

Constitutional Human Rights: Saudi Perspective

Moosa Akefi GHAZI[®]

(Department of Jurisprudence and Islamic Law, Islamic Azad
University of Tehran)

Abstract: *Saudi land has always been considered as sacred by Muslims, since the emergence and the cradle of Islam is Mecca to which all Muslims in the globe turn in their daily obligatory prayers. Millions of Muslims from all continents go to perform their annual pilgrimage function 'haj' in this Holy Shrine. Moreover, Saudi's legal system and practices in respect to human rights has an impressive effect on the other members of the GCC. This paper probes constitutional human rights of Saudi Arabia.*

Key Words: *Basic Law of Government; Constitutional Human Rights; Judiciary Independence; Qu'ran; Saudi Arabia; Saudi Legal System; Saudi King Shari'ah*

"The world conference on human rights urges governments to incorporate standards as contained in international human rights instruments in domestic legislation and to strengthen national structures institutions and organs of society which play a role in promoting and safeguarding human rights" (Vienna Convention on Human Rights, 1993: 2/E/83).

Introduction

Saudi land has always been considered as sacred by Muslims,

[®] Dr. Moosa Akefi GHAZI, Department of Jurisprudence and Islamic Law, Islamic Azad University of Tehran.

since the emergence and the cradle of Islam is *Mecca* to which all Muslims in the globe turn in their daily obligatory prayers. Millions of Muslims from all continents go to perform their annual pilgrimage function '*haj*' in this Holy Shrine. Moreover, Saudi's legal system and practices in respect to human rights has an impressive effect on the other members of the GCC (Pasha, 2000: 105).

Given that the legal system is a hierarchical normative order (Kelsen, 1966: 110) of which the constitution has highest influence, a concise allusion into the Basic Law of Governance 'BLG' can illustrate the situation of human rights norms across the country. The king avoided in 1992 to introduce the basic law as the constitution of the country. Because according to Article 1 of the Basic Law, the Holy Qu'ran and the prophet's tradition which comprise the *Shari'ah* as the law governing in Saudi, are elevated to the status of immutable constitution of the country.

As "the Constitutions of democratic states organize and control power, ensure human rights, balance the competing claims of social and individual interests, mirror the culture and experience of the country and operate as vehicles of national progress and unity" (Bhat, 2004: 1), now it is a question as to whether the Basic Law of Saudi guarantees these rights.

The international legal laws that have not been approved by legislative authority of the national system may not penetrate into the state's legal system, except in cases of incorporation or transformation into the domestic agenda. The Doctrine of incorporation considers that international law is a part of the municipal law regardless of whether there exist municipal statutes that reflects these norms. While the transformation doctrine says there must be a legislative enactment to transform an international norm into a municipal norm. (See: Bledsoe & Boczek, 1987).

Further, the improvement of international human rights standards in the national territory depends on the first step necessitated by regulatory power of the state. Hence, this article has

tried to become acquainted with the constitutional structure of Saudi Arabia to realize what criteria it pursues. In addition, even the important laws will be useless if the independent judiciary system that has the responsibility to implement human rights standards is not established. Therefore, the judiciary and its role in the context of localizing the international human rights norms should be under deliberation in this article. However, as the constitution resulted from the political environment and religious atmosphere of the given society, Saudi Arabia, at first the nature of the legal system will be discussed.

Nature of Saudi Legal System

Each legal system codifies a set of norms that deeply roots in philosophical, social or religious background. The reason of various constitutions can be argued for the sake of this. Islamic *Shari'ah* which means Islamic Law or *fiqh*. This is a science which deals with Islamic rituals, pillars and socio-economic rules, similar to jurisprudence of the Roman, '*Rerum divinarum atque humanarum notitia*'. ("*Justice is the constant and perpetual desire to give to each one that to which he is entitled.*") Above all the holy Qu'ran comprises the main historical sources of legal structure in Saudi (BLG, 1992: 1).

The nature and definite features of Saudi laws as well as its quantities or the extent of jurisdiction are not readily accessible to laypeople. Except to jurists and legal scholars who spend their lives on the Qu'ran, *Sunn'ah* and the works of previous capable scholars, no one can easily understand the precepts, origins and applications of *Shari'ah*. In this process, they apply some methodologies "*usul al-fiqh*" (Islamic analysis of probability) such as traditions and verification of the true prophetic tradition to realize the very true essence of *Shariah's* objective. The philosophy may justifiably be traced back to the common law system in which God's rule and country rules are considered the same '*La ley de dieu et ley de terre sont tout un*' ("The

law of God and the law of nature are all one.”) (Black, 1951: 1034). The system basically depends on the school of *Abd al-wahhab* with his special interpretations on his own understanding of original texts which are close to that of the *Hanbali* School of jurisprudence (DeLong-Bas, 2004). This school does not accept the judicial precedents *stare decisis*; (judicial respect for precedents established by prior decisions) instead it prefers to imply the original legal reasoning '*ijtihad*' (a technical term of Islamic law that describes the process of making a legal decision by independent interpretation) (to the *Qu'ran* and *Sunn'ah* to derive the appropriate ruling for the case under consideration.

The absence of rules of precedent in the criminal cases, in which the judge has discretion over the definition of what constitutes a crime and over the sentence, without being bound by judicial precedent, can result in widely differing sentences in various courts. In fact, judges with their wide latitude, in the absence of a written penal code determine to legislate and criminalize any accused under their custody. This policy can be considered explicitly clashing with the essential principles of criminal law '*nullum crimen, nulla poena sine lege*'.-(an age old-doctrine which expresses that for every interference with life, liberty and property of the subjects, there should be authorization of law and not executive fiat caprice. (See: Bhat, 2004, p.40.)

However, as the country legal system is based on *the Qu'ran*, it should be examined as to how and whether this claim can be truly upheld or not.

The *Qu'ran* as a Source of Constitutional Rights

At first, it ought to be clarified that although the holy *Qu'ran* is the primary expression of the Islamic law, in a practical sense it may be taken as a main source of *Basic law* including human rights, the following points should not be neglected:

1. From the viewpoint of the *Qu'ran*, some aspects are tacit, and the solution of contemporary matters or necessities are left to the mind of society, such as the branches and jurisdictions of courts (CEDAW, 2007) or the numbers of the ministers or the consultative council (BLG, 1992: 56-57, 68-69). For instance, the matter of social rights of women is inserted in this category, while personal status of women such as marriage and divorce are contended in opposite category. Therefore, one should distinguish between the criminal, contractual section and political, social or public rights of citizens in *Qu'ranic* verses. For example, the decree against a thief is expressed, though the shape or kind of verdict is not mentioned (Verse 38, Chapter 5). Even here we need interpretation as to the value of the property stolen from a protected place and to the portion of hand which should be cut off for the first theft, notwithstanding the matter of plagiarism is also new. As such, no body can claim that the mode of government in view of the *Qu'ran* is republic or royalty, nor are the ordinary acts like driving prohibited in case of Saudi women. These are within the silent "*shari'ah*".

2. The Islamic legal system is based on a text and the text (Holy *Qu'ran*) has predominance over other subsidiary sources. Hence, the *Qu'ran* as a Constitution as claimed by the Basic Law of Saudi Arabia, needs to be interpreted by scholars (BLG § 45). The council is headed by Grand Muftis (jurist consults) who issue the official interpretations of Islamic law with the consent of the king. (See: The Shura Council Law, Royal Decree No. A/91 of 1st March 1992, available at: <http://www.shura.gov.sa/englishsite/Elaw/law1.htm>).

Bearing in mind that many of its verses are allegorical (*Qu'ran*, 3:7; 39:23), although the Book is the best announcement (*Qu'ran* 3:7; 39:23), interpretation is the function of human body (*Ulama* / interpreters) and it can be wrong or correct. No one has a right to attribute the sanctity of the text (*Qu'ran*) to his/her human interpretation; since each interpretation is derived from a personality of a scholar whose

knowledge and considerations may have an effect on the result of the interpretation.

3. Since the *Qu'ran* is used as a source of legal regime within the territory of the Saudi Kingdom or of reference for accepting the international human rights instruments, no chance is imagined for so called lawyers to analyze or define characters of the country's legal structure. Therefore, the direct effect of the said article's (BLG, 1992: 1) address, is taking constitutional law away from legal criteria substituting new criteria or standards instead of legal rules which are handled by religious jurists or interpreters.

4. *Qu'ranic* concepts should not be interpreted according to whims and fancies of the political rulers as it has been done in the case of 'U.L-amr 'Rulers' (*Qu'ran*, 4:59; BLG, 1992: 5,6,7), as if, they may only be found in the line of ancestors of the Saudi founding King's sons. The *Qu'ran* was not revealed to be in favor of sons (not daughters) of this imperial family recognizing their ancestral right to ruling. Accordingly, the nature and interpretation of human rights issues may be realized under the meaning expressed by theological scholars. Of course, their views on human rights could not be immune from extralegal considerations. Probably, this may be the reason as to why women are not in the Council of Ministers nor have they been permitted to drive. Hermeneutically, perceiving of the *Qu'ranic* substance needs the manner which entirely differs from that of the constitution. Here we face two different texts with their own qualities and features. While the former is a religious manuscript, the latter is a legal passage.

5. The Basic Law is a chief document of the Saudi King's polity towards the people as obedient (BLG, 1992: 6, 23) and its task is to deal with human rights, whereas a very primary fundamental rights namely the matter of non-discrimination between men and women is neglected in the text of Basic Law. If one believes in the *Qu'ran* as a Holy Book of Islam and if one were to submit to its rules *per se* (in and of itself) s/he should believe in the principle of non-discrimination as

a base for fairness among human rights (*Qu'ran*, 4:1). This is the meaning of a whole and unqualified submission to the will of Allah.

Common Characters of Constitutions Inconsistent with the *Qu'ran*

1. The *Qu'ran* is not *ipso facto (by itself)* a sole legislative document, since it contains an enormous number of moral, historic, devotional, virtual, sociological and faithful verses or precepts much more than ordinary. Therefore, the *Quran* should not be described as a code or constituent book with a particular mission, as it is typically expected from constitutions.

2. Constitutions of countries, in the general view, consist of some principles or standards and invoke particular aspirations, such as; the matter of the supremacy of constitution over other ordinary legislative rules or codes within the domestic Jurisdiction of specific territories (Indian Constitution, 13). But the *Qu'ran* was not revealed for a specific territory nor are its universal precepts restricted to the land of Saudi as an example. The *Qu'ran* addresses all people and nations," saying "O people I am the messenger of Allah to you all" (Verse 151, Chapter 7. And Verse 21,213 Chapter 2).

3. Constitutions represent the will of their own people or sovereignty. In case of a revolution or coup-d'état and military occupation a constitution's legally binding era may cease, whereas the *Qu'ran* was neither drafted by people, rather it is the revelation from God without any doubt for all Muslims (*Qu'ran*, 2:2), nor would its eternity of codification not be authenticated among Muslims all around the world. At the same time as constitutions respect the non intervention principle in interrelations among states, the *Qu'ran* encourages its adherents to unqualified support for all the oppressed nations of the world, because, in view of the *Qu'ran*, Muslims constitute one nation. (Verse 92, Chapter 21. Verse 60, Chapter 8). According to the Iranian constitution, Muslims of the globe

constitutes one nation and the leader of the Islamic Republic is their *Imam* 'leader' (See: Article 11. See also the Preamble of the Cairo Declaration on Human Rights in Islam August 5, 1990, adopted by 45 foreign ministers of the Organization of the Islamic Conference).

4. The primary concern of the constitutional task is to balance and harmonize the innate conflicts of interests between individuals vis-à-vis the state, whereas that is not the primary mission of the *Qu'ran*. It is not a book to share out power among governmental or royal families.

The Rise of Constitutionalism

The Constitution as the highest source of hierarchical legal regime of Saudi, has become manifest in different ways. Therefore, in regard of codification and approval of the constitution the following points can demonstrate the characters of the system and make distinctions between Saudi and other states in respect of legal system.

1. The creation of the political and legal system in Saudi Arabia is merely the product of governmental (king's) will. Now the question of the Saudi people's role in creating the Basic Law is raised. By referring to the history of constitutionalism it appears that the legal as well as political system of the country is much older than the constitution. In other words, the Basic Law is created according to the existing system to regulate and formulate it on the shape of texts and articles acceptable by international standards. This event happened by the Royal Decree issued by *Fahad Ibn Abdul Aziz* in 1992 for the first time of the modern Saudi era. He, along with the Royal family, created the Basic Law and afterwards issued some required orders to implement the articles. In this process as we understand the role of people and the ballot box is lost. The royal Saudi family consists of some 4000 members, of whom approximately 60 are involved in major policy decisions (See: www.worldinformation.com/world/meast/Saudi Arabia/profile).

2. The second distinctive point is that the Saudi political and legal system revolves around the axle of one family. Saudi Arabia is among the rare countries named after its ruling family. This indicates that the high position of this family is regarded as more superior to anything else. According to the Basic Law the rule passes to the sons of the founding king, *Abd Al Aziz Bin Abd Al-Rahman Al-Faysal al saud* and to their children's children. No role is anticipated in favor of people except obedience to the king and the heir apparent (BLG, 1992: 5-6). The main role of people is illustrated in article 6, which demands citizens to pay allegiance to the King in the name of Islam.

3. Considering the role of people in the process to create the legal system, the important and essential distinction may appear due to the categorization of the legal system in which the Saudi belongs to the mono system in character. Accordingly, the Saudi follows with firm insistence on *Shari'ah* or Islamic rules in its judiciary not observing the entities of the civil Roman law system. This factor is very important and has made a lot of special features in the political system of the country. For instance, no rights are recognized in favor of religious dissidents. Therefore, the applied literature of the Basic Law in respect of human rights is totally distinguished from what could be expected from such a document's text. Equal rights of people, equal protection of law, rights of women, right to honor, life, property, and jobs are among those rights in which the Basic Law is completely empty, except in article 26 which is provided by an ambiguous condition, "in accordance with the Islamic *shari'ah*." The vast concept may be easily misused by officials to protect their political interests instead of Islamic/national values.

4. Another subsequent result of the absence of the people's role in the legal structure of the Saudi system relates to the matter of non-governmental organizations and syndicates activating human rights affairs. It should be noted that the first municipal election in the history of the Saudi took place in 2005 as a first step to open the way to form political parties (Gruber, 2005: February). However, these political events

depend on the will of officials since according to the Basic Law, no articles deal with the right of associations and assemblies.

Constitutional Balance of Power and Its Human Rights Orientation

The matter of balance among authorities and powers has a very noticeable position in the course of constitutional rights of people, since the extent of a nation's cooperation to form its political system and applying the right of self-determination can make a vital influence to ensure the civil and political rights in accordance with laws. Hence, a brief study to examine the authorities and their powers in the state seems necessary.

On March 1, 1992 the King announced three fundamental laws, established by Royal Decree which promoted the international appearance of the state in developing its diplomatic position in the global scenario as well its domestic legal system. These fundamental documents are as follows:

- i .The Basic Law of Governance (Basic law).
- ii .The Consultative Council Law (*Majlis Al-sharow*).
- iii.The Regional Law. (BLG, Royal Order No. A/90 (March. 1, 1992), O.G. Umm al-Qura No. 3397 (March. 5, 1992); The Regional Law, Royal Order No. A/91 (March. 1, 1992), O.G. Umm al-Qura No. 3397 (March. 5, 1992); The Shura Council Law, Royal Order No. A/91 (March. 1, 1992), O.G. Umm al-Qura No. 3397 March. 5, 1992).Subsequently, some more royal orders have been issued amending these new laws, including the *Council of Ministers Law* in order to coincide with Saudi's constitutional evolution. It may be assumed that these fundamental laws and their amendments can improve participation in government on the part of the citizenry. While these laws constitute significant steps towards codifying the largely unwritten legal system of the country, they fall far short of internationally recognized standards in their treatment of civil and

political rights. Despite article 25 of ICCPR Saudi people have been refused to access public office (See: Res/ GA/ 2200, 26 Dec 1966).

Moreover, it is important to examine the significance given to civil and political rights in the governmental structure of the state to comprehend the true extent of this presumption. Naturally, the whole legal system is derived from and complied with as the main and principal rule of the country. Therefore, the Basic Law and its alleged precepts ensure that the human rights enjoy much importance in the course of discussion.

The basic system is not produced by people in their consultative participation by passing the process of enacting a constitution. Hence the Basic Law does not owe itself to people's will nor does it recognize the people as the source of power or legitimacy of authorities. It confirms that the government draws its authority from the *Quran* and the people only pay allegiance to the king and his crown (BLG, 1992: 6-7).

As a corollary, the Constitution is not bound to empower people or to ensure their rights; rather, it expressly declares that the state's object is to protect the principles of Islam and to enforce its *Shari'ah* (BLG, 1992: 23). Despite some similarities between Basic Law and the constitutions of other countries in terms of content, it lacks any chapter under the title of human rights or rights of people. There is only one ill defined article that is allocated to human rights, i.e. Article 26.

The area of similarities would be found in respect of economic principles, guarding the kingdom's sacrosanct public funds, and the obligation of the state to provide healthcare to citizens. But the diversities in comparison with standard constitutions seem more important and challengeable. These differences may be enumerated in brief as follows:

- 1) The state remains an absolute monarchy without elected and representative institutions. According to articles 55, 23, the king is charged to rule the nation according to the *Shari'ah*. He shall also "supervise the implementation of the *shari'ah*, the general policy of the state and the defense and protection of the country."

2) Not only is the king the head of state and ministerial cabinet who as well occupies the position of Prime Minister according to articles 56, 57, but also he reserves the power of enacting laws along with the Consultative Council and the Council of Ministers (BLG § 48). The power of the king is not limited to this article on the domestic laws; rather the king has the authority to approve or deny any international rules or treaties (See: Articles 81, 70). In this process the role of CC members is to express views, in an advisory capacity, on policies submitted to them by the king. The members would not act on behalf of the people since they are appointed by the king (BLG, 1992: 44). Therefore, the Council's membership is restricted to men who have proved their allegiance to the king.) (See: www. UNDP POGAR-Programme on Governance in the Arab Region-Saudi Arabia: legislature). Not only statutes without the king's approval would not take effect as enacted laws, but also the king has the power to dissolve and reorganize the legislative power. The legislature is composed of a Consultative Council and the Council of Minister which is headed by the king who has the mere power to approve the laws (BLG, 5.44). It is clear that the universal standard which is stipulated in article 21 of *UDHR* is contrary to this absence of Saudi people's contribution in governmental affairs. The king has failed to ratify the *UDHR* and its two supplementary documents i.e. *ICCPR* and *ICESCR*. Apparently the argument stated is that these instruments violate the precepts of Islam (Report of the International Commission of Jurists). In addition, the state applies a general reservation to all such articles which are apparently in conflict with the provision of Islamic law. The *CRC* 1996, *CERD* 1997 and *CAT* 1994 are among those documents which are ratified by the state under such reservations.

3) As we realize, the theory of separation of power that is identified as the distinguished feature of standard constitution is violated by Saudi Basic Law. This violation has also occurred on the independence of the judiciary, where the rights of citizens are directly related and supported by the state authority. The original problem of

the Basic Law is that the role of people is neglected and they cannot participate in the formation of the government and its branches. The natural result of these deficiencies and shortcomings show itself in the form of king centric or 'autocracy' of the Basic Law.

Judicial System

The Saudi Basic Law did not do much in the establishment of a judicial order as so described in codifying current practice. Indeed, the *Qu'ran* and the *Sunn'ah* form the constitution of Saudi Arabia, in a sense meaning that *shari'ah* is seen as superior to any positive legal or judicial order. Despite this modesty, the Basic Law does have a section on the judiciary comprising nine articles. These provisions assume a unified, *shari'ah*-based judiciary, independent of the ruler but respected by it, supplemented by a "Board of Grievances" and other supporting bodies: **Article 46** The judiciary is an independent authority. There is no control over judges in the dispensation of their judgments except in the case of the Islamic *shari'ah*. **Article 47** The right to litigation is guaranteed to citizens and residents of the Kingdom on an equal basis. The law defines the required procedures for this. **Article 48** The courts will apply the rules of the Islamic *shari'ah* in the cases that are brought before them, in accordance with what is indicated in the Book and the *Sunn'ah*, and statutes decreed by the Ruler which do not contradict the Book or the *Sunn'ah*. **Article 49** Observing what is stated in Article 53, the courts shall arbitrate in all disputes and crimes. **Article 50** The King, or whoever deputizes for him, is responsible for the implementation of judicial rulings. **Article 51** The authorities establish the formation of the Higher Council of Justice and its prerogatives; they also establish the seniority of the courts and their prerogatives. **Article 52** The appointment of judges and the termination of their duties are carried out by Royal Decree by a proposal from the Higher Council of Justice in accordance with the provisions of the law. **Article 53** The law establishes the seniority of

the Board of Grievances and its prerogatives. **Article 54** The law establishes the relationship between the investigative body and the Prosecutor-general, and their organization and prerogatives.

On the other hand, the Administrative Judiciary known as the Board of Grievances '*diwan mazalim*' (*Diwan* means :account books of the treasury in the older Islamic Administration), collection of poems written by one author; governmental office, ... *Mazalem* means: misdeed, wrong, inequity, act of injustice, thus the phrase in combination means the office of examining the injustice actions (See: Hans Wehr, *A Dictionary of Modern Written Arabic*, Edited by :J Milton Cowan ,2nd Ed. Wiesbaden, 1966).

It stands along side the court system and is accountable to and affiliated directly with the king. Although the Saudi judicial system comprises of *shari'ah* courts, there are several administrative committees with special jurisdiction along with specialized courts that may be established by royal order on the recommendation of the supreme judicial council (Law of the Judiciary, 26; Royal Decree, 1975: July; Ummal Qura, 1975).

The courts of guarantees and marriages that exercise jurisdiction over family suits are exceptions as is the Court of Juvenile Delinquency since these two courts are seen not under *shari'ah* court but by royal decree as specialized. See: Royal Decree no. 19. Feb. 1967. Also see the law of the judiciary adopted in 1975 in which the competence of the Saudi judicial courts system as such is set up. In one word, it can be concluded that the courts are generally divided into two categories the *shari'ah* courts which apply the rules of Islamic *shari'ah* to the cases that are brought before them, and the administrative or specialized courts which are governed under the rules issued by royal decree instead of *shari'ah* (BLG, 1992: 48).

Supreme Judicial Council

The Saudi Arabian judiciary is governed by a Supreme Judicial

Council with eleven members (Law of Judiciary, 6; Royal Decree, 1975). Five members are full-time; they are appointed by royal order from among senior judges. The remaining six members consist of the president of the council (appointed by royal order), the president of the appeal court, the deputy minister of justice, and three other senior judges (Law of Judiciary, 6; Royal Decree, 1975). With the exception of the deputy minister of justice and potentially the president, therefore, all the members of the Supreme Judicial Council, all members are judges.

It seems that the role for royal appointment whether directly or indirectly is significant. The Supreme Judicial Council has wide jurisdiction over judicial matters, but much of the administrative support for the courts comes from the Ministry of Justice. It is probable that the Ministry of Justice maintains oversight over the budget of the courts (Law of Judiciary, 87). By considering the role of ultimate power of the king which appears in the shape of enacting and appointing the judges of the courts (BLG, 1992: 50, 52, 56), the vital matter of independence of the judiciary would be diminished. Moreover, the *shari'ah* and its embodied rules are not clear unless interpreted by judges of courts who are appointed by the king though indirectly. Therefore, the definitions of rules or crimes and the extent of punishment or compensation depend on the judges' comprehension and understanding through which they try to find the will of God in his holy Book (Trumbull, 2006: March). In fact, Saudi judges apply their '*ijtihad*' to reach decisions through using Islamic jurisprudence trial tools such as analogy (Vogel, 2000: 141).

Independence of Judiciary

The judiciary in Saudi Arabia "should be an independent power" to protect individual as well as social rights. "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and non-governmental institutions to respect and

observe the independence of the judiciary." ("Basic principles on the Independence of the judiciary" adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985". "See also": clause 1 of the report of committee 4 International Congress of jurists, New Delhi 1959. "See also": UDHR, Art, 10). Article 46 states: The judiciary is an independent authority. There is no control over judges in the dispensation of their judgments except in the case of the Islamic shari'ah.

Today, the independence of the judiciary is recognized as "an indispensable requisite" of a free society under the rule of law. Such independence implies freedom from interference by the executive or legislature with the exercise of the judicial function" (New Delhi, 1959). Moreover, every one is entitled to an independent and impartial tribunal upon international human rights instruments (ICCPR, 14.1). The Judicial authorities are appointed by the King and are accountable to him (BLG, 1992: 44, 50, 52). Therefore, the judiciary is not independent from executive power of the state, nor has authority over possible offences of the king or related officials of his office. Whereas, in the modern constitutional law no body is regarded above law "*ultra vires*" ("*above men*") (Smith, 1959). In fact, according to Article 44 and 52, the Saudi judiciary should exercise its responsibilities under the absolute authority of the king. Moreover, the administrative and employment affairs of the judiciary are not independent of other powers (BLG, 1992: 57). Therefore, executive power can interfere in the appointment and salary of judges which may influence the judicial decisions. Independence does not require only impartial or independence of judges; rather, the control of finance and administration may provide any threat to judicial independence. According to some writers "the enforcement of the rule of law by the judges could be wholly frustrated by the refusal to appoint judges to provide courtrooms for them to sit in or staff to service those

courts..." Sir Nicolas Browne Wilkinson believes that 'A modern lawyer might say that the crown and its servants like all other public authorities must not act *'Ultra Vires'*. "The independence of the judiciary in the 1980s" Public Law, the British Journal of Administrative Law. 44 (1988)

An independent judiciary is effective in the protection of rights and freedoms of citizens. If the Basic Law provides fair trial under an independent and impartial court system, then the idea of independence is protected by referring to the Basic Law. Apart from the Basic Law, the Law of Judiciary provides some extent of safeguards to ensure the impartiality of the judiciary (BLG, 1992: 16; Decree, 1961).

The principle of separation of powers as well as the independence of the judiciary is acknowledged by the Law of the Board of Grievances the 1982, 2007; nonetheless the rule is restricted to the protection of judges from removal from their office or transfer (Law of Judiciary, 1975: 2, 51; 2007: 2, 3, 46). However, the provisions are not sufficient to guarantee the judicial independence since as far as the regulations are not sanctioned by enacted laws in particular, wherever there is no written laws in case of criminal courts, the impartiality of judges can not be ensured.

In addition, the king appoints the Supreme Judicial Council members and the chief of the High Court (Law of Judiciary, 1975; 2007). The reason behind this authority of the king may be justified under the conception of God's vicegerency rule that the king has joined it, accordingly he should oversee the implementation of Islamic rule and *shari'ah* which courts have evolved to ensure (BLG, 1992: 50, 52). By referring to article 55 of the Basic Law, this fact could be realized (Vogel, 2000: 292). Obviously, in case of unsatisfactory court's decrees, the king has the authority to dismiss judges or decree the loss of their welfare or salaries. Independence of the courts is basic and absolute and suffers no exception in view of modern human rights standards (Rio, 1987; Report of HRC, 1993). The European Court on

Human Rights has clarified that the tribunal must be subjectively free of personal prejudice or bias and it must be impartial from an objective point of view (European Convention on Human Rights: 6; Findlay, 1997: February; McGonnel, 2000: February). The international instruments and guidelines require that the courts operate in a manner strictly consistent with fair trial requirements (UK & Northern Ireland). The judicial laws clearly assert the independence of judges and their adherence to Islamic rules while providing them with adequate safeguards to protect them from arbitrary transfer, dismissal or legal action. Unfortunately the problem is related to the lack of regulations to ensure such written values and precepts.

Conclusion

The Kingdom of Saudi is an Islamic country under a monarchy system. The power, whether executive, legislative or judicial, is centralized in the hand of royal family without any break in favor of electoral rights of people in the process of its constitutional system. All this happens in the name of Islam, as if Islam and its Holy *Qu'ran* should be interpreted to serve the officials. In this line it is believed that the power is derived from God and the people are given the obligation to pay allegiance to the ruler and sons of the founding king's successor one subsequent to the other. During this discussion, it has been illustrated that the *Qu'ran* is only misused by the government to justify its essential breach of human rights norms in the process of shaping the constitutional structure of the state. There is a need to protect the holy *Qu'ran* with its contents. A line should be drawn, however, between the exploitation of believers and the matters concerning politics.

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