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Judicial Training in Saudi Arabia: From an Uncodified to Codified System

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Abstract: The precise description of the roles and qualifications of Saudi judges (*qāḍī*) in the legal process assist in understanding the actual practice of jurisprudence. This paper aims to shed light on the jurisprudential procedure and the responsibilities of judges in the past and present Saudi legal system. Although the Saudi judges had freedom to exercise independent reasoning in the process of evaluating cases during the uncodified period before the 2020s, they were required to follow the classical regulations that were transmitted by the previous Ḥanbalī scholars' textual sources. On the other hand, recent codification attempts provide Saudi scholars with a kind of set of systematized traditional rules and bring standardization in final decisions. Since the rules of codification are directly derived from the main sources (the Qur'an and Sunna) of Islamic law, the Saudi legal system is supposedly governed by the traditional framework of Islamic law, and this semi-independent nature separates it from its counterparts' dependent codified legal systems. This article elucidates the transformational process of the Saudi legal system from classical implementation to codification. In applying analytical and descriptive methods, the objective of this paper is to investigate the responsibilities and training process of the judges and the jurisprudential procedure in the Saudi legal system.

Keywords: Saudi Arabia; Islamic law; jurisprudence; judge; legal training; appellate courts

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1. Introduction

Islamic law (*sharīʿa*) is applied as a legal system in a few countries, which include Saudi Arabia, Iran, Afghanistan, and Pakistan. Saudi identity, custom, and the legal system cannot be separated from each other either in theory or in practice, and also there is no clear-cut separation between the Saudi legislative, executive, and judicial branches. The Muslim countries implementing Islamic law mainly use codified regulations to pursue Islamic rulings in their legal system (Otto 2010, pp. 17–40). On the other hand, the codification attempt is quite a recent development for the Saudi jurisprudential system. Before the introduction of codification, the judges (*qāḍī*) mainly used the classical legal compilations of the Ḥanbalī school and their interpretations to adjudicate court cases. The classical legal compilations provided solutions to the judges in the form of codified rules, and this process considerably reflected the traditional implementation of Islamic law. With the announcement of Crown Prince Mohammed bin Salman in 2021, Saudi authorities initiated a series of legal reforms, including the codification of the Civil Transactions Law, the Penal Code for Discretionary Sanctions, the Law of Evidence, and the Personal Status Law (Alhussein and Gade 2023). It is noteworthy to state that even if the Saudi legal system experiences the codification process, the codified rules are derived from the main sources of Islamic law and reflect the legal methodology of classical schools. Although the transformational process of the Saudi legal system that mainly started after 2020 is still continuing, the differences between the non-codified and codified system are discernible in the jurisprudential area.

The main sources (the Qur'an and Sunna) of Islamic law are immutable, but the law can be applicable and adjustable in accordance with different times and places (Yaman and Çalış 2021, pp. 20–32).[1] The changeability of regulation is also strictly connected with the direct or indirect origin of the ruling. The principle of public interest (*maṣlaḥa*) provides legal scholars with an opportunity to make necessary changes and adopt regulations in harmony with the contemporary period (Kamali 2003, p. 247). The main purpose behind the possibility of alteration is linked to the protection and preservation of the primary objectivities of Islamic law—these objectives include the protection of religion, life, property, reason, and offspring (Al-Shāṭibī n.d.; Nas 2022, pp. 112–13; Ebu Zehra 2017, pp. 318–320; Al-Qaradavi 2020, pp.161–182).[2] The justification for this change was recently developed as a theoretical principle in Islamic legal methodology, and it reads as follows: "It is undeniable to change the regulations regarding the change of time". (Şimşirgil and Ekinci 2009, p. 79; Ebu Zehra 2017, pp. 321–331)[3] Regarding the principle, if the conditions and times of the society change, the previously existing regulations need alteration to achieve applicability and practicality in jurisprudence. Considering the necessity of adjustment and local conditions, Saudi judges either pursue the classical solutions or strive to produce new regulations regarding their own interpretation of the textual sources, as stated by Ibn Bāz and Ibn Uthaymīn. Their decision can advocate either consistency or change depending on the contextual factors, because Islamic law leaves room for the local practices and environmental parameters of the community. The consideration of context, therefore, gives flexibility, practicability, and adaptability to legal interpretations, and it also enables the judges to seek assistance from contextual factors that occasion the legal alterations. The Saudi judges who functioned under the uncodified system took advantage of this flexibility and adjudicated cases through their own interpretation. On the other hand, the nature of codification somewhat mitigates or restricts the interpretation ability of judges. Therefore, some scholars demonstrate their resistance against codification attempts through emphasizing its negative effects in comparison to the independent interpretation ability of judges and consider it as a legal impediment to the adaptability of rulings in accordance with changing times and places (Alhussein and Gade 2023).

A few studies focus specifically upon the legal system and religious institution of Saudi Arabia. For instance, Vogel's *Islamic Law and Legal System* is considered the first English contribution regarding the legal system of Saudi Arabia, but it does not provide court record samples examples from real court practice (Vogel 2000). Atawneh's book mainly engages in the official Islamic legal opinions (*fatwās*) issued by the official institution, which is known as the Dār al-Iftā' and is not relevant with the jurisprudential system (Al-Atawneh 2010). Since the legal system uses the classical Ḥanbalī rulings, the book assists in understanding the legal methodology of the contemporary judges. Yakar's *Islamic Law and Society* also provides a substantial contribution at this point because the book explains the process of transferring institutional *fatwās* into state regulations, which are transformed through Royal Decrees as referrable legal sources (E. Yakar 2022). Eijk and Yargı's works present a detailed explanation regarding the jurisprudential system and the legal hierarchy within Saudi jurisprudence, but they do not offer practical court records and do not explain the influence of the religious institution (Van Eijk 2010, pp. 139–180; Yargı 2014).

Apart from the above-mentioned valuable academic contributions regarding the general structure of the Saudi legal system and the influence of the religious institution, this article, as an example of an area study, specifically aims to shed light on the jurisprudential procedure and the responsibilities of judges within the scope of the Saudi legal system. This research also broadly examines how different conditions are treated within the Ḥanbalī legal tradition to analyze the interpretation level and educational background of judges in the jurisprudential procedure of the Saudi legal system. To what extent judges' decisions are linked to the classical Ḥanbalī regulations is the additional focus of this study.

The authors traveled to Saudi Arabia to conduct their area research in 2018. They observed trials for a period of 31 days to understand how a judge operates at the courts and how the legal system works. Sometimes, it was difficult to acquire research data,

being foreign women researchers, but the researchers did manage to acquire some data and to perform interviews with some Saudi judges and scholars in the Dār al-Iftā' through the assistance of Saudi citizens. The collected data and interviews are the main sources of this article, but the answers of judges were not directly quoted because of ethical and procedural reasons. Instead of putting direct quotations, the primary and secondary textual sources, which are in harmony with the explanation of the interviewers, are referred to in support of the collected data. Since the materials of this research are mainly comprised of written texts, critical reading of classical and modern sources with a descriptive and comparative perspective will be the fundamental methodology. In applying analytical and descriptive methods, this article intends to investigate the responsibilities of the judges and the jurisprudential procedure in the Saudi legal system. For future studies, the explanation of judges' educational stages and the jurisprudential procedure bring out the possible connection of their decisions with the classical legal texts.

2. The Features of the Saudi Legal System

Muslim countries generally implement Islamic law in their jurisprudential system, but some specific features of the Saudi legal system separate it from its counterparts' legal systems, and its hierarchical structure also has a distinctive character. Firstly, the legal system of Saudi Arabia is supposedly governed by the traditional framework of Islamic law, which includes the science of legal methodology (*uṣūl al-fiqh*) and the science of legal rulings (*furū al-fiqh*), and depends on the individual and independent reasoning (*ijtihād*) of judges. Article 46 of the Basic Law of Governance directly and explicitly states the implementation of Islamic law in the Kingdom of Saudi Arabia, and the article opened the way for the traditional implementation of Islamic law during the pre-codification period (*Al-Niẓām al-Asāsī li-Ḥukm* n.d.).[4] Secondly, the characteristic and semi-independent nature of the Saudi legal system makes it different from other existing national or codified Islamic legal systems that are seen in Jordan, Morocco, Indonesia, or Iran (Otto 2010, pp. 17–40; Temel 2020, pp. 13–18; *Majmūiy'iy-i Qawānīn* 2008). The voluntary usage of the classical legal compilations and the respect for these sources endow the Saudi system with an idiosyncratic semi-independent nature. Thirdly, the legal system encourages judges to improve their interpretation capacity and assists the flexibility of legal rulings, since there is no official separation between the legislative, executive, and judicial branches (Van Eijk 2010, pp. 156–57). There is a correlation between the application of personal interpretation, the semi-independent nature of the system, and the absence of codification. Fourthly, only the Saudi legal system applies the Ḥanbalī school of law, which was established by Aḥmad b. Ḥanbal (d. 241/855) (Vogel 2000, pp. 174–75; Al-Atawneh 2010, pp. 55–77; Melchert 2004, pp. 22–34). Strong adherence to the Qur'an and prophetic narration rather than personal interpretation and being critical against religious innovation (*bid'a*) are the main characteristic features of the school's methodology (Yakar 2020, pp. 219–46).

Fifthly, Saudi Arabia was neither colonized nor did it replace its legal system with a Western model constitutional and legal system until recent periods.[5] The negative approach of some scholars and judges toward codification distanced it from completely dependent codified Islamic legal systems until the 2020s. However, the opponent scholars to codification and their criticisms lost their influential power, and the Saudi government has recently begun to implement the codification process. It is important to note that the codified regulations of many Muslim countries closely resemble the classical rulings of Islamic law, since they are derived from the main sources of Islamic law. The rulings regarding marriage, divorce, inheritance, property, financial transactions, criminal punishments, and agency are mainly derived from the traditional Islamic legal sources and integrated into the conditions of modern times. The codified regulations naturally reflect the modernized version of the classical Islamic legal rulings and hence are mainly in harmony with the classical legal resolutions. The outcome, therefore, particularly disappointed some supporters of the reform activities, since the codified regulations did not meet their expectations. In other words, some reformers were expecting to have secularized regulations through the codifi-

cation process, but the majority of these codified regulations reflected the transformation of classical rulings into the codes (*Amnesty International* 2024).

Lastly, during the pre-codification period, the Saudi legal system experienced a modernization process through state-issued Royal Decrees (*marsūm malakī*), which regulated the new legal provisions in the spheres of mainly international trade, medicine, or technology (Al-ʻUtaybī 1999, p. 407; Yaşar 2024, pp. 125–28).[6] The administrative enhancements, institutional developments, governmental initiations, financial situations, and reformation of the legal system also forced some of the existent Ḥanbalī elements in the Saudi system to be modified. Even with these changes, it can be claimed that the Saudi legal system protected its unique position among the countries that apply *sharīʿa* because its legal system presented itself as maintaining the implementation of the classical Ḥanbalī regulations in the field of jurisprudence (Vogel 2000, pp. 174–75). The judges, therefore, shared similar characters with those in the classical period, since they were required to derive their rulings directly from the main sources of Islamic law during the pre-codified period.

3. The Training Process of Saudi Judges

The fundamental skills and qualities for being a judge or jurist were established during the classical period of Islamic law, including being an adult Muslim and having a sound understanding of law, legal theory, linguistic analysis, the Arabic language, logical deduction of the law from its original sources, and methods of legal reasoning (Al-Shāfiʻī 2021, pp. 509–11; Al-Qaradawi 2012, pp. 17–49; Shabbar 2017, p. 14; Al-Shāṭibī n.d.; Ebu Zehra 2017, pp. 329–36).[7] Although these are the minimum requirements to be a capable judge, each school of law inserted additional criteria in harmony with the methodology of their school. Whereas the minimum level of the judge's skills or essential requirements may not vary among the Islamic legal schools, the highest level of qualities or the possibility of performing independent reasoning (*ijtihād*) may require different capabilities and qualifications in accordance with the methodology. The requirements of the Ḥanbalī school were outlined by Ibn al-Qayyim al-Jawziyya (d. 751/1350) and he highlighted that a judge must be a specialist in Islamic knowledge, including the science of exegetics, the main principles of religion, the science of narration, the deduction of rules from narrations, the Arabic language with all grammar and linguistic regulations, and the science of Islamic jurisprudence and its methodology (Al-Faifi 2020, p. 928).

The contemporary Saudi legal system considers the classical requirements settled by the Ḥanbalī school necessary for present judges who are tasked with providing legal solutions to the problems of parties in the courts (S. Yakar 2022, p. 46). There are two alternative routes to be a judge in the contemporary Saudi courts. These include either having equal religious education or graduating from the Islamic law department of universities. In the first case, there are famous religious education centers near Riyadh that are mainly located around the Qāsimī region, and their curriculum is mainly based on the legal compilations of the Ḥanbalī school of law (Al-Ansi et al. 2022, pp. 105–12; Rahmayati and Alsaid 2024, pp. 1–8). The syllabus of the training center is mainly dominated by the legal contributions of prestigious Ḥanbalī scholars, including Muwaffaq al-Dīn ibn Qudāma (d. 620/1223), Fakhr al-Dīn ibn Taymiyya (d. 728/1328), Ibn Qayyim al-Jawziyya (d. 751/1350), Ibn Najjār al-Futūḥī (d. 971/1564), Manṣūr al-Buhūtī (d. 1051/1641), and Mūsā al-Ḥujjāwī (d. 968/1560). The graduates of these training centers can work as legal consultants after completing the necessary syllabus or obtaining the required certificate. If the graduates of these centers want to be a judge or jurist, they should complete additional courses at these religious education centers. In the second instance, upon graduating from the law department of any university, the person cannot be appointed as an official judge and jurist. The legal system does not accept this education compatible with the conditions that are settled by the classical Ḥanbalī scholars (Al-Jarbou 2007, p. 224; Yargı 2014, pp. 167–71). If the male student completes two or four years of advanced education in Islamic study centers after graduating from the law department of a university, he can obtain a certificate

to be a judge or a jurist. However, a person that has only graduated from a law department, either a male or female graduates, can work as a lawyer or consultant at the Saudi courts.

The necessity of obtaining a religious education certificate is connected with the religious character of the legal system. The judges are, therefore, required to be a qualified jurist (*mujtahīd*)[8] adorned with inevitable legal authority and freedom of independent reasoning (Kamali 2003, pp. 315–16). They are not only supposed to know the law through their own investigation of the legal sources, but they also need to have the capability to exercise independent reasoning during the evaluation of cases in the court, which makes the nature of Saudi jurisprudence semi-independent (Gleave 2008, p. 235; S. Yakar 2022, p. 177). Although the recent developments provide an opportunity for using codified rules to judges, they are still supposed to know the origins of the rulings for better adjustment and explanation at the courts. Even if the judges refer to the modern codes, they automatically and intrinsically transfer the same solutions for similar cases. The nature of codification, therefore, has not led drastic changes for the educational process of the judges.

It is worth mentioning that before the introduction of standardized codes, contextual elements including education centers, living conditions, geographical factors, cultural values, and the customs of society undeniably emerged as considerable components in the process of decision-making by scholars and judges. In the pre-codified Saudi legal system, custom was accepted among the sources of jurisprudence to produce justifiable and practicable rulings for the areas that did not have a definitive or precise regulation in the fundamental sources. The stance of judges regarding the legal usability of custom or contextual factors at the court underlines that they all agreed with its legal validity. In particular, Shaykh Abdullah Abdulrahman al-Tuwayjirī, a contemporary Saudi scholar, states: "Customarily known things [customary knowledge] are treated like a legal rule." (S. Yakar 2022, pp. 31–4).[9]

The contextual factors and local influences were mainly used to provide legal solutions for familial issues in the civil courts (*maḥkama al-shahṣiyya*) and to enforce punitive sanctions in the criminal courts (*maḥkama al-jazā'iyya*) (Kamali 2003, pp. 155–57; Koç 2019, pp. 262–83).[10] The general courts (*maḥkama 'idāriyya*) and criminal courts are open for public observers, but the observers of the civil courts are required to obtain permission from the defendant, plaintiff, and the judge in order to attend to the trial. The design of the judgment hall for the civil court is more private and informal than the courtrooms of other courts, with sofas instead of formal seating arrangements. Additionally, the court hearings can be arranged online for the present period since the Ministry of Justice aims to digitalize all judicial procedures with the intent of accelerating the legal process and increasing the accessibility of legal solutions (Alhussein and Gade 2023). The arrangement of the courts reflects Saudi norms and local values, since there is no definitive instruction regarding the organization of these branches.

The absence of prescribed rules within the main sources (the Qur'an and Sunna) allows the integration of contextual elements in particular areas, such as the amount and payment method of dowry, maintenance, ransom, or custodial expenses. When the religious texts order believers to make the payment without stating a particular amount for the religious validity of some actions, the concept of custom plays a determinative role in fulfilling this mission. A relevant example in criminal issues is that the definition of theft (*sariqa*) evinces regional disparities according to the local structure and perceptions of the society (Kamali 2003, pp. 155–57, 132–33).[11] What type of activities are considered within the scope of theft, therefore, always requires re-evaluation. Even if there are strictly prescribed punishments for certain crimes, the interpretation, assessment, or evaluation of acts reflect the local circumstances of the region. Regarding this cultural intervention, if a person takes a personal belonging of a person from a table (which is occasionally used by the person) in their absence, the Saudi judge can find them guilty within the scope of theft crime. On the other hand, if the person takes a personal belonging of a person from a table (which is located at a restaurant), the Saudi judge cannot find them guilty due to the culture of the area. The outcome of the judges' evaluation, therefore, changes the nature

and category of the punishment. Another relevant example focuses on non-prescribed discretionary punishments (*ta'zīr*), which are not referred to either in the Qur'an or Sunna. These types of crimes emerge within society because of changing times or modernization, and include technological problems, cybercrimes, financial transactions, or medical issues (S. Yakar 2022, pp. 31–34). The alteration of classical rulings in the jurisprudential area regarding contextual factors is fulfilled through the collective *fatwās*, which were issued by the official *fatwā* institution, the Dār al-Iftā' (Yakar 2021, pp. 326–27). The King can also enact legal regulations through issuing Royal Decrees (*marsūm malakī*) in order to provide solutions to novel issues and standardize the legal procedure, upon obtaining a *fatwā* from the institution (Al-'Utaybī 1999, p. 407; Erdoğdu Başaran 2019, pp. 11–35). The punishments regarding drug dealers or traffic accidents can be relevant examples for the transformation of *fatwās* into legal regulations in the Saudi legal system.

The contextual elements and customary factors should satisfy specific criteria for their usability during the implementation process. Without fulfilling these criteria, the scholars and judges mainly hesitate to refer to them in their decision-making process. First, they should not violate either the textual sources (the Our'an and Sunna) or rulings directly derived from the textual sources. Second, there should not be any defined or prescribed solution in the textual sources regarding the problematic issues. However, if the local practices contradict the secondary sources of Islamic law, which include public interest (*maṣlaḥa*), presumption of continuity (*istiṣḥāb*), juristic preference (*istiḥsān*), and blocking the means (*sadd al-dharā'ī'*), the decision of the judge relatively represents and prioritizes the contextual factors. For example, the visitation days and times of children by their non-custodial parents in the case of divorce, the amount of maintenance, the monthly custodial payment for children after divorce, the selection of custodial parent, the status of marriage gifts after divorce, the division of inheritance (not the portion of heirs but the sharing style of the estate), or the governmental regulations regarding novel issues are the main areas that reflect the influence of contextual elements. The judges take occasional assistance from the contextual factors with the aim of not providing a solution but finding a method for the implementation of the prescribed ruling. However, the nature of codification as having strictly defined articles has possibly alleviated the influence of external factors and brought a kind of standardized easiness and consistency for the judges in the decision-making process.

The consideration of context and custom provided flexibility to legal interpretations, and it also enabled Saudi judges to seek assistance from contextual factors, which led to legal pragmatism (Yamani 2008, p. 139). Performing in the pre-codified period, judges improved their methodological understanding and maintained their connection with the classical jurisprudential methods (S. Yakar 2022, pp. 158, 250–60).[12] It is important to note that since the extensive and individual usage of contextual factors by the judges occasionally caused complexities and instabilities within the general jurisprudential system, the judges were relatively hesitative in applying contextual elements. They therefore tended to refer to the classical textual sources to support their arguments during the decision-making process. On the other hand, codification has curtailed the place of custom in the jurisprudential area and probably minimalized the instability among the decisions of contemporary judges (Alhussein and Gade 2023). One counter argument against codification among the opponent scholars emphasizes the inflexible and rigid nature of codification, because the codified laws do not leave enough room for the integration of contextual factors during the decision-making process.

4. The Responsibilities of Judges and the Sources of Law

In the pre-codification period, Saudi judges performed either independent reasoning or imitation (*taqlīd*) to give their judgment, whether the main sources of Islamic law (the Qur'an and Sunna) provided an explicit text for a problematic case or not. The responsibility of judges in finding a workable and applicable solution to the challenges provided them with greater freedom for adaptation, innovation, and flexibility in the uncodified legal

system. A Saudi judge, theoretically, had an opportunity to practice legal reasoning by issuing a unique and sound decision through relying on the Qur'an and Sunna for the case before him. However, the reflection and implementation of this theory in the court system might have been different, since the adaptation procedure included various elements. The interviews with the legal experts during the area research clarified that the judges had broad freedom to choose among the opinions of scholars belonging to the four schools of law (Ḥanafī, Mālikī, Shāfi'ī, or Ḥanbalī), the opinion of well-known Ḥanbalī scholars (e.g., Ibn Taymiyya or Ibn Qayyim), or to use their own opinion. Ṣālih al-Lahaydān (d. 2022)[13] refers to this point when he states the following:

"The *qādī* of Saudi Arabia is not obliged or compelled to restrict himself to the school of Ibn Ḥanbal, but rather has the right to judge in the case in accordance with that to which his *ijtihād* leads, even if that is not the Ḥanbalī school. . .It is not said to him, perform *ijtihād* within the school or without it; rather he is requested to judge by that which he believes to be truth." (Vogel 2000, p. 83)

Although there was a broad spectrum regarding the applicable references, the main tendency among Saudi judges was to refer to the opinion of Ḥanbalī scholars (S. Yakar 2022, p. 133, 176; Akgündüz 2010, p. 285; Van Eijk 2010, p. 157). The Ḥanbalī school somewhat distinguishes itself from the other schools of law regarding its strict adherence and emphasis on the literal interpretation of the Qur'an and Sunna (Melchert 2004, pp. 22–34; Fanani 2021, pp. 1–27).[14] Since Aḥmad b. Ḥanbal's strong reliance on the revealed texts and his traditionalist character influenced the methodology of the Ḥanbalī school, the contemporary Ḥanbalī scholars tend to espouse the classical solutions rather than performing independent reasoning (Akyüz 1999, pp. 113, 124–28). The establishment process of the state, the hierarchy of governmental institutions, and the curriculum of education centers offer a reasonable explanation for the dominant character of the Ḥanbalī school within the Saudi society. The responses of judges and the analysis of court cases (S. Yakar 2022, pp. 257–64), therefore, basically indicate the following order regarding the legal references during the decision-making process:

1. If the case is examined and finalized with an applicable solution in the main sources of Islamic law (the Qur'an and Sunna), the judges mainly follow the same opinion rather than applying legal reasoning;
2. If there is a direct quotation from Aḥmad Ibn Ḥanbal, the judges mainly follow his opinion by demonstrating adherence to the Ḥanbalī school;
3. If there is an opinion quoted from the well-known and authoritative classical Ḥanbalī scholars, the judges mainly apply it to adjudicate the case, especially for civil matters. The authoritative classical compilations of the contemporary Saudi jurisprudence include the following:
    - Muwaffaq al-Dīn ibn Qudāma's (d. 620/1223) *al-Mughnī wa al-Sharḥ al-Kabīr*;
    - Fakhr al-Dīn ibn Taymiyya's (d. 728/1328) *al-Fatāwā*;
    - Ibn Qayyim al-Jawziyya's (d. 751/1350) *I'lām al-Muwaqqi'īn 'an Rabb al-Ālamīn* and al-*Ṭurūq al-Ḥukmiyya fī al-Siyāsa al-Shar'iyya*;
    - Ibn Najjār al-Futūḥī's (d. 971/1564) *Muntahā al-Irādāt fī Jam'i al-Mughnī ma'a al-Tanqīḥ wa al-Ziyādāt*;
    - Manṣūr al-Buhūtī's (d. 1051/1641) *Kashshāf al-Iqnā' 'an Matn al-'Iqna'* and *Sharḥ Muntahā al-Irādāt*;
    - Mūsā al-Ḥujjāwī's (d. 968/1560) *al-Iqnā' fī Fiqh al-Imām Aḥmad ibn Ḥanbal* (Yakar and Yakar 2020, p. 277; Al-Atawneh 2010, pp. xviii, 71–76).
4. If the problem is not included in these classical sources (which comprises approximately 2% of the total court cases), the judge issues a verdict depending on either the opinions of the other schools of law or their personal interpretation. Regarding this option, if the case needs permission or additional explanation from religious authorities, the judge asks for a religio-legal explanation from Hay'at Kibār al-'Ulamā' (Board of Senior Scholars or BSU) (E. Yakar 2022, pp. 39–46).[15]

Saudi judges occasionally tend to seek solutions following this order. In the first instance, if there is a verse from the Qur'an or a narration from the Prophet Muhammed, the judge espouses it rather than applying their legal reasoning. This is the main doctrine of jurisprudence for all schools of Islamic law. In the second instance, if there is a direct quotation from Aḥmad Ibn Ḥanbal, the judge mainly follows his opinion by demonstrating adherence to the Ḥanbalī school. This option is considered only if the case is not mentioned in the Qur'an or Sunna. In the third instance, upon not finding an applicable solution in these sources, the judge seeks a solution from the opinions of well-known and authoritative classical Ḥanbalī scholars and their legal texts. Ibn Qudāma al-Maqdisī's (1993, 1994) *Al-Kāfī fī Fiqh Ahmad Ibn Ḥanbal* and *Al-Muqni' wa al-Sharḥ al-Kabīr wa al-Inṣāf*, Ibn Taymiyya's (1965) *Fatāwā al-Kubrā'*, Ibn Qayyim al-Jawziyya's (1998, 2002) *Zād al-Ma'ād fī Hadī Khayr al-'Ibād* and *I'lām al-Muwaqqi'īn 'an Rabb al-Ālemīn*, Ibn Najjār's (1999) *Muntahā al-Irādāt fī Jam'i al-Mughnī ma'a al-Tanqīḥ wa al-Ziyādāt*, Manṣūr Al-Buhūtī's (1983) *Kashshāf al-'Iqnā' 'an Matn al-Iqnā'*, and Mūsā Al-Ḥujjāwī's (n.d.) *Al-Iqnā' fī Fiqh al-Imām Aḥmad ibn Ḥanbal* are the most influential and prestigious scholars whose works and opinions are used in contemporary Saudi jurisprudence. In the last instance, if there is no solution in these categories for the problematic case, the judge has two options: either referring to the opinion of scholars from the different schools of law or applying their own interpretation. For the first option, if the case is related to controversial issues, the common approach amongst scholars is to search the opinions and methodologies from the different schools of law. Yakar states the following: "This has been done under the practice of determining the preponderant opinion (*tarjīḥ*) if the strongest proof (*dalīl*) is identified in another *madhhab*'s legal ruling or opinion." (2022, p. 175). As for the second option of referring to their personal interpretation, the judge asks for a religio-legal opinion from the Dār al-Iftā' or Hay'at Kibār al-'Ulamā', which is the highest authority within the structure of the official religious institution, the Dār al-Iftā' (Vogel 2000, p. 8; Van Eijk 2010, p. 158). Obtaining a pragmatic and applicable legal opinion from Hay'at Kibār al-'Ulamā', it becomes common among the judges to resolve similar problems in harmony with this opinion. In other words, after obtaining a *fatwā* from the official institution, the ruling can sometimes be standardized through the transformation of the *fatwā* into Royal Decrees within the legal system of Saudia Arabia. A relevant example may be given regarding the number of divorce pronouncements, because a formula of thrice-pronounced divorce on one occasion is officially counted as the usage of one divorce right (Vogel 2000, p. 266; Elgawhary 2019, pp. 101, 147).[16] It is worth mentioning that the opinion of Hay'at Kibār al-'Ulamā' is taken to protect social stability and to control obedience to the ruler regarding the socio-political arrangements within the Kingdom (Yakar 2020, pp. 39–41, 45). Using the state-issued religio-legal opinions for unresolved cases not only provides unity of practice and but also offers a proposed solution to the judges. It can be expected that during the codification of rulings, the committee intimately pays attention to these fundamental sources and their methodological hierarchy.

5. The Official Restrictions of Judges

The normal structure of the court's final verdict (*ḥukm*) starts with the personal information of a plaintiff (*mudda'ī*) and a defendant (*mudda'a 'alayh*). After this preliminary statement, the final verdict briefly explains what the problem is, how the situation changed, who was involved, where the event took place, and when it happened. After detailed explanation of the grievance, the judge refers to the relevant verses of the Qur'an, the Prophetic narrations, and the quotations from knowledgeable Ḥanbalī scholars, and lastly announces their final decision (E. Yakar 2022, pp. 257–64; Yamani 2008, pp. 13–16).[17] Inserting quotations from the original sources of Islamic law provides a unique character to the Saudi verdicts and makes them different from the verdict of other counterparts' legal systems that implement Islamic law in their jurisprudence. The parties, upon dissatisfaction with the decision, have right to apply to the appellate court within thirty days in request of revision (E. Yakar 2022, pp. 262–64).

Each province has at least one appellate court consisting of a criminal chamber, a personal status chamber, a commercial case chamber, a distinct chamber for labor cases, and a chamber for other cases (Van Eijk 2010, pp. 160–61). The system of the appellate court functions to maintain uniformity in the judicial process, with the power of restriction or rejection over the verdicts of the judges. It is a common principle that when the litigant is disappointed by the judge's verdict, she or he has an opportunity to request the revision of the verdict by another judge, the ruler, the latter's agent, or extraordinary courts. The primary objective of the appellate court is to elucidate the determination of a decision's compatibility with Islamic law and to review its procedural stages (Al-Ghadyan 1998, pp. 239–40; Vogel 2000, p. 84–5; Van Eijk 2010, p. 160). Upon noticing incompatibility with the main sources of Islamic law or procedural mistakes, the appellate court returns the case to the same judge for re-evaluation. However, it must be noted that if the final decision depends on the judge's legal reasoning or rational interpretation rather than direct excerption from the revealed texts, the verdict must be used regardless of the other opinions.

The appellate court does not have the plenary right to change the verdict or to criticize the personal interpretation of judges. The appellate court, therefore, can examine the case regarding the procedural hierarchy, reliability of evidence, or evaluation of presented documents (Yargı 2014, pp. 239–42; Vogel 2000, p. 83). This preventive measure protects the independent reasoning capability of all judges and jurists who are considered equal in their qualifications, without priority. The acceptance of equality between the personal opinions of judges and jurists has been a unanimously approved cogitation since the period of the Companions of the Prophet, and Saudi legal authorities pay attention to this principle (Kamali 2003, p. 320). The statistics regarding the percentage of cases that are transferred to the appellate court from the Civil Court of Riyadh clarify that two to five cases out of a hundred go to the appellate court (*Al-Mamlaka al-'Arabiyya* 2016, pp. 24–28).

The decisions concerning cases regarding crimes that include cruelty, theft, robbery, fornication, or bribery, and their punishments, which include the death penalty, amputation, exile, or stoning, are mainly referred to the appellate courts for re-examination (Van Eijk 2010, pp. 159–61). After the inspection of appellate courts, the decisions regarding these criminal punishments need the King's approval for their validity and enforcement. Apart from these special cases related to penal law, the decision of the appellate court is generally in favor of the decision of the judges. If there is a mistake related to lack of evidence or the official procedure, the appellate court sends the case back to the same judge for reconsideration of the judgment with additional documents. However, the appellate court does not have the right to make a new decision by only evaluating or criticizing the personal interpretation of the judge.

6. Conclusions

The main sources (the Qur'an and Sunna) of Islamic law are immutable, but the law must be applicable and adjustable according to changing times and places. The justification of time and place is considered a meaningful and acceptable proponent of change in Islamic jurisprudence. It is important to note that although Saudi judges have freedom to exercise independent reasoning during the decision-making process, they are required to follow the classical methodologies, which were formulated by the previous traditional legal scholars and transmitted through the textual sources throughout generations. The previously existing classical legal works regarding court cases, therefore, functioned as codified articles for the judges in the pre-codification period. Throughout time, general methodological principles have been established regarding enhancements in the legal literature. These systematic methodologies have been followed and referred to as principles in guiding further analogical thought by the subsequent generations.

Regulations have also been produced by way of these methodologies, and these aspects reflect the practical side of Islamic jurisprudence. During the last period of the Ottoman Sultanate, scholars made the first attempts to codify these rulings to provide stability and unity in the realm of legal practice. In the contemporary world, the revised and reformed

version of this codified regulation, *Majalla*, is functional in many Muslim countries that apply Islamic law. However, until recent times, attempts regarding the codification of Islamic law were not supported by Saudi scholars, which made the Saudi jurisprudential system unique. Although the judges and jurists operated in a non-codified system for the solution of disputes, they referred to the classical Hanbalī sources as codified regulations. Since the nature of the legal system was independent regarding its non-codified structure, its nature seemed dependent regarding the application of classical methodologies and the usage of the textual sources. Since Saudi judges could espouse stability, consistency, flexibility, or predictability regarding the non-codified character of the legal system, their tendencies inevitably influenced the final verdict and the implementation of Islamic law in the court system.

The independent reasoning ability of the judges provides them a privileged position and practicality during the jurisprudential procedure as long as they pursue the methodology of the Hanbalī school. The requirement of graduating from the Islamic law department of a university or a religious education center to obtain a certificate for being a judge can be implicitly understood as the connection of contemporary jurisprudence with the classical Ḥanbalī textual sources. Saudi Arabia has continuously preserved the basic features of its constitutional system that are in accordance with Islamic doctrines and promoted the image of the state that functions to uphold the eternal divine law. Operating with this mechanism has endowed the state with religious credentials as well as a flexible and pragmatical legal system. However, the extensive usage of external factors, including custom and public interest, can lead to disputes and instability within the system, since the decisions are accepted as a verdict that has a religious dimension. The appellate courts, therefore, occasionally function to modify and alleviate the interpretational differences because of regional discrepancies. The descriptive analysis regarding the Saudi legal system explicitly brings out the substantial place of the main sources of jurisprudence and custom in the decision-making process; it also refers evidently to the importance of fulfilling the educational requirements to be a judge in the Saudi judiciary and evidences the hierarchical structure of the Saudi courts. This broad explanation of the legal system with relevant examples may open the way for new research that focuses on the implementation of regulations in specific areas.

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Notes

1 The classical approach divides the areas of Islamic law into three main sections: worship (*ʿibādāt*), social transactions (muʿāmalāt), and punishment (*ʿuqūbāt*). The regulations related to the worship area are mainly unchangeable, while the rulings related to the social transactions and punishments are changeable and adjustable according to time and circumstances. If the ruling is directly derived from explicit and clear texts excerpted from the Qurʾan, Sunna, consensus (*ijmā*), and analogy (*qiyās*), the ruling does not experience change and alteration. However, if the ruling relies on personal interpretation or secondary sources of Islamic law including public interest (*maṣlaḥa*), juristic preference (*istiḥsān*), or blocking the means (*sadd al-dharāʿī*), these rulings are generally considered changeable and adjustable according to the preferences of the scholars and needs of the community. The justification of time and place are, therefore, meaningful and acceptable in Islamic jurisprudence because of contextual circumstances.

2 Abū Isḥaq al-Shāṭibī (d. 790/1388) conceptualized the theory of the objectives of Islamic law (*maqāsid al-sharīʿa*) to improve the pragmatical aspect of jurisprudence and he divided it into three categories: compelling necessity (*ḍarūriyyāt*), needs (*ḥājiyyāt*), and improvements (*taḥsīniyyāt*).

[3] The necessity of alteration regarding time is stipulated as a general principle in the first codification attempt of Islamic law, *Majalla*. For further information see Article 39.

[4] Article 46 reads: "The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunna of His Prophet, God's prayers and peace be upon him, are its constitution, Arabic is its language and Riyadh is its capital."

[5] There are ongoing reformation and codification activities, including in the legal system, but this study does not cover the period after 2018.

[6] The initiations regarding codification and modernization of the legal system can be considered quite recent developments. Before these initiations, changes were obtained throughout marsūm malakīs that were special orders authorized on behalf of the ruler in the form of monarchical decrees.

[7] Muḥammad ibn Idrīs al-Shāfi'ī (d. 204/820), the founder of the Shāfi'ī school, listed the requirements for being a capable jurist and latterly descendent scholars improved the standards and inserted additional conditions in accordance with the changing circumstances. In the modern period, Al-Qaradawi, a prominent scholar, provides crucial criteria to perform independent reasoning by drawing the lines of restrictions: the scholar makes every effort to arrive at complete clarity on the problem at hand; the scholar should not make the definitive and prescribed issues subject of ijtihād; the scholar should not treat speculative and unclear texts as definitive rulings; the interpretation activity of the scholar should aim to protect the bridge between the juristic and tradition-based schools of law; and the scholar should put emphasis on beneficial new approaches that pay attention to the five fundamental values of Islam (*maqāṣid al-sharī'a*). Al-Qaradawi summarizes the general instructions of the main schools of law for being a religious scholar, judge, and jurist.

[8] *Ijtihād* means independent reasoning and continues to be the fundamental instrument of interpreting the divine message. It is a process of legal reasoning and hermeneutics through which the jurist derives and rationalizes law on the basis of fundamental sources of Islamic law, mainly the Qur'an and Sunna. *Mujtahid* is the person that performs ijtihād, competent to reason from the revealed texts, and rationalizes the pre-existent law.

[9] The approval of its legal validity is formulated in Arabic language as "Al-ma'rūf 'urfan ka al-sharṭ shar'an." The terminological concept of custom, including contextual factors, refers to an applicable legal principle in Islamic law.

[10] In Islamic law, crimes are divided into three categories: *qiṣāṣ* (retaliation), *ḥadd* (prescribed punishment), and *ta'zīr* (discretionary punishment). *Qiṣāṣ* refers to crimes involving bodily harm or physical injury inflicted upon another person or life, and receive life punishment. The ḥadd crimes refer to the fixed punishments that are explicitly and clearly defined in the Qur'an and Sunna. The crimes include *zīnā* (adultery), *ridda* (apostasy), *ḥirāba* (armed robbery), *baghy* (rebellion), *qaḍf* (false accusation), *sukr* (intoxication), and *sirqāt* (theft). The two types of crimes and their punishments are explicitly stated in the textual sources. On the other hand, *ta'zīr* refers to governmental punishments that are not directly mentioned in the sources but implemented by the governmental authorities according to contemporary needs of society. The judges with the approval of the governmental authorities can insert preventive measures regarding the context.

[11] The basic definition of 'thief (*sarīq*)' refers to a person who steal things. However, there are disagreements over the scope of thief and the acts connected with their punishment. For example, what is the evaluation for a pickpocket or a person who steals the shrouds of the dead results in diversity of opinion among scholars. Therefore, the scholars indirectly refer to their contextual knowledge to evaluate whether the punishment is given depending on *ḥadd* or *ta'zīr*.

[12] For instance, the lawsuit for returning marital gifts after dissolution was finalized by a judge considering the principle of maṣlaḥa and he combined the principle with the importance of harmony between the spouses. Additionally, the judge directly referred to the the opinion of a twelfth-century Mālikī scholar Ibn 'Arabī, who states: "The contracts amongst people should be conducted upon the basis of agreement, harmony and mutual kindness. In the absence of these elements, the contract becomes meaningless and the interest (*maṣlaḥa*) of both parties then requires separation with an agreement. This establishes the basis of a fair and equitable distribution of items between the husband and/or wife."

[13] Shaykh Salih bin Muhammad al-Lahaydan is the president of the Permanent Board of the Supreme Judicial Council and a member of Hay'at Kibār al-'Ulamā' (the Board of Senior 'Ulamā').

[14] Ahmad b. Ḥanbal is accepted as one of the authoritative *ḥadīth* collectors and his knowledge and expertise in this science also resultedin him being evaluated amongst the traditionalist and textual scholars.

[15] Hay'at Kibār al-'Ulamā' (Board of Senior Scholars or BSU), with 21 scholars including the chairman, is considered the highest religious authority within the structure of the Dār al-Iftā' in Saudi Arabia. The BSU is responsible for delivering the ultimate religious decisions, advising on religious matters, and conducting religious services in harmony with Islamic law. The legal opinions of the BSU play a crucial rolein shaping legal, social, political, and educational approaches and it has a right to enjoy the approval of the King.

[16] A husband has three divorce pronouncement rights for his wife. However, if the man wants to use all of his divorce rights on one occasion rather than using them separately, the question arises amongst scholars regarding the number of divorce rights. The opinion of well-known scholars counted a thrice-pronounced divorce formula as the usage of one divorce right and the Saudi judges refer to their decision for the relevant cases.

[17] One sample from the final verdict of judge states: "[I]n addressing the issue God refers: 'And if you fear dissention between the two, send them an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, God will cause

it between them. Indeed, God is ever-knowing and acquainted. (Q4:35)' In addressing the case of women, Ibn 'Abbas states that myself and Mu'āwiya have been send for judgement. Ma 'mar said that I was informed that Othman sent those two for a judgement and he said: 'If you see fit reconcile them; if you see fit, separate them.' I therefore cancelled the marriage contract. . .."

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