudud are the seven specific crimes in Islamic criminal law and their mandatory punishments' (1995) 432.

¹² Fouad Sheyab, 'Sources of Judicial Judgment in Commercial Disputes: A Study in the Saudi Legal System' (2023) Judicial Magazine, Issue 2.

form, a total of 49 times. According to a certain scripture, the Almighty proclaims: 'We have granted dignity to the offspring of Adam'.

2.1.2 The Sunna

According to Islamic Sharī'a, the Qur'ān is the primary source of guidance, with the Sunna providing additional guidance. The Hadith, is often referred to as the Sunna of the Prophet which is a compilation of the teachings and actions of the Prophet Muhammad and therefore they have significant authority in Islam. The verses of Surah An-Nisa explain the authority of the prophet Muhammad and instructs believers to adhere to the Messenger who has been assigned to them by God.¹³ Thereunder, the Sunna explains and clarifies the Qur'ānic's general regulations, prohibitions, and commands. Furthermore, the results are corroborated by the Prophet's personal observations and accounts of scientific explanations and oral teachings that he shared with his disciples throughout his lifetime. Consequently, it may be said that there are two categories of Sunna: the Sunna pertaining to verbal expressions and the Sunna pertaining to physical deeds.

The Qur'ān is ultimately the most authoritative source, although both sources are essential to a great understanding of Islamic Sharī'a. Nevertheless, each of them may require some interpretation where supplementary legal sources are used when the primary sources or secondary sources of law are inadequate or uncertain in addressing specific issues.

2.2 Secondary sources

2.2.1 Ijmā' (Consensus among legal scholars)

According to Islamic jurisprudence, consensus is considered the third most important authoritative source. In the present context, consensus 'Ijmā'' refers to the shared viewpoint of Islamic jurisprudence, the consensus of a group of Muslim jurists regarding a particular ruling or decision. The Prophet stated in a hadith that has been transmitted, 'Indeed, Allah will not permit Muhammad's community to concur on an error'.¹⁴ In addition, obedience to God and the Messenger, in addition to those in positions of authority within the Muslim community, is obligatory according to the Qur'ān.

2.2.2 Qiyas (legal analogy)

The analogy is the fourth source of Islamic Sharī'a. It is a method of utilising rational thinking concerning the application of verdicts derived from the holy texts to various emerging issues that arise daily life. Four essential components are required for analogous reasoning: the origin, which describes the original subject; the branch, which represents the new subject; the explanation, which is a statement of the shared cause between the two; and the ruling, a statement that refers to the inferred rule derived from the analogy.¹⁵

Based on the sources of Islamic Sharī'a, it can be said that rules are derived from the Qur'ān and Hadith, as well as consensus and a process of interpretation known as Qiyas. A certain process needs to be followed when these sources are in conflict. It is believed that the Qur'ān and the Prophet's Sunnah are the primary texts or fundamental sources in this approach. There are many circumstances in which logic and reason may be applied, provided that they do not contradict the teachings of the Qur'ān and Sunna.¹⁶ According to Baderin, the concepts of Ijmā' and Qiyas assist individuals in interpreting and implementing the teachings of the Qur'ān and Sunna with intricate and constantly evolving situations.¹⁷

2.3 The concept of Ijtihad and the Islamic schools of thought

Islamic jurisprudence, according to Islamic Sharī'a, refers to the cognitive process of uncovering and deducing principles pertaining to God's legal rules (Sharī'a). In Islamic jurisprudence, Ijtihad is the process of deriving legal views by analysing and interpreting writings from the law. It is crucial to comprehend that Sunni and Shiite legal philosophy include many distinct schools of thought. Sunni legal interpretation is grounded on four prominent schools of jurisprudence: Hanbalia,¹⁸ Malikia,¹⁹ Shafi'ia,²⁰ and Hanafia.²¹ As a group of Shiites legal interpretation, there are several different branches, such as Twelver, Imami, Ismaili, Alawite, Druze, and Zaidi.

Islamic Sharī'a is fundamentally 'an exhaustive body of regulations' that can be implemented anywhere and at any time due to its well established structure. Islamic Sharī'a maintains that only God has complete knowledge and understanding of all

¹³ As for the obligation of following the prophet and complying with his Sunna, the Qur'ān states in Surah An-Nisa - 59: 'O you who have believed, obey Allah and obey his Messenger and those over you'.

¹⁴ Muhammad Al-Uthaymeen, *Al-Sharh Al-Mumtī'* 'In Zad Al-Mustaqni' Vol 7 (Dār Ibn Al-Jawzi 1428)

¹⁵ An analogy may be illustrated by dispossessing a murderer of his inheritance. As per the Sunna of the Prophet, it is prohibited for a murderer to receive inheritance. Analogically, this norm encompasses testamentary law as well.

¹⁶ An illustration of this may be seen in the narrative of Muadh bin Jabal, who was designated by the Messenger to oversee the virtuous adjudicators in Yemen. Prior to assuming the position of judge, Muadh was inquired by the prophet whether there are any Qur'ānic passages or Prophetic sayings that might serve as guidance in the judiciary. Muadh replied, 'I will exert my utmost effort in rendering judgements'. The Messenger consented to this. Thus, this practice reinforces the previously stated organisation of Sharia's sources.

¹⁷ Mashood Baderin, *International Human Rights and Islamic Sharī'a* (Oxford University Press 2003).

¹⁸ The Hanbali School, founded in 780 CE by Ahmad Bin Hanbal, is the fourth most significant Islamic Sharia school. It prioritizes the Qur'an and Sunnah, rejecting qiyas and consensus if they conflict with these teachings. Ibn Hanbali, known for his *Al-Musnad*, is often seen as a conservative, preserver of traditions rather than a genuine legal expert. Originating in Saudi Arabia and Qatar.

¹⁹ The Maliki school, established by Malik Bin Anas in 713 CE, is an Islamic legal tradition that uses a unique approach to final judgements, considering both authoritative sources of Islam and traditions of Madinah. It is based on nearly two thousand hadiths and is considered the most trustworthy by Muslims. The school is renowned for its comprehensive understanding of Islamic Sharia.

²⁰ Shafi'i philosophy, established in Gaza in 767 CE by Palestinian Mohammed Al-Shafi, is a key school of Islamic Sharia based on qiyas-based legal reasoning and consensus within the Muslim community. Its most famous book is *Al-Risala* fi 'usul alfiqh, and it has influenced East African nations, Malaysia, India, Pakistan, and Arab nations like Egypt and Yem.

²¹ Imam Abu Hanifa, a renowned Islamic thinker, established the ray/shura institution in Kufa, Iraq, in 699 CE. He promoted a subjective decision-making process based on Ijma and Qiyas principles. This educational institution has expanded over Central Asia, the Anatolian Peninsula, and India, with Iraq and Syria being the only Arab nations firmly adhering to this school of thought.

matters. Consequently, a significant proportion of Muslims maintain the belief that Islamic Sharī'a is fair and regard it to have the natural principles that the rational mind should strive to understand and apply since it represents the ultimate truth. The validity of Islamic principles of law is derived solely from their existence rather than from their reason. Due to the divine and inviolable character of Islamic Sharī'a, these concepts are certain and not subject to speculation. Consequently, Islamic Sharī'a is different from other legal systems. While followers of Islam contend that secular law is unsubstantiated, Islamic Sharī'a maintains that the law as elucidated in the Qur'ān offers a clear and unequivocal basis for legal concepts. As for the Qur'ān, 'This is the Book; in it is guidance sure, without doubt, to those who fear Allah'. That is a statement expressing agreement or confirmation.

Due to its immutable nature, Islamic Sharī'a is inalterable by removal, or substitution, thus constituting an eternal source. However, it is feasible to differentiate between the unchanging principles of Islamic Sharī'a and the adaptable regulations that may be periodically reinterpreted by careful examination.

Ijtihad may be described as a process used to read texts with the purpose of extracting standards from them. Muslims who engage in legal reasoning are obligated to adhere to the subsequent principles, as stipulated in the Qur'ān and the Sunna of the Prophet: Islamic scholars adhere to the principles of Islamic Sharī'a and refrain from violating them. They focus their analysis on contemporary issues based on the Qur'ān and Sunna. In addition, it is not acceptable to rely solely on justice or common sense when making decisions. Accordingly, Islamic Sharī'a provides an objective interpretation rather than one that is subjective. It is an unauthorised inference made without the approval of a governing authority. In addition, if the interpretation is speculative in nature and hypothetical, it therefore cannot be conclusive.

In summary, Ijtihad plays a vital role in the application of Islamic law in modern life, particularly in cases when there are no established sources for specific situations. It has a crucial function in contexts where criminal law is lacking, and Muslim scholars need to depict Islamic principles accurately. Therefore, it is incumbent upon individuals to assiduously seek divine guidance and adhere to the textual foundations of Islamic Sharī'a, specifically the Qur'ān and the traditions bequeathed by the Prophet, in order to discover principles and resolutions pertaining to social issues such as human trafficking.

The corpus of Islamic law can be broadly classified into three categories:

- i. Rituals and worship (ibadat);
- ii. Civil and other legal duties that include administrative, commercial, constitutional, labour, employment, family, and civil laws (mu'amalāt) in the modern sense; and,
- iii. Sanctions (uqūbat).²²

3. The Foundation of the KSA Legal system

The official language of the KSA is Arabic, which is the language used in all of its official legal documents. Although legal materials come in various forms, they can be broadly categorised into three sources: Islamic Sharī'a, statutory law,²³ and custom (*urf*).²⁴ The KSA acknowledges Islamic Sharī'a as the only basis for its legal system. Sharī'a refers to the body of Islamic law as it serves as a guideline for all legal matters in the KSA. In the Sharī'a, and therefore in the KSA, there is no difference between the sacred and the secular aspects of society. In fact, the KSA has no formal constitution; however, by royal order in 1992, the King implemented the Basic Law of Governance. To the extent that the Basic Law can be considered an 'informal' constitution, Article 1 establishes the Qur'ān and the Sunna of the Prophet Muhammed as the 'formal' constitution. In light of this, there should be no inconsistencies between the laws of the State and the principal sources of Islamic Sharī'a.²⁵ A notable characteristic of the KSA is that it does not have many secular laws. Nonetheless, this may also increase the difficulty of determining the true meaning of the law, particularly in a system that lacks judicial precedent. Traditional laws can be interpreted more flexibly in this manner.²⁶

The Basic Law has a total of 83 articles distributed throughout nine chapters.²⁷ Article 7 of the KSA constitution establishes that the KSA government has authority derived from the Holy Qur'ān and the Sunna of the Prophet Muhammed.²⁸ Under Article 44, the King is exempted from the separation of powers, which applies to the legislative, executive, and judicial branches. The monarch is their 'ultimate authority'. As per Article 67 of the Constitution, if Islamic Sharī'a does not directly address a legal issue, when a regulatory action is still needed, then a King may enact regulations (*nizam*) to address that issue in accordance with Islamic Sharī'a. Furthermore, Article 68 of the Constitution provides for consultation and advice between the Council of Ministers and the Consultative Council (Majlis Al-Shura) re-established in 1992.²⁹

The Consultative Council's duties include policy advice and the creation of rules and bylaws that are consistent with Islamic Sharī'a principles and serve the public interest.³⁰ It was given the authority to create policies related to all public affairs, including economic, financial, and international affairs. As per the rule, an ordinance (*nizam*) could only be issued by royal

²² *ibid.* 424 – 433.

²³ According to Article Seventy of the Basic Law of Governance, the issuance and amendment of regulations, treaties, international agreements, and privileges are to be carried out through royal decrees.

²⁴ Ihab Eid, lectures In Principles of Law, College of Applied Studies and Community Service, King Saud University.

²⁵ Saudi Basic Law of Governance (1 March 1992) art 8.

²⁶ Lisa Wynn, 'Marriage Contracts and Women's Rights in Saudi Arabia; Mahr, Shurūt, and knowledge distribution (2008) Islamic Legal Studies Program, Harvard Law School 200.

²⁷ The Saudi Basic Law of Governance was adopted on 1 March 1992.

²⁸ *ibid* arts 1, 7 and 48; Additionally, Rashid Aba-Namay's article 'The Recent Constitutional Reforms in Saudi Arabia' appeared in 42 International and Comparative Law Quarterly 295.

²⁹ Its responsibility is to establish rules and regulations that serve the public interest while also adhering to Islamic Sharia.

³⁰ Saudi Basic Law of Governance (1 March 1992) arts 67

order or decree and would not come into effect until it was published in the official gazette.³¹ According to Article 48, courts (including labour courts) must “apply Islamic Shari’a to the cases before them in strict conformity with the Qur’an, and Sunna as well as other regulations issued by the Head of State”.³² The Council of Senior Eulama was founded in 1971 to make sure governmental regulations follow Islamic law. An important function of this institution is to advise the King and the administration on matters of state. Over the years, the council has played an integral role in the development of government policy.³³

Council of Senior Eulama viewpoints regarding specific criminal law issues are considered authoritative by the legal profession. With the assistance of intellectuals and jurists, the State has been able to maintain Islamic Shari’a despite the KSA’s incredibly rapid development.³⁴ During the past few decades, the KSA has frequently interpreted and applied Islamic Shari’a in a more traditional and conservative manner, which may explain why many observers perceive it as inflexible.³⁵

Considering its prominent religious position in the Muslim world with the location of two of the most significant Islamic holy mosques, the KSA has an obligation to safeguard its Islamic identity. Accordingly, it declares itself to be an Islamic State throughout, binding itself to Islamic values and customs.³⁶ Additionally, the KSA is considered one of the nations most likely to maintain a strict Islamic legal system.³⁷ In this regard, the KSA has a distinct legal system compared with both the western and the Islamic systems that are practiced elsewhere.³⁸

In general, KSA laws are mistakenly thought to be solely based on Islamic Shari’a. Conversely, due to the presence of regulations issued by the government, the law in reality is more comprehensive than it first appears. Consequently, the KSA has adopted a completely new interpretation of Islamic Shari’a relating to the legislative authority of the government following the passage of these laws. This new methodology appears to acknowledge that it is possible to enact laws under Islamic Shari’a ‘without in any way infringing on the function reserved exclusively for God’.³⁹

In addition, tribal values, traditions, and customs make an important contribution to the KSA’s culture and their legal system, as in most of the Middle East. Esmaeili concludes that tribal law, tradition, or custom have a significant influence on the political and governmental structures of the KSA, as well as the laws pertaining to private and individual matters.⁴⁰ It is, however, safe to say that Islamic Shari’a is without a doubt the cornerstone of the Saudi legal system, as well as in the Islamic world. However, there is one critical point to note that no law shall conflict with Islamic Shari’a, as the Qur’an and the Sunna constitute the primary sources of legal norms in the KSA.

The first place to look for information on Saudi Arabian law is the ‘fiqh’ of Islamic law. Fiqh is an Arabic Islamic jurisprudence term derived from the root word faqiha, meaning ‘deep and comprehensive understanding’. The Arabic literature has used the word ‘fiqh’ and its subparts in the quest of knowledge, wisdom, and in-depth understanding of Islamic laws. One looks to the ‘fiqh’, or ‘ijtihad,’ of religious-legal scholars from the past and present who, through their knowledge and devotion, have become qualified in interpreting Islamic Law and deduce laws rather than from State legislation or court decisions. The majority of the recognised Islamic legal schools’ body of knowledge, or ‘fiqh,’ is found in works authored by Muslim scholars (Ulama) throughout a nearly fourteen-century span.⁴¹ Saudi Arabian judges base their decisions on these texts, particularly those that are regarded as canonical sources in every Islamic legal school.⁴² According to Professor Frank Vogel, who examined the Saudi legal system:

Every source of Saudi law, with the exception of the Qur’an, was written or assembled by academics known as Ulama. This includes the compilation of the Prophet’s customs. Ulama’s ability to produce these texts is based on their standing as scholars, not on any formal or official roles they may have, like judge or professor in an academic institution. Based on these sources, other Ulama, like Saudi Arabia’s judges and Mufti, produce fiqh to provide guidance to others or settle disputes. Usually, a scholar is required to assess these materials and render a decision. A non-scholar has a moral duty to contact someone who is more knowledgeable than them when it comes to interpretation; they can do this by getting their fatwa or by reading a book where the expert has expressed their ideas.⁴³

³¹ Many Saudi Eulama view the word ‘nizam’ (ordinance or regulation) as a Western concept that is not permitted under Islamic Sharia. This word distinguishes itself from the word ‘law’ and is commonly used to refer to codified laws. It is also avoided to use the term ‘legislative authority’ in preference to ‘regulatory authority’, as a phrase that can only be applied to God as the only legislator. In 2004, AM Al-Jarbou published a case study on the independence of the judiciary in Saudi Arabia in 19 Arab Law Quarterly 5, 31.

³² Saudi Basic Law of Governance (1 March 1992) arts 1, 7 and 48

³³ Anders Jerichow, *The Saudi File – People, Power, Politics* (St Martin’s Press 1998) 68.

³⁴ The KSA History, Ministry of Foreign Affairs of the Kingdom of Saudi Arabia’s website <https://www.google.co.uk/search/> accessed 01 December 2023.

³⁵ Hossien Esmaeili, ‘On a Slow Boat Towards the Rule of Law: The Nature of Law in the Saudi Arabian Legal System’ (2009) 26 *Arizona Journal of International and Comparative Law* 1.

³⁶ The Kingdom of Saudi Arabia, as protector of Islam’s holy sites, holds a special place in Muslims’ hearts. This is stated in paragraph 2 of part 1 of the KSA’s Initial Report to the CRC.

³⁷ Cf Enid Hill, ‘Comparative and Historical Study of Modern Middle Eastern Law’ (1978) 26 *The American Journal of Comparative Law* 295.

³⁸ Jan Michiel Otto, *Sharia Incorporated; A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden University Press 2010) 172.

³⁹ KA Faruki, *Evolution of Islamic Constitutional Theory and Practice* (1971) 4.

⁴⁰ Hossien Esmaeili, ‘On a Slow Boat Towards the Rule of Law: The Nature of Law in the Saudi Arabian Legal System’ (2009) 26(1) *Arizona Journal of International and Comparative Law* 1.

⁴¹ Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* at 22, 142 – 143 & 370 – 373 (2000).

⁴² *ibid.* 16.

⁴³ *ibid.* 145-146.

The Hanbalī school, the fourth orthodox school of law within Sunnī Islam, interprets Islamic Sharī'a, which forms the basis for the implementation of Islamic law in the KSA courts. Even with the Kingdom's single school of Islamic law, there were still disparities in decisions and practices, which made it more challenging to get a reliable legal opinion. The scholars of the Hanabli school of Islamic law held differing views and philosophies, which contributed to the multiplicity of interpretations.

In June 1928, the Judicial Board of Saudi Arabia adopted a resolution, which was subsequently confirmed by the King, aiming to address the inconsistencies. The resolution declared that rulings would follow the established decisions found in Imam Ahmed ibn Hanbal's school of Islamic law due to its books' clarity and simplicity, the consensus of this school's adherents, and the presentation of evidence addressing any issues that may be at hand.⁴⁴

Specific Hanbali school books were named by the Judicial Board as the official and primary sources for the Shari'a courts under its purview. Judges were instructed to refer to the two previous Hanbali authoritative works written by renowned Hanbali jurist Mansur ibn Yunus al-Bahufī al-Hanbali (1052 A.H./1642) as per the resolution's paragraph (c): Sharh Muntaha al-Iradat (Manual's Explanation); and Sharh al-Iqna' (Manual for Explaining Al-Iqna').

When attempting to solve a particular issue, judges must abide by the solution offered by one of the books and not the other, or by the answer that both agree upon. If there is a disagreement, nevertheless, Sharh al-Muntaha takes precedence. If neither of the two volumes is accessible or does not address a certain issue, judges should revert to an abridgment or synopsis of it:

A Synopsis of Al-Iqna', written by Sharaf al-Din Abu al-Naja al-Hajjawi (968 A.H./1560), is known as Zad al-Mustaqni' fi Ikhtisar al-Muqni'. Mar'i ibn Yusuf al-Karmi's work Dalil al-Talib li Nayl al-Matalib, or A Synopsis of Muntaka al-Iradat (961 A.H./1554).

Other Hanbali law books may be studied and conclusions drawn in line with the prevalent opinion they contain if a solution is still not discovered.⁴⁵ As a result of this decision, a royal decree was issued in 1349 A.H. (1930) which said that 'a judgement not based on those texts shall require an obligatory meeting, while it shall be sufficient to rule by what is found in the authentic law books of the school of Imam Ahmed ibn Hanbal, which may be applied without a meeting of court members'.⁴⁶

Furthermore, there are situations where judges on hearing such cases should or should not follow the instruction of other Sunni schools, depending on the specifics. The aforementioned resolution contained a significant exception in paragraph (b) that allowed the courts to adopt the views of other schools of Islamic law if they thought that doing so would help them reach a decision that would best serve the public interest.⁴⁷

The Council of Ministers, the Shura Council, or the King codify family law, criminal law, legacy or inheritance, or many facets of Islamic contract law. The 'codification of Islamic law' debate is worth mentioning. Traditionalists, who favour applying Islamic law as it is understood by the Prophet's noble companions and as set forth in the Qur'an and Sunna, with the assistance of explanations found in traditional jurisprudential sources, have strongly opposed this.⁴⁸ While that is outside the purview of this thesis, scholastically speaking, limiting the number of jurisprudential sources of the divine law (fiqh), which caused ambiguity and differing opinions when applied in court rulings, was a significant first step towards codification and a crucial way to standardise the Saudi Arabian judicial system.⁴⁹

The 1953 establishment of the Saudi Council of Ministers as a formal decision-making body with legislative, executive, and administrative functions brought modern laws and regulations spanning a wide range of public and private law domains into the Saudi legal system in addition to Islamic law.⁵⁰ The Saudi Corporation Law, which was enacted in 1385 A.H./1965, is a clear example of French influence in the field of private law. It was introduced into the Saudi legal system through 'the Egyptian code which was directly patterned on French company law before the amendments of 24 July 1966'.⁵¹ The Saudi Law of Criminal Procedure also contains several provisions that were borrowed from Egyptian and French law.⁵² Many other legal systems, particularly the Egyptian and French systems, had an influence on numerous codes that regulate public finance, customs, ports, mines, and other areas which have been enacted in the field of public law.⁵³

As long as contemporary statute provisions do not violate divine law, they are generally valid and enforceable. As indicated, the objectives of Islamic Sharī'a and the public interest (Maqāsid al-sharī'a and Maṣlaḥa) are the only foundation upon which contemporary statutory legislation and regulations can be established and enacted. This power is only used when Islamic law

⁴⁴ Abdulfattah M. Sayfi, *al-Ahkam al-ammah Lil-Nizam al-Jinai fi al-Shari'a al-Islamiyah Wa-Al-Qanun* [The General Rules of the Shari'a Criminal Justice System] 9 (1997).

⁴⁵ Al-Hay'a al-Qadaiyyah [Judicial Board] Decision No.3 (17/1/1347/ June 25, 1928), approved by Royal Decree of 24/3/1347/ Sept. 8, 1928. See also Nabil Saleh, *The Law Governing Contracts in Arabia*, 38 Int'l & Comp. L. Q. 764 – 765, 761 - 787 (1989).

⁴⁶ Fuaad Hamza, *Al -Bilad al-Arabia al-Saudiyah* [Kingdom of Saudi Arabia] 175-76 (1988).

⁴⁷ Al-Hay'a al-Qadaiyyah [Judicial Board] Decision No.3 (17/1/1347/ June 25, 1928), approved by Royal Decree of 24/3/1347/ Sept. 8, 1928. See also Nabil Saleh, *The Law Governing Contracts in Arabia*, 38 Int'l & Comp. L. Q. 764 – 765, 761 - 787 (1989).

⁴⁸ Bakr Abu Zayd, *al-Taqqeen Wa al-Illam* [Rationalization and Necessity] (1982); see also Wahbah Al-Zihily, *Johoud taqneen al-fiqh al-Islami*, [The Efforts to Codify the Islamic Fiqh] (1987).

⁴⁹ Abdulfattah Sayfi, *al-Ahkam al-ammah Lil-Nizam al-Jinai fi al-Sharia'h al-Islamiyah Wa-Al-Qanun* [The General Rules of the Shari'a Criminal Justice System] 12-13 (1997).

⁵⁰ Roger Perrot, 'Institutions Judiciaires' 88 (1983) Paris: Editions Montchrestien; see also Al-Jazeera newspaper, 'The Council of Ministers, history, figures, and facts from establishment to modernization' Thursday 06/10/2022 Issue 18134< <https://www.al-jazirah.com/2022/20221006/fe1.htm>> accessed 5 January 2024.

⁵¹ *ibid.* 290.

⁵² Abdullah Mari Qahtani. 2 *Tatawwur al-Ijraat al-Jinaiyah Fi al-Mamlakah al-Arabiyah al-Saudiyah* [The Development of the Law of Criminal Procedure in Saudi Arabia] 528, & 363 (1998).

⁵³ Roger Perrot, *Institutions Judiciaires* 290 (1983).

lacks a clear provision addressing a particular matter.⁵⁴ According to Article 67 of the Basic Law, 'the regulatory authority shall lay down regulations and proposals to further the interests of the State, or remove what might be prejudicial thereto, in conformity with the Islamic Shari'a'.⁵⁵ Saudi Arabia refers to statutory laws that are autonomous, although not entirely independent, of Islamic Shari'a rules because, in accordance with the Islamic Shari'a God is sovereign and has the final say over matters of law. 'The Arabic word 'qanun,' meaning 'law,' is not used in Saudi Arabia because Shari'a forbids it as it symbolises secular or temporal law'.⁵⁶

The government establishes the official sources of the KSA law, which include statutes, executive regulations, tables, laws, rules, procedures, international treaties and agreements,⁵⁷ ministerial resolutions and decisions, departmental circulars, and other pronouncements of the KSA official bodies with legal force. As previously stated, unless authorised by royal decrees following its study—typically by both the Council of Ministers and the Shura Council—no legislations⁵⁸ or regulations, treaties, international agreements, or concessions may be adopted, negotiated, or changed.⁵⁹

By issuing royal orders, the King can also independently create laws or policies. The head of an Islamic State, according to Islamic jurists, has the authority to enact laws, either directly or through interpretation, in order to meet growing social needs, address developmental concerns, and protect the public interest.⁶⁰ The King used his legislative authority to promulgate the following constitutional instruments between 1992 and 1994.⁶¹

- i. The Basic Law of Governance, Royal Order No. A/90, (27/08/1412H, Mar. 1, 1992);
- ii. The Shura Council's Law, Royal Order No. A/91, (27/08/1412H, Mar. 1, 1992);
- iii. The Council of Ministers Law, Royal Order No A/13. (03/03/1414H, Aug. 20, 1993); and
- iv. The Law of Provinces, Royal Order No. A/92, (27/08/1412H, Mar. 1, 1992).

Furthermore, in order to guarantee that judges have access to the most recent working knowledge and to prevent inconsistencies in their rulings, the Law of the Judiciary established a research department. This department is housed within the Ministry of Justice and is composed of several experts with a minimum of a bachelor's degree. Its duties include indexing, abstracting, and classifying the principles established by higher courts, gathering collections of specific judgements, general rules, and precedents for publication, conducting research projects, and responding to judges' inquiries.⁶² The 2007 Law of the Judiciary's implementing rules also established the High Court's Research and Studies Department, which is made up of researchers who draft studies that the High Court's specialised circuits request.⁶³ Currently, the Ministry of Justice has released the 47th edition of its Code of Judicial Rulings, which is a compilation of court decisions from 2008 through 2024.

These decisions seem to set legally binding precedents for situations that are comparable in the future. It is beneficial in that it reduces the quantity of occasionally seemingly arbitrary rulings from certain courts. Similar departments with a director, several judges, specialists, and researchers were established as a result of the 2007 Law of the Board of Grievances. These divisions offer advice, carry out studies, categorise Board rulings, standard operating procedures, and precedents, and prepare them for publishing.⁶⁴ The Law of the Board of Grievances' implementing regulations also established the High Administrative Court's Research and Studies Department, which employs researchers whose job it is to prepare studies that the court's specialised circuits require.⁶⁵

To further address the demands of the judiciary, the King of the KSA issued a Royal Order on December 10, 2014, creating a committee to propose a project for the compilation of a Code of Judicial Rulings on legal situations and issues, categorised by Islamic jurisprudential category.⁶⁶ The committee, housed under the Ministry of Justice, has the authority to ask for research works and studies on Islamic jurisprudence and judicial precedents from specialists, researchers, and members of the court. The committee must weigh the views of the Islamic schools of law using a scientific method and in accordance with the guidelines of the Islamic Shari'a.

The 'Ijtihad' of religious-legal scholars and proof from Shari'a scriptures must bolster all of the codified content.⁶⁷ The committee was given 180 days to complete its work after the Royal Order affirmed its independence. The committee divided the work among three subcommittees, each of which was made up of eminent judges with expertise in criminal, personal status, and private law. Because the work was so complex, the committee asked the Royal Court to extend the deadline for completion. The Royal Decree is seen by many academics as a significant step towards the final codification of laws and punishments under the Islamic Shari'a, and the project is considered as a component of the extensive reform of the nation's

⁵⁴ Royal Decree No. 19746 (22/9/1379H, Mar. 20, 1960).

⁵⁵ The Basic Law of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992) art. 67.

⁵⁶ Roger Perrot, *Institutions Judiciaires* 290 (1983).

⁵⁷ According to Article Eighty-One of the Basic Law of Governance, the implementation of this system does not undermine the treaties and agreements that the Kingdom of Saudi Arabia has made with other countries, international bodies, and organisations.

⁵⁸ Legislation is divided into several sections; primary legislation (constitution), ordinary legislation (statutes) and subsidiary legislation (regulation).

⁵⁹ The Council of Ministers Law, royal order, art. 7 (03/03/1414H, Aug. 20, 1993).

⁶⁰ The Basic Law of Governance, royal order No. A/90, (27/8/1412H, Mar. 1, 1992) arts. 1 & 55.

⁶¹ Sobhi Mahmansani, *Falsafat al-Tashri fi al-Islam* [The Philosophy of Jurisprudence in Islam] 127 – 130. (Farhat J. Ziadeh trans., by, Beirut; 1952).

⁶² The Law of the Judiciary, Royal Decree No. M/64, art. 89 (14/7/1395H, Jul. 23, 1975).

⁶³ The Law of the Judiciary, Royal Decree No. M/64, art. 89 (14/7/1395H, Jul. 23, 1975).

⁶⁴ *ibid.* art. 6(a), amended by Royal Decree No. M/4 (1/3/1401H, Jan. 7, 1981).

⁶⁵ *ibid.* art. 6(b), amended by Royal Decree No. M/76 (14/10/1395H, Sep. 20, 1975).

⁶⁶ Mahir 'Abdulmajeed 'Abbood, *Some Guarantees of Justice in the Islamic Judiciary*, (Jan. 4, 2005).

⁶⁷ Royal Order No. A/20, (Dec. 10, 2014).

legal system. Consequently, the evidence law (2021), the personal status law (2022), and, more recently, the civil transactions law (2023) were all codified by rules issued by the Kingdom later on, as per Islamic Sharia.

The Official Gazette (Umm al-Qura) is the publication where all Saudi statutory legislation and regulations are published.⁶⁸ The majority of Saudi statutory laws and regulations, as well as all the fundamental sources from the Sunni schools of jurisprudence, have been published in multi-volume works by private entities. The printed resources should be a researcher's initial choice.

It is noteworthy, nevertheless, that a sizable body of primary sources of Islamic Shari'a and its related sciences, including all the primary sources of the Hanbali school of jurisprudence, are now digitally accessible. The full texts of all the major sources of the Sunni schools of jurisprudence are available to attorneys, judges, scholars, and researchers through a number of independent internet services. With the advancements in search engine technology, interested parties can easily search through hundreds of volumes for a certain topic using the electronic copies of these primary sources. This allows users to compare and contrast different viewpoints from various Islamic schools of law.

Furthermore, all of the KSA's statutory laws and regulations are gathered, arranged, preserved, and made accessible by the Saudi National Centre for Documents and Archives. The Arabic full texts of multilateral, regional, and international conventions and treaties, as well as Saudi statutory laws and regulations, are comprehensively covered on the Centre's website.

The Compendium of Saudi Laws has also been updated by the Bureau of Experts, which has added modifications and removed laws that have been repealed. Its English online database is an officially recognised government website providing a trustworthy English translation of Saudi Arabian statutory laws and regulations. It has translated a number of significant Saudi statutory laws.

As the KSA is an Islamic state, as such, both criminal and civil proceedings in its court system are handled under Islamic law, or Shari'a. The King, who serves as both a source of pardon and the ultimate court of appeal, is at the head of the legal system. There are three primary components to the Saudi judicial system. The majority of matters in the Saudi legal system are heard by the largest, the Shari'a Courts. The Supreme Judicial Council, Courts of Appeal, and Courts of First Instance (Summary and General Courts) comprise the hierarchy of Shari'a courts. Courts of First Instance are divided into the following: a- General courts. b- Criminal courts. c- Personal status courts. d- Commercial courts; and e- Labour courts. Each entity is preoccupied with the matters presented to it in line with the framework of this system, namely the legal proceedings system and the criminal processes system. With the King's assent, the Supreme Judicial Council has the authority to create further specialised courts.⁶⁹

The Board of Grievances is an additional judicial system that hears cases involving the government in addition to the Shari'a courts. A number of special committees housed within government ministries handle certain disputes with limited adjudicatory or quasi adjudicatory jurisdiction, making up the third segment of the Saudi judicial system, the most significant being as follows: the Committee for Negotiable Instruments (a); the Commercial Agency Commission (b); the Committee for Combating Commercial Fraud (c); the Committee for Combating Cover-Up Activities (d); the Committee for Combating Cover-Up Activities (e); the Customs Committee (f); the Committee for the Resolution of Securities Disputes (CRSD) (g); the Committee for the Settlement of Banking Disputes (the 'SAMA Committee'); and (h) the Labour Disputes Committees.

The SAMA body established in 1987 by the Saudi Arabian Monetary Agency, is a special body tasked with investigating banking disputes between banks and their clients and mediating a resolution between the parties. Claims made by or against banks are outside the jurisdiction of the Board of Grievances and Shari'a courts, according to the Royal Order that established the Saudi Central Bank Committee. Hence, the Committee has the authority to render binding decisions even though it is not a recognised court.⁷⁰

Bibliography

Quran

Sunnah of the Prophet Mohammed

National Laws

The Basic Law of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992)

The Council of Ministers Law, Royal Order No A/13. (3/3/1414H, Aug. 20, 1993)

The Law of the Judiciary, Royal Decree No. M/64, (14/7/1395H, Jul. 23, 1975)

The Shura Council's Law, Royal Order No. A/91, (27/8/1412H, Mar. 1, 1992)

The Law of Provinces, Royal Order No. A/92, (27/08/1412H, Mar. 1, 1992)

The Judicial law. The law was enacted by Royal Decree No. M/78 on October 1, 2007

Articles

⁶⁸ Al-Shamil fi Anzimat Al-Mamlakah al-Arabiyyah al-Sa'udiyah [Comprehensive Collection of Saudi Arabian Regulations] 10 Volumes (Muhammad Rustom & Muhammad Al-Fuzani eds.) (Beirut: El-Halabi, 2005).

⁶⁹ [Article 9 of the Judicial law. The law was enacted by Royal Decree No. M/78 on October 1, 2007.](#)

⁷⁰ See further at <https://www.acc.com/sites/default/files/resources/vl/membersonly/Article/1384896_1.pdf>.

- Aba-Namay Rashid 'The Recent Constitutional Reforms in Saudi Arabia' appeared in 42 International and Comparative Law Quarterly 295
- Ali, SS 'Teaching and Learning Islamic Sharī'a in a Globalized World: Some Reflections and Perspectives' (2011) 61(2) Journal of Legal Education 207
- Muhammad Sidahmad, 'The Hudūd: the hudud are the seven specific crimes in Islamic criminal law and their mandatory punishments' (1995) 432
- Cherif and others, Bassiouni 'The Shariah: Sources, Interpretation and Rule-Making' (2002) 1 UCLA Journal of Islamic & Near Eastern Law 135
- Cf Enid Hill, 'Comparative and Historical Study of Modern Middle Eastern Law' (1978) 26 The American Journal of Comparative Law 295
- Hallaq, Wael 'A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-fiqh' (1999) Cambridge University Press 31
- Esmaili, Hossien 'On a Slow Boat Towards the Rule of Law: The Nature of Law in the Saudi Arabian Legal System' (2009) 26 Arizona Journal of International and Comparative Law 1.
- Sheyab, Fouad 'Sources of Judicial Judgment in Commercial Disputes: A Study in the Saudi Legal System' (2023) Judicial Magazine, Issue 2
- Perrot, Roger 'Institutions Judiciaires' 88 (1983) Paris: Editions Montchrestien.
- Wynn, Lisa 'Marriage Contracts and Women's Rights in Saudi Arabia; Mahr, Shurūt, and knowledge distribution (2008) Islamic Legal Studies Program, Harvard Law School 200.
- Weissbrodt and others, David 'International Human Rights: Law, Policy and Process' (2009) LexisNexis 239

Books

- Abdulmajeed, Mahir '*Some Guarantees of Justice in the Islamic Judiciary*, (Jan. 4, 2005)
- Abu Zayd, Bakr '*al-Taqneen Wa al-Ilzam* [Rationalization and Necessity] (1982)
- Al-Zihily, Wahbah '*Johoud taqneen al-fiqh al-Islamī*, [The Efforts to Codify the Islamic *Fiqh*] (1987)
- Al-Shamil fi Anzimat Al-Mamlakah al-Arabiyyah al-Sa'udiyah [Comprehensive Collection of Saudi Arabian Regulations] 10 Volumes (Muhammad Rustom & Muhammad Al-Fuzanī eds.) (Beirut: El-Halabi, 2005)
- Baderin, Mashood, International Human Rights and Islamic Sharī'a (Oxford University Press 2003)
- Eid, Ihab, lectures In Principles of Law, College of Applied Studies and Community Service, King Saud University
- Faruki, KA '*Evolution of Islamic Constitutional Theory and Practice* (1971)
- Hamza, Fuaad, '*Al-Bilad al-Arabia al-Saudiyah* [Kingdom of Saudi Arabia] 175-76 (1988).
- Majid and others, Khadduri Origin and Development of Islamic Sharia: Law in the Middle East (Lawbook Exchange 1955)
- Jerichow, Anders The Saudi File – People, Power, Politics (St Martin's Press 1998)
- Muhammad Al-Uthaymeen, Al-Sharh Al-Mumtī 'In Zad Al-Mustaqni' Vol 7(Dār Ibn Al-Jawzi 1428)
- Mahmansani, Sobhi '*Falsafat al-Tashri fi al-Islam* [The Philosophy of Jurisprudence in Islam] 127 – 130. (Farhat J. Ziadeh trans., by, Beirut; 1952).
- Qahtani, Abdullah. Tatawwur al-Ijraat al-Jinaiyyah Fi al-Mamlakah al-Arabiyyah al-Saudiyyah [The Development of the Law of Criminal Procedure in Saudi Arabia] 528, & 363 (1998)
- Sayfi, Abdulfattah '*al-Ahkam al-ammah Lil-Nizam al-Jinai fi al-Sharia'h al-Islamiyyah Wa-Al-Qanun* [The General Rules of the Sharī'a Criminal Justice System] 12-13 (1997)
- Otto, Jan Sharia Incorporated; A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present (Leiden University Press 2010) 172.