

DEVELOPMENT OF THE CIVIL LEGAL SYSTEM IN SAUDI ARABIA

Awad Ali Alanzi, Prince Sattam bin Abdulaziz University

ABSTRACT

The civil societies need civil legal system to be operative in the environment of justice and equity. Civilization and unification of the Kingdom of Saudi Arabia are also gone through the process of development in building a sound legal system in the Kingdom. This research discovers the development of the constitution, administrative law, commercial law and financial laws in the Saudi Arabia. We discussion on the historical development of constitution, administrative law, commercial law and financial laws in the Saudi Arabia. We observed that basic teachings of Islam including Qur'an, Hadith and Fiqh are the main sources to fill the legislative gaps but most of the codes of laws are derived from the French law in the mentioned domains in Saudi Arabia. Following the French law, the Islamic principles have never been ignored in developing the constitution, administrative law, commercial law and financial laws. This is a first study which discussed a comprehensive development of constitution, administrative law, commercial law and financial laws in the Saudi Arabia.

Keywords: Civil Legal System, Saudi Arabia, Teaching of Islam, Constitution, Administrative Law, Commercial Law Financial Laws.

INTRODUCTION

The Arabian Peninsula has been home to millions of people for over 20,000 years. States rose and fell throughout the ages, each contributing cultures, customs, lore, and law to future generations. Once thought to be only nomadic Bedouins, these people created and maintained the economic lifelines known as caravan routes with oases where weary travelers might pause their journey to rest and share knowledge of other places and times to teach, to learn, to experience something new. Logic suggests that it may have been through these types of casual and planned meetings that new cultures and laws may have developed.

There is a school of thought that promotes the theory that laws are created by man to serve man. This theory is flawed. The situational needs create laws, and the legal system of the Kingdom of Saudi Arabia is a perfect example of this. The law is meant to assist humans to live safe and fulfilled lives with respect for others but humans are ever changing and the law must keep up or fail them. The law must always be ahead of the curve to protect themselves from themselves. The Kingdom has been confronting this issue by establishing Civil law schools in the hopes of training quality legal experts to assist the government and the people, but there is a gap that must be closed between the reality and legal theories for there to be actual progress.

There is only one thing that can close that gap which is improved the civil law, commercial, criminal and international law educational programs offering training and certification to qualified graduates to practice law in the Kingdom. Critical efforts must be put

forth to train quality students in the various disciplines of law. The legal system in the Kingdom has been the subject of much controversy over the years. Non-Saudis have given it various names, some of which may have been derogatory and majority of which are patently wrong. However, the most appropriate name heard is “*achievement*.”

The Arabian Peninsula has a very long history of living and learning to live amid natural and human-made hardships. For at least a thousand years and more before unification, its small clans and tribe’s people struggled against the climate and lack of natural resources such as water and food and their only real enemy was survival in their harsh world. However, they learned to persevere by developing cultures with customs and ethics that met the needs of each group while adjusting to specific needs of each era. As the small clans, tribes and groups began to grow and expand, a hierarchy of judicious members began to take leadership roles.

In many tribal cultures, these were the wise elders who had studied in the classrooms of life, perhaps evening sharing knowledge and lore around a campfire at night or in a place of sitting. While, younger members vied for the best seat to hear, and more importantly learn. Each story told contained a sword called knowledge, a shield called wisdom, and a lesson in unity that held the group together. One might ask,

“Did these learned men also speak of law?”

In a sense, yes, it is easy to believe they did speak of law, but most probably it was not the law as a 21st Century people would define it. It was cultural guidelines and parameters designed to protect the self and the community unit.

The Qur’an, Sunnah, and Prophetic Hadith are the respected source of law. It is essential for the modern Saudi Arabian students of law to understand what is considered law and what is not? To begin with, each student must realize the fact that Sharia is not an actual code of law. Sharia is a guidebook, a map, and a personal advisor rolled up into one neat little package. It is the essential life-book of every faithful Muslim. It is the supreme source of the Saudi laws, but it is not a law book. It makes suggestions, gives advices, and points out human errors, but it is not a codified legal system. However, Islamic fiqh crafted its opinions according to Islamic Sharia teachings. In truth, it is meant to open one’s eyes to the maybes of life while following the sanctioned correct path of life lay out by God.

As communities grew in population, the need for a more official form of legal jurisprudence was recognized. Scholars began to train a new generation of scholars who in turn would carry on and train younger ones. In the form of oral lore, the wisdom of the past was passed on to younger generations. Perhaps these were the first true legal lectures but they were discussion groups. Elliot (2011), in his article on Sharia in America, narrated that

“The right wants to ban it in America, but do they even know Sharia Law what it is?”

The Kingdom of Saudi Arabia obliges a unique legal system which relies on Sharia principles and modern civil law in parallel. At present, the principles of Sharia apply in courts in the absence of legislative text that is enacted by legislatures. Therefore, the Sharia is a main source to fill the legislative gaps and interpretation of the law.

Basic Law of Governance: Constitutional Law

A basic Constitutional Law of country was dated as far back as the unification of the Kingdom. In 1926, the King sanctioned a constitution “*Basic Regulation for the province of Hijaz.*” The document became known as the Hijaz constitution, which was perceived as the precursor for future ones (Solaim, 1978). Over time, proposals were presented and committees formed to debate the merits of each until a long-awaited draft of the promised basic law was approved and it was promulgated in 1992, as the Basic Law of Governance (BLG). The BLG is the original constitutional legal document established in the country. It decrees that Islamic Sharia drawn from the Qur’an and Sunna shall be the foundation for all legal authority throughout the Kingdom. This BLG is similar to the constitutional laws of other countries. It defines the function, powers, and structure of different governmental entities within the Kingdom, and protects individual rights of citizens and the principles of Islam. The Law defines the relationship between rulers and the ruled (Ansary, 2008).

However, the term “*constitution*” in the BLG of the Kingdom is not always clear. This Law provides that the book of God and the Sunna (Traditions) of His Messenger, may God’s blessings and Peace Be upon Him (PBUH) is a constitution of the country. These concepts are provided in the BLG of the Kingdom which is interpreted as a constitutional law in each country. The Books of God, the Quran and the Sunna of the Prophet are considered the primary resource of Sharia, which along with qiyas (analogic reasoning) and ijma (consensus), could be abstracted to fiqh and the sources from which Sharia is derived (Standke, 2008). From Muslims’ belief, these religious sources are occupied a higher position than any writ rules by humans, including the constitutional law.

However, the BLG says the Qur’an and Sunna are the constitution of the Country. Then, it considers the Qur’an and Sunna are sources for the fatwa (religious legal opinion), courts and for the laws which the authorities may promulgate. To avoid this confusion, the BLG might do not mean the constitution according to the legal definition of the term. From the Arabic perspective, the constitution means a rule that works under it or an approach that must follow, which differs from the specific legal terminology. The King, by royal order, employs all affiliates of the cabinet, the president and vice presidents of the Board of Grievance. The head of the Board of Grievances reports to the King. The Minister of Justice has no authority over the Board. All decisions are based on promulgated laws and decrees issued by the government. The King, in his capacity as King, has sole authority to approve laws proposed by governmental agencies or ministers presented by his cabinet.

Saudi Arabian Rule of Law

The law within the Kingdom of Saudi Arabia is vital to the establishment of a consistent legal system that will faithfully serve all citizens of the country. The philosophies of many western nations are based on the premise that the law defends the people beside arbitrary or state interference. The significant difference is that in the Islamic principal belief, the highest law is that of the divine law. The legal concept is founded on a monarchical system and divine law. The rule of the state lies solely with the civil dynastic monarchical system. The Ulama have no jurisdiction over the working of state. However, the Saudi state adheres to Islamic principles as

the fundamental foundation of ruling for all activities in the Kingdom. The kings are entrusted with the primary protection of Islam's holiest sites, and since 1986, the Saudi kings undertook the burden of the Custodian of Two Holy Mosques as a formal title. In addition, all official religious institutions must be in charge of the religious scholars Ulama who are followers of the official jurisprudence school of the country (Esmaeili, 2009; Al-Fahad, 2005).

The nature of Saudi law is that of an integration of Islamic principles and contemporary civil law. The Islamic Sharia is grounded in actual Godly teachings which are pliable to statuses, evolving and submissive to improvement and application at all times and places. However, the legal system of the country is shifting to a modern system (Esmaeili, 2009). The Companies Law is a result of the national law of the Kingdom and has no theoretical basis in the heritage of Sharia which upholds the aforementioned rule of law in the legal system of the State.

Administrative Judiciary

The law of the Board of Grievances Diwan al Mazalim affirmed in 2007 that the Board is a self-governing judicial body associated with the king and pursues to establish justice. It works through the lawsuits presented and is enabling rightful owners to recover under them, guaranteeing the protection of rights, application of law and achieving justice and restitution of the rights. The Kingdom devoted additional effort to allocate a tribunal to decide on administrative disputes up to the time of reforming the board and deciding its jurisdictions. Since, it was a section in the Council of Ministers of 1954. It followed becoming an independent judicial of 1982 (Anthony, 2006).

The supreme-administrative court shall have jurisdiction to consider objections issued by administrative-court and any judiciary also in the case of issuance by a non-competent court. Its issuance by a court is not formed according to the law and error in the adaptation of the incident or its description. Also if it is a decision in a dispute contradicting another judgment issued between the two disputing parties. Administrative judiciaries according have jurisdiction to judge the lawsuits related to the rights determined pursuant to the military and civil service laws, the retirements of government employees, public and independent groups of corporate personnel and their heirs or worthy parties on their behalf.

The decisions issued by governmental agencies and their analogues associated with their activities are included in rejection of administrative decision refusal by the administrative body or refraining from making a decision that was supposed to be taken by it according to laws and regulations. Compensation lawsuits would be initiated by a concerned persons regarding decisions on or work of the administration body. Lawsuits are related to contracts which the administration body is a part therein. Disciplinary lawsuits are referred by the involved persons. All judges shall exercise their jurisdiction according to board law through a quorum formed of three judges while an administrative court might be formed of a single judge.

Commercial System

The Commercial Court Regulation (CCR) Nizam al-Mahakim al-Tijariyyah was enacted in 1931 (Al-Jaber, 1987). The regulation makes provisions for procedural rules, the effects of judgments and enforcement in matters concerning the Commercial Court (Anthony, 2006). Saudi

commercial judicial system has a story in the legal history; the CCR is addressing the commercial provisions and establishing a commercial court to apply the enacted laws. The commercial court contained seven members, six of whom were to be merchants of good religion and character and only one a judge trained in the Islamic jurisprudence *fiqh* (Vogel, 2000).

The court was dissolved in 1962, only to be superseded by the Committee for the Settlement of Commercial Disputes *hayy'at hasam al-Munazaeat al-Tijariyyah* in 1967, the first level of litigation consisting of two Sharia judges and one legal counsel. The second level of litigation is consisting 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 should hold a law degree from any law school. This was succeeded in 1988 by the expansion of the Board of Grievances *Diwan al-Mazalem* (Anthony, 2006). The Board of Grievances was authorized to hear commercial disputes within the Kingdom. Eventually, the Court was abolished, but provisions of its regulations remain in effect in commercial disputes in Saudi Arabia.

The commercial judiciary has experienced several changes in the Saudi legal system. The first regulation was the Law of Commercial Court *nizam al-Mahakim al-Tijariyyah* issued in 1931. That was followed by the Court being canceled in 1962, and its jurisdiction transferred to the Committee for the Settlement of Commercial Disputes *hayy'at hasam al-Munazaeat al-Tijariyyah* in 1967. Then, the Committee was also canceled and jurisdiction transferred to the Board of grievances. Eventually, it was transferred to the general judiciary. So, the traditional authority of the jurisdiction of the Commercial Court was eliminated in 1955. However, the government reinstated the commercial tribunals under the title of the Committee of Settlement of Commercial Disputes. In 1965, authorities instituted two commissions in Riyadh and Jeddah. In 1967, the authorities added one more located in Dammam and were placed the commissions under the authority of the Ministry of Commerce, not the Minister of Justice (Vogel, 2000).

Vogel (2000) further stated that each of these commissions was composed of three specialists or experts in modern commercial law *qanuniyyun*. In 1968, the composition was changed to two Sharia experts and two legal experts. Finally, in 1969, it became two Sharia judges appointed by the Ministry of Justice, and one legal expert delegated from the Ministry of Commerce. To allow judges *qudah* of the regular Sharia court cadre to serve, the commissions met part-time in the evenings. In this way, the commissions came under the control of Sharia court *qadis*, the reverse of the situation in the original commercial court. The chief difference remaining between the commissions and Sharia courts was that the former was willing to apply relevant laws *anzmah* according to their terms, while the latter was not.

However, since the *Ainzmah* in the commercial field do not oppose *fiqh* on face value, but merely add to it provisions regulating merchant practices, creating new legal institutions, and licensing and regulating new forms of business organizations. A Sharia court judge of middling to liberal mind could serve on the commissions with little conflict in conscience. Moreover, Vogel (2000) stated that he attended sessions of the commercial commissions in 1985 in the Riyadh commission for several months, in 1987 in the Jeddah commission for several days and in both Jeddah and Riyadh during which time he had several days to read reports of various decisions. The Jeddah and Riyadh commissions were very different. In Riyadh, the commission was controlled by its two *qadi* members. In Jeddah, by far the most active city in the Kingdom commercially, the two *qadi* members followed the initiatives of the Ministry of Commerce legal expert, a particularly forceful and independent-minded individual (Vogel, 2000).

Financial Legal System

The Kingdom of Saudi Arabia has found ingenious ways to combine reformism with Islamic provisions of its tax system, which targets legal persons at very low rates. Consistent with the Islamic teachings, zakat is a form of annual payment, which is one of the five requirements of Islam. In the 1950, the Saudi law-making passed the Law of Zakat Collection. Saudi Arabia is subjected to zakat. Under the Zakat Collection Law, Saudi individuals and companies are subjected to an annual flat rate of 2.5 percent. In 1964, a new Law of Commercial Papers was promulgated relating to modern types of business operations. The regulation was leading to issue a parallel judiciary to the Sharia Courts which is called the Settlement of Commercial Paper Committee Disputes “*tribunal*” for handling disputes involving private persons (Baamir, 2008).

The Law of Commercial Agency (LCA) is issued in 1962. It is still effective today and governs the relationship between a commercial agent and its foreign principal. This law requires foreign companies to appoint a Saudi commercial agent or distributor in order to sell their products in the Kingdom. In this case, a Saudi citizen may not be either a commercial agent or a distributor for a foreign company unless the agreement is registered in the registry designed for this purpose in the Agencies' Agreements Department at the Ministry of Commerce. The LCA requires that commercial agents must be registered in the Commercial Registry, respect of rules regarding the goods and their descriptions and specifications. In addition, the law obliges commercial agents to provide certain registration data, including the name of the supplier, company name, and type of merchandises. Further, a foreign principal is subject to various administrative practices and policies of the Ministry of Commerce.

The banking system in the Kingdom was founded as a traditional way, and was governed by the Saudi Arabian Monetary Agency (SAMA). The authority of legislature of the Kingdom enacted the Banking Control Law of 1966 to control the operations of commercial banks. Within the Islamic norms, taking an excess money or interest in the operation of money is considered usury *riba* which is forbidden *haram*. It is prohibited as violating the rules of the Sharia, which has led to the Saudi Sharia courts refused to consider the claims “*Banking Litigation*” including usury (Meyer-Reumann, 1995). To avoid this judicial vacuum, the Kingdom government established the Banking Disputes Committee (BDC) linked to SAMA for settlement of disputes between banks and their customers in 1987 which consisted of three civilian-trained lawyers as advisors/judges (Sfeir, 1988).

The regulation governing the conduct of business was initiated in 1965, when the Saudi Council of Ministers passed the first Companies Law. This law was a copy of Egyptian law, which was derived from the 1953 French Companies Act. However, some research mentions that the origin of the Saudi Companies Law goes back to the 1948 British Companies Act (Uddin, 2008). In fact, the Saudi legislation authority depended on the Egyptian legal counselors as non-Saudi advisors to write the draft of laws and they followed the French legal school. This fact supports the notion of the 1965 Saudi Companies Law is copy for the French Act more than it was a copy of the 1948 British Companies Act. However, the impact of common law has appeared late on Saudi laws.

In any event, some of provisions of the 1965 Companies Law were amended in 1982 and 1998. The New Companies Act of 2015 reflects growth of the Kingdom's economy and updates

the law applicable to corporations within the state. The law is regulated forms of companies' entities that could be created and operated in the country. The law set provisions and conditions for companies to be instituted in the Kingdom, and provided requirements for companies' agencies and their affairs, formation, structures, capital, liabilities of agencies, directors and so on. In 1966, Saudi authorities enacted the Governing Bids for Government Procurement. In 2007, the government passed the Government Tenders and Procurement Law, which governs the public contracts, including rules of purchase, obligations of contractors, sale of movables, rental and investment of public properties, banking guarantees, and similar matters (Hanson, 1987).

CONCLUSION

This research explores historical prospective of the constitution, rule of law, administrative law, commercial law and financial laws. It is found that basic domains of types of law are founded on the basic Islamic teaching and further derived from French and British law. As per Islamic state, Saudi Arabia is following the Qur'an and Hadith as important sources of law and fiqh is also derived from the basic sources to meet the challenges of modern age. Moreover, these sources are provided codes of civil law so different phrases of law are developed time by time with a need and to serve the nation on the legal standing but the Islamic norms of ethics and principles are always respected in the period of all developments.

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