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Judicial Evolution in the Kingdom of Saudi Arabia

An Analysis of Structural Reforms and its Role in
Enhancing Legal Consistency

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Judicial Evolution in the Kingdom of Saudi Arabia: An Analysis of Structural Reforms and its Role in Enhancing Legal Consistency

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ملخص البحث:

تتناول هذه الورقة الإصلاحات القضائية واسعة النطاق التي تم إجراؤها في المملكة العربية السعودية، مع التركيز على إعادة هيكلة نظام المحاكم، وإدخال هيئات قضائية متخصصة، والدور الدقيق للسوابق القضائية ضمن إطار قانوني قائم على الشريعة الإسلامية. وتحلل الدراسة تأثير هذه الإصلاحات على اتساق وكفاءة العمليات القضائية في المملكة العربية السعودية، لا سيما في سياق الحكم الحديث والتجارة الدولية.

تسلط النتائج الضوء على الانتقال من الهيئات شبه القضائية التقليدية إلى المحاكم المتخصصة مثل المحاكم العمالية والتجارية، بهدف مركزية وتبسيط حل النزاعات. وتناقش الورقة أيضاً آثار هذه الإصلاحات القانونية على العلاقات التجارية الدولية، وخاصة تنفيذ الأحكام الأجنبية وقرارات التحكيم.

وبناء على هذا التحليل، تم اقتراح توصيات لتعزيز الاتساق والموثوقية القضائية. ويشمل ذلك إنشاء نظام رسمي للسوابق، وتحسين التدريب القضائي، وتوسيع المحاكم المتخصصة، وزيادة وصول الجمهور إلى القرارات القضائية، وتبسيط آليات التنفيذ.

وتهدف هذه الإجراءات إلى مواءمة الممارسات القضائية في المملكة العربية السعودية مع المعايير الدولية ودعم اندماجها في الاقتصاد العالمي. وتساهم هذه الورقة في فهم عمليات الإصلاح القانوني في السياقات التي تكون فيها الممارسات التقليدية راسخة بعمق ولكنها تتطور لتلبية متطلبات التحديث والعودة.

الكلمات المفتاحية: الإصلاحات القانونية، الأحكام الأجنبية، التدريب القضائي، المحاكم المتخصصة، التجارة الدولية.



Judicial Evolution in the Kingdom of Saudi Arabia: An Analysis of Structural Reforms and its Role in Enhancing Legal Consistency

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Abstract:

This paper examines the wide-ranging judicial reforms undertaken in Saudi Arabia, with a focus on restructuring the court system, introducing specialized judicial bodies, and the precise role of case law within a legal framework based on Islamic law. The study analyzes the impact of these reforms on the coherence and efficiency of judicial processes in Saudi Arabia, particularly in the context of modern governance and international trade.

The findings highlight the transition from traditional quasi-judicial bodies to specialized courts such as labour and commercial courts, with the aim of centralizing and simplifying dispute resolution .

The paper also discusses the effects of these legal reforms on international trade relations, in particular the enforcement of foreign awards and arbitral awards.

Based on this analysis, recommendations were proposed to enhance judicial consistency and reliability. This includes the establishment of a formal case law system, improved judicial training, expansion of specialized courts, increased public access to judicial decisions and simplification of enforcement mechanisms.

These measures aim to harmonize judicial practices in Saudi Arabia with international standards and support its integration into the global economy. This paper contributes to an understanding of legal reform processes in contexts where traditional practices are deeply entrenched but evolving to meet the requirements of modernization and globalization.

Keywords: Legal reforms, Foreign judgments, Judicial training, Specialized courts, International trade.



Introduction

The legal landscape of the Kingdom of Saudi Arabia (KSA) has undergone significant transformations over the decades, reflecting a profound evolution from traditional judicial mechanisms toward a more structured and systematic approach to law and governance. These changes are pivotal not only for the internal administration of justice but also for Saudi Arabia's interactions on the international stage, particularly in areas like commerce and labor relations (Bashayreh, 2022).

This paper aims to explore the multifaceted aspects of judicial reform in Saudi Arabia, examining the restructuring of its court systems, the introduction of specialized judicial bodies, and the nuanced role of judicial precedents within the legal framework. The discussion begins with an overview of the historical development of the judicial system, focusing on the establishment of various committees such as the Commercial Papers Committees (CPC) and the Committees for the Settlement of Labor Disputes (CSLD). It also addresses the creation and function of enforcement courts, which mark a significant stride toward enhancing the efficiency of legal processes in the Kingdom.

A critical component of this examination is the doctrine of judicial precedents. Unlike many Western jurisdictions where precedents bind future rulings, Saudi Arabian judicial decisions traditionally serve advisory roles, granting judges the discretion to adapt legal interpretations to contemporary needs (Vogel, 2000). This aspect of Saudi legal practice underscores the balance between maintaining judicial independence and ensuring consistency across legal decisions.

Through this exploration, the paper will assess the impacts of these reforms and practices on the consistency and reliability of judicial decisions in Saudi Arabia. The aim is to provide a comprehensive understanding of how these changes align with both the cultural context of Saudi law, deeply rooted in Sharia, and the requirements of modern governance and international



commerce. This analysis not only contributes to academic discourse but also offers insights into potential future developments in Saudi Arabia's legal system.

Research Objectives

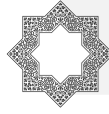
This study aims to achieve the following objectives:

- 1. To Analyze the Structural Reforms:** Examine the specifics of the judicial reforms introduced in Saudi Arabia, focusing on the restructuring of the court system and the establishment of specialized courts.
- 2. To Evaluate the Role of Judicial Precedents:** Investigate how the role of judicial precedents has evolved in the Saudi legal system, particularly their impact on legal consistency and judicial discretion.
- 3. To Assess Impact on Legal Efficiency:** Measure the effectiveness of these reforms in improving the efficiency of legal processes, particularly in terms of case handling times and consistency of judgments across similar cases.
- 4. To Discuss International Implications:** Explore the implications of these judicial reforms for international business, especially in terms of enforcing foreign judgments and arbitral awards.
- 5. To Propose Recommendations for Improvement:** Based on the findings, suggest further reforms or adjustments to enhance the effectiveness, reliability, and international compatibility of the Saudi judicial system.

Research Importance

The judicial evolution in the Kingdom of Saudi Arabia represents a significant transformation within its legal and governance frameworks, marked by an ambitious series of structural reforms and changes in the role of judicial precedents. Understanding these shifts is crucial due to several reasons:

- 1. Enhancing Legal Consistency:** The adaptation of judicial precedents in



Saudi Arabia, moving from purely discretionary to more structured use, impacts legal consistency, which is fundamental for domestic and international confidence in the Saudi legal system.

- 2. Supporting International Commerce:** As Saudi Arabia continues to attract foreign investment and expand its global trade relationships, the need for a predictable and transparent legal environment becomes paramount. Analyzing these reforms helps assess how the Kingdom aligns its judicial practices with international norms and standards.
- 3. Modernizing Traditional Systems:** The transition from a traditional Sharia-based legal system to one that incorporates specialized courts and potentially more binding precedents provides a model for modernization while respecting cultural and religious foundations. This balance is critical for other nations with similar legal and cultural backgrounds.
- 4. Policy Implications:** Insights from this research can inform policymakers and judicial authorities in Saudi Arabia and similar jurisdictions on the effectiveness of current reforms and areas needing further enhancement to improve legal certainty and judicial efficiency.

Research Methodology:

The study adopted an analytical and critical approach by providing a of Structural Reforms and the Role of Judicial Precedents in Enhancing Legal Consistency in the Saudi Legal system.

Review of Past Studies on Judicial Evolution in Saudi Arabia

The judicial system in Saudi Arabia has undergone significant changes over the past several decades as the Kingdom has modernized and developed its legal infrastructure. A number of studies have examined this evolutionary process and the reforms that have taken place.

One of the earliest major works on this topic is the book "The Judicial System of Saudi Arabia" by Frank E. Vogel, published in 1993. Vogel provided a comprehensive overview of the traditional Islamic judicial system



in Saudi Arabia and how it functioned. He examined the roles of judges, courts, procedure, and the application of Sharia law.

A 1998 study by Ahmed Amin Rida titled "The Judicial System in the Kingdom of Saudi Arabia" looked at reforms initiated by King Fahd in the late 20th century. This included the establishment of the Ministry of Justice in 1970 and subsequent moves to codify and regulate judicial processes.

In the early 2000s, researchers began analyzing further reforms under King Abdullah. Essam Al-Enazy's 2008 paper "The International Law between Theory and Practice in Saudi Arabia" discussed the growing influence of international laws and treaties on the Saudi legal system during this period.

More recently, studies have focused on ongoing judicial modernization efforts under the current King Salman and Crown Prince Mohammed bin Salman. Ayoub Al-Jefri's 2018 work "Judicial System in Saudi Arabia" detailed new commercial courts, personal status courts, labor courts and administrative courts established since 2007.

A 2020 paper by Abdulrahman Baamir titled "Saudi Arabia's First-Ever Comprehensive Codification of Sharia" analyzed major legislative changes including the issuance of new procedural laws and the establishment of the Supreme Court.

While much progress has been made, some scholars like Esther van Eijk in her 2021 work "Sharia and Saudi Law Today" contend that challenges remain in fully codifying Sharia and providing consistency across the judicial system.

Overall, the studies illustrate an evolutionary process over recent decades as Saudi Arabia has worked to modernize its judiciary while maintaining its foundation in Islamic law. Reforms have touched all aspects including court structures, codes, procedures and judicial training.



Historical Development of the Kingdom of Saudi Arabia (KSA) Transformation

The Kingdom of Saudi Arabia (KSA), predominantly located on the Arabian Peninsula, is a region historically significant as the birthplace of Arab culture and Islam. According to the Central Department of Statistics in 2015, it is home to approximately 31 million people. In 1932, King Abdulaziz Al Saud unified the various tribes and territories on the peninsula to establish modern Saudi Arabia and proclaimed himself the absolute monarch. This unification brought an end to longstanding conflicts and initiated the construction of a nation-state designed to meet the burgeoning aspirations of its populace for a developed and civilized society.

Under King Abdulaziz's rule, the country was unified under a single sovereign governance system, which was pivotal in cultivating a unified national identity. This governance structure evolved significantly from its humble beginnings into a complex institutional framework, supporting the executive authority to efficiently manage the nation's affairs in alignment with the principles of Sharia law (Faisal, 2002).

Culturally, the KSA is profoundly influenced by Islam and traditional Arab norms that not only define its national identity but also link its citizens to millions of people beyond its borders (Al Farsi, 1986). The traditions, customs, and tribal orientations that characterize Saudi society have ancient roots, passed down from generation to generation (Tripp & North, 2003). However, the Saudi culture has seen considerable changes, transitioning from a primarily nomadic society to a wealthy oil-rich nation following the oil boom in the 1970s (Tripp & North, 2003). This evolution has been critical in shaping the modern-day KSA, marking its progression from a collection of tribes to a significant and affluent country on the global stage.



Constitutional and Administrative Evolution in the Kingdom of Saudi Arabia

The early 20th century marked a pivotal era for Saudi Arabia as King Abdulaziz undertook significant constitutional developments, crucial for the modern state's governance structure. The establishment of the Consultative Council in Makkah in 1925 was a strategic move, positioning Saudi Arabia on a path towards formalized governance ahead of its official unification in 1932. This council, with extensive powers to manage institutional affairs, served as a precursor to modern legislative bodies within the Kingdom (Al-Fahad, 2005).

In 1926, the introduction of the Basic Directives for the Hejaz province represented an alignment with global constitutional practices of that era. These directives, comprising nine parts and 79 provisions, covered extensive constitutional and administrative roles, laying a foundational framework for governance that closely mirrored the evolved constitutions of more developed nations (Al-Fahad, 2005).

The role of the Inspection and Reform Commission, established in 1927, was critical in this evolving governance framework. It was not only a supervisory body but also a transformative force that recommended necessary reforms to the existing administrative structure. The approval of the Consultative Council decree in the same year underlined the Kingdom's commitment to reforming its governance in response to internal and external pressures (Al Kahtani, 2004).

The discovery of oil in the 1930s brought new challenges and complexities, which revealed the inadequacies of the existing administrative frameworks. In response, several key ministries were established between 1930 and 1953, including the Foreign Affairs, Finance, Defense, Internal Affairs, and Communications Ministries. This expansion not only diversified the administrative functions of the state but also facilitated the integration of Saudi Arabia into the global economy and political landscape (Richard, 1984; Faisal, 2002).



The decentralization efforts in the 1970s and 1980s, including the establishment of the Municipal Affairs Ministry in 1975, marked a significant shift towards empowering local governance. This movement aimed to enhance local administrative capacities, reducing the burden on the central government and fostering a more participatory governance model. This shift was underpinned by the drafting and approval of major regulatory frameworks like the Basic Law and the Shura Law in 1992, which were crucial in formalizing the roles and responsibilities within the Kingdom's governance structure (Royal Decrees Nos. A/90-92, UM Al-Qura Gazette, 1992; Faisal, 2010).

Overall, the constitutional and administrative developments in Saudi Arabia signify a profound transformation in the Kingdom's governance framework. In addition to maintaining its traditional monarchy, Saudi Arabia has integrated structured, legalistic, and decentralized elements into its system. This evolution underscores the Kingdom's adaptive governance strategies, which have been essential for maintaining stability and fostering growth amidst the economic and political challenges of the 20th century.

The gradual introduction of structured legal frameworks and the establishment of key governmental institutions reflect a deliberate shift toward a more systematic approach to governance. This shift has not only helped in managing the complexities introduced by rapid economic expansions, such as the oil boom, but also in navigating the intricacies of international relations and internal demands for more participatory governance.

Furthermore, the decentralization efforts, particularly through the establishment of local councils, have played a crucial role in alleviating central governmental burdens. This strategy has enabled regional administrations to have a greater role in decision-making processes, thereby increasing efficiency and responsiveness to local needs. These changes have allowed Saudi Arabia to evolve its governance structures in a way that supports sustainable



development and social cohesion, ensuring the Kingdom's resilience against both external pressures and internal demands.

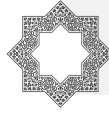
The Basic Law 1992: Overview

The Basic Law is considered the most significant constitutional legislation to date in the Kingdom of Saudi Arabia (KSA). It designates the Quran and Sunnah as the constitution of the Kingdom (Article 1), with Sharia as the foundational legal system (Article 7). The monarch's power is derived through a Bay'ah (pledge of allegiance), a traditional Islamic practice, emphasizing that the role of the government is to protect and enforce Sharia (Article 23). The government's identity, aim, and the relationship between the monarch and the citizens are deeply rooted in the concept of Shura (consultation), as encouraged by the Quran (Al-Muhanna, 2009). However, the advisory nature of Shura's outcomes means that the ultimate decision-making rests with the monarch, not being compulsory (Ali, 2016). This has led to concerns about the actual implementation of Shura within Saudi constitutionalism, suggesting that it should involve broader public participation (Hosen, 2007).

The Basic Law encompasses nine chapters covering governance, general principles, social values, economic principles, rights and responsibilities, state authority, financial affairs, and institutional audits. While it stresses the monarchical system (Articles 5 and 13) and defines the interactions among the judiciary, executive, and legislature (Article 44), critics argue it fails to clearly separate executive and legislative powers (Gregory, 1994). The law also divides the judiciary into three branches: Sharia courts, Diwan Al-mazalim, and other judicial committees, which will be detailed further.

The Shura Council of Saudi Arabia

The Shura Council in Saudi Arabia plays a consultative role in the legislative process, operating alongside the king and the Council of Ministers as stipulated in Article 67 of the Basic Law of 1992. The council comprises one hundred and fifty members, all appointed by the king for a four-year



term, with many members typically having their terms extended for another four years. Historically, the council only included male Saudi nationals; however, this changed in 2013 when King Abdullah appointed thirty female members for the first time, a practice that has continued with these seats now reserved exclusively for female Saudi nationals (The Guardian, 2013).

The Shura Council holds regular monthly meetings, requiring a two-thirds attendance of its membership and the presence of the speaker or his deputy to proceed, as per Article 16 of the Shura Council Law. Despite its structured meetings, the council has limited powers, primarily providing opinions on non-sensitive governmental affairs such as budget management, commercial relations with foreign states, and certain aspects of the state's economy, legal matters, and public welfare (Article 15, Shura Council Law). The council can issue resolutions and submit them to the king, who then decides which resolutions will be forwarded to the cabinet for further deliberation and potential approval. These resolutions only become legally effective after receiving the king's approval, as outlined in Article 17 of the Shura Council Law. One notable instance of the council's engagement in legislative matters occurred in 2012 during discussions on the SAR, where Shura members consulted with experts and the Minister of Justice, who attended a session to address queries and concerns raised by the members (Alalshaikh, 2017).

Although the Shura Council may appear similar to parliaments in the developed world, it fundamentally differs as it is an extension of the executive authority, chosen by the king and operating under his approval. As such, it could be argued that the Shura Council does not function as a public forum but rather as one of the consultative arms of the executive branch. This is evident even in its name, "Shura," which translates to "consultation." Despite being composed of well-qualified Saudi nationals, the limited decision-making power of the council significantly curtails its effectiveness, reducing its role to that of an advisory body rather than a legislative power with autonomous authority.



The Judicial legal System in Saudi Arabia

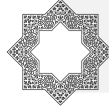
The judicial system in Saudi Arabia underwent significant changes starting in 1975, which initially established a framework that included the Supreme Council, courts of first instance, and appeal courts, along with several administrative committees responsible for commercial, civil, and administrative cases. The jurisdiction of each committee was defined by the Royal decree under which it was established (Ansary, 2015). However, by 2007, the need for a more specialized and efficient judicial system led to substantial reforms.

In October 2007, a series of Royal decrees were issued, marking a pivotal moment in the evolution of the Kingdom's judicial structure. These reforms abolished the Supreme Council and introduced the High Court, which assumed the role of the highest court in the Kingdom. Additionally, the creation of courts of appeal in every Saudi province and the establishment of specialized courts for criminal, commercial, and labor disputes represented a move towards a more specialized judiciary capable of handling specific types of cases (Royal Decree No M/78, 2007).

These specialized courts began to take on disputes that were previously managed by special administrative committees, reflecting a shift towards a more organized and reliable system for dealing with complex legal issues (Ansary, 2015). This was a critical development, as the previous system showed limitations, particularly in handling intricate commercial disputes due to a general lack of specialization among judges (Al-Jarbou, 2007).

To facilitate these changes and ensure a smooth transition, the Judiciary Law of 1975 was repealed, and the judicial system was restructured to align more closely with those of developed nations. This restructuring involved changes to longstanding statutes that had governed the general courts for over three decades and the Diwan Almazalim for more than two decades (Royal Decree No M/78, 2007).

To support this overhaul, a budget of seven billion Saudi Riyals was



allocated. This funding was used to build new court facilities, renovate existing ones, and provide training for judges, aiming to enhance the overall capacity and efficiency of the judiciary. Currently, the Saudi judicial system is in a transitional phase as it implements these significant amendments made in 2007 (Implementation Mechanism Decree, 2007).

These efforts to modernize the judicial system reflect Saudi Arabia's commitment to developing a robust legal framework that can effectively manage the complexities of modern legal challenges, thereby ensuring justice and maintaining the rule of law in the Kingdom.

Enforcement Courts in Saudi Arabia

The Judiciary Law of 2007 significantly restructured the Saudi judicial system, including the establishment of specialized Enforcement courts. According to Article 19 of the Judiciary Law, general courts are required to have specialized enforcement circuits, which may consist of single-judge or three-judge panels, as determined by the Supreme Judicial Council. This provision marked a departure from the 1982 system, which placed enforcement responsibilities before the Diwan Al Mazalim, and delegated these powers to dedicated Enforcement judges (Royal Decree No M/78, 2007).

In response to a growing caseload and the need for efficient enforcement of court rulings, the Supreme Judicial Council, empowered by Article 9 of the Judiciary Law to create specialized courts, established the Enforcement courts. These courts, set up following a resolution on August 27, 2014, focus on the swift execution of judgments, thereby protecting the interests of individuals and preventing delays in justice (Resolution No. 530 - 4 - 34; Arab News, 2014).

The role of Enforcement judges is clearly defined in Article 3 of the 2007 Law. They are responsible for the enforcement or supervision of all judgments, excluding those from administrative or criminal disputes. These judges must adhere to the procedural laws of the Sharia courts unless directed otherwise by the 2013 SER. Furthermore, Enforcement judges have the

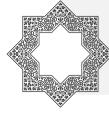


authority to request assistance from the Ministry of the Interior for imposing or lifting travel bans or ordering detention and release. Their decisions are typically final, with certain exceptions such as insolvency issues, where appeals are permitted and the outcomes of such appeals are conclusive (Al-Jarbou, 2007).

Enforcement courts hold jurisdiction over all enforcement actions within Saudi Arabia, including the enforcement of foreign awards and judgments. This was a significant shift from the previous arrangement where the Diwan Al Mazalim handled foreign enforcement issues, a process often criticized for its length and inefficiency (Al-Amr and Al-Ayoni, 2013; Jones and Day, 2013). The establishment of enforcement courts and the issuance of the 2013 SER have substantially improved the legal framework, enhancing the enforcement of arbitral awards and providing a clear jurisdictional mandate for these activities.

The positive impact of these changes is evident in the performance of the Enforcement courts. In 2015 alone, these courts resolved nearly 7,946 disputes and facilitated the recovery of over ten billion Saudi riyals, demonstrating their crucial role in the effective administration of justice and economic transactions within the Kingdom (The Ministry of Justice, 2016). This evolution in the Saudi judicial system not only enhances the rule of law but also boosts confidence in the Kingdom's legal processes, particularly in commercial dealings that require timely dispute resolution. The establishment of specialized Enforcement courts in Saudi Arabia represents a significant evolution in its judicial framework, enhancing the efficiency and reliability of legal processes, particularly in the enforcement of judgments. This move parallels developments in other jurisdictions where specialized courts have been established to address specific legal needs and improve the judiciary's responsiveness.

For instance, in Singapore, the introduction of the Singapore International Commercial Court (SICC) offers an apt comparison. Launched



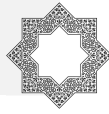
in 2015, the SICC was designed to handle transnational commercial disputes, providing a framework for swift and expert resolution of complex cases, similar to the objectives of Saudi Arabia's Enforcement courts(Yip, 2019). Like Saudi's enforcement judges, SICC judges can include eminent jurists from both Singapore and abroad, offering a blend of international and local legal expertise.

Similarly, in the United States, the establishment of Bankruptcy Courts as specialized tribunals under the U.S. District Courts system mirrors Saudi's approach to specialization in enforcement (Zimmer, 2009). These courts focus solely on bankruptcy filings, allowing for more nuanced and knowledgeable handling of such cases, thereby speeding up the process and enhancing the overall efficiency of the judiciary.

These comparisons show that while the structures and specific legal mandates may differ, the underlying principle of specialized courts across various jurisdictions—including Saudi Arabia, Singapore, and the United States—is to streamline judicial processes, ensure expert handling of specific types of cases, and improve the execution and enforcement of the law.(ibid) Such initiatives are crucial in maintaining judicial efficiency and upholding the rule of law, thereby fostering a reliable legal environment for both domestic and international stakeholders.

The Board of Grievances System (Diwan Al Mazalim)

A royal decree was issued in 2007 to approve amendments to the Diwan Al Mazalim system in the KSA (Royal Decree No M/78, 2007). The new structure of Diwan's administrative courts remains similar to those of the Sharia courts. The 2007 law stipulates that the Diwan is to be situated in Riyadh and considered as an independent entity directly accountable to the King (ibid). The 2013 Diwan Al Mazalim procedural law states in Article 1 that: “[t]he Board of Grievances courts shall, in the cases filed with them, apply the rules of the Islamic Sharia in accordance with the Quran, the Sunnah, and laws not conflicting with the present law, and their proceedings



shall comply with the provisions thereof.” Diwan Al Mazalim includes a ministry-ranked President, with one or more Vice Presidents and their assistants, in addition to other judges (Law of Procedure 2013, Article 2). An administrative judicial council was also created by the 2007 law to include the President of the Diwan, the High Administrative Court Chief Justice, the Diwan’s senior Vice-President, and four judges, all appointed by the Monarch (Article 4). This Administrative Judicial Council undertakes a number of administrative tasks in their bi-monthly meetings. These meetings are valid only if a minimum of five members are present, and decisions are taken by majority vote (Article 6). The council has created a number of committees such as the Jurisdictional Dispute Committee (Article 15); the Committee for Judicial Discipline; and the Judicial Inspection Department (Articles 16-24).

High Administrative Court (HAC)

The 2007 law created the HAC, which includes a ministerial rank Chief Justice selected by the monarch and an adequate number of judges of a certain rank that are also chosen by the monarch as recommended by the Administrative Judicial Council (Article 10). The HAC performs its functions via specialized circuits consisting of three-judge panels. It is empowered by the 2007 law to review rulings made by the Administrative Appeal Court when the appeal is based on certain grounds such as the court’s incompetence and Sharia provision violation.

Administrative Courts of Appeals

The 2007 law contains provisions for a minimum of one Administrative Court of Appeal working through special circuits comprising a three-judge panel. This court hears appealable judgments from the lower Administrative Courts (Articles 8 and 12). Diwan Al Mazalim has established four of these courts in Riyadh, Aseer, the Eastern Province, and Makkah, which are empowered to hear appeals from all of the KSA provinces (Ansary, 2015).



Administrative Courts

The 2007 law provides for the creation of one or more administrative courts. These courts operate via special circuits including a panel of one or three judges (Article 8). These courts are empowered to hear claims such as: tort cases against decisions or actions made by administrative authorities; cases linked to contracts to which the other party is an administrative authority; a competent authority filing disciplinary claims; other administrative cases; and the enforcement of foreign judgments and arbitral award requests (Article 13).

Consequently, it is clear that under the 2007 law, Diwan Al Mazalim continues to consider administrative disputes involving a government agency. The old law of Diwan Al Mazalim, approved in 1982, provided the Diwan with the jurisdiction to consider crimes related to forgery, bribery, misuse of official effects, or misuse of power in criminal proceedings, or human rights violations (Diwan Almazalim Law, 1982). The 2007 law removed their authority over criminal offenses that was given by the 1982 law to the present Ordinary Court System. Additionally, Diwan Al Mazalim has no jurisdiction to consider claims related to sovereign acts, objections against rulings made by normal courts in their designated jurisdictions, judgments made by either the Administrative Judicial Council or the Supreme Judicial Council (Article 14). Diwan Al Mazalim is still regarded as having jurisdiction over supervising awards proceedings within the KSA. Prior to the 2012 SER that established the Enforcement Court in Saudi Arabia, the Diwan had the jurisdiction to enforce both national and international arbitral awards (See Riyadh Convention next chapter). However, this is no longer the case since the Enforcement courts are now the competent authority to enforce all awards in accordance with the 2013 SER (Almuhaideb, 2013).

Quasi-Judicial Bodies in Saudi Arabia

In addition to the Sharia courts and the Diwan Al Mazalim, Saudi Arabia utilizes several quasi-judicial committees that are integral to its legal



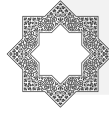
landscape. Quasi-judicial bodies are agencies or committees that have powers resembling those of a court of law. They conduct hearings, make legal decisions, and their rulings are generally binding, similar to decisions made by traditional courts. However, they do not have the full judicial powers of a court and typically focus on specific areas of law (Vogel, 2000).

The role of these quasi-judicial bodies in Saudi Arabia is particularly notable. They were established primarily to alleviate the heavy caseload of the formal court system and to ensure that disputes could be settled more efficiently by experts specialized in particular legal areas. This approach not only speeds up the resolution process but also ensures that decisions are informed by specialist knowledge, which is crucial in complex sectors like labor, commercial, and financial disputes (Baamir, 2020).

These committees operate under procedural rules similar to those followed by traditional judicial authorities in Saudi Arabia, ensuring a systematic approach to dispute resolution that aligns with the broader legal principles of the Kingdom. Their decisions are binding, meaning they carry the weight of law and are enforceable under Saudi legal norms. This setup allows for a more streamlined and focused dispute resolution mechanism that complements the broader judicial system by handling cases that require specific technical expertise or that are too voluminous for the regular courts to manage effectively (ibid).

By delegating specific types of disputes to these specialized committees, Saudi Arabia has created a layered judicial framework that not only enhances the efficiency of its legal processes but also contributes to the overall robustness and adaptability of its judicial system. This structure is crucial for managing the diverse and complex issues that arise in a rapidly modernizing society, balancing the need for specialized knowledge with the imperative of legal consistency and reliability.

Each of these committees is designed to offer a more focused and efficient resolution process for disputes in their respective areas, thereby



enhancing the overall effectiveness of the judicial system. By channeling cases through these specialized committees, the Saudi legal system ensures that expert opinions are brought to bear on complex issues, which helps in providing fair and informed decisions while relieving the broader judicial system of excess burden.

The Committee for the Settlement of Banking Disputes (CSCD) in Saudi Arabia

The Committee for the Settlement of Banking Disputes (CSCD) plays a crucial role in resolving banking disputes within Saudi Arabia, notably through several strategic initiatives. Firstly, the CSCD has enhanced efficiency by digitally linking with the public prosecution for streamlined data exchange, facilitating faster dispute resolution. Additionally, the CSCD expanded its operations to Jeddah and Dammam, enabling local judicial sessions that speed up litigation procedures for residents in these regions (Baamir, 2020). Furthermore, the CSCD uniquely adjudicates violations of the Banking Control Law, ensuring strict compliance by handling cases against entities operating without proper licenses. These measures collectively highlight the CSCD's vital role in maintaining legal integrity and improving dispute resolution efficiency in the Saudi financial sector. According to Shoult (2006), the CSCD is empowered to adjudicate such claims effectively. The committee is composed of three members who base their decisions on the contractual agreements between the disputing parties, applicable Saudi laws, and recognized international banking practices. During deliberations, the committee may also consult with external experts to aid in resolving disputes.

One of the primary roles of the CSCD is to act as a mediator. After the initial hearing stage, the committee invites both parties to reach a final settlement under its guidance (Rolf, 1995). If the parties accept the committee's mediation, the resulting decision is binding and final. However, if the parties reject the mediation offer, the committee then proceeds to decide the matter unilaterally and issues a binding decision.



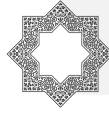
Despite these provisions, the CSCD's effectiveness as a dispute resolution body has been questioned. Paragraph 3 of the CSCD Internal Rules and Procedures states that if a decision by the CSCD does not satisfy both parties, the dispute may then be taken to a competent court (CSCD, 1987). This suggests that the committee's role is primarily mediatory and not necessarily final in all cases. Al-Saman (2000) critiques this aspect, pointing out that it might undermine the CSCD's authority as a decisive arbiter in banking disputes, especially since there are no other judicial bodies in the Kingdom specifically designated to handle such matters. Although Sharia courts hold general jurisdiction, they typically refrain from adjudicating banking disputes.

As a solution, it is recommended that if parties cannot reach an amicable settlement through the committee's mediation, they should consider arbitration under the 2012 SAR and inform the CSCD of their decision. This recommendation is backed by Article 10 of the CSCD Internal Rules and Procedures, which allows parties the option to pursue arbitration (CSCD, 1987). This provision aims to ensure that all parties have access to fair and effective resolution mechanisms, particularly in complex banking disputes.

The Commercial Papers Committees (CPC) in Saudi Arabia

Established in 1963, the Commercial Papers Committees (CPC) were designed to provide an efficient forum for resolving disputes involving debts evidenced by commercial papers, such as promissory notes and cheques (The CPC 1963). The CPC operates branches in Riyadh, Dammam, and Jeddah, each headed by a chairman and supported by two legal counsels from the Ministry of Commerce. Decisions made by this committee can be appealed within 30 days from the notification of the decision to the involved parties. The appeal process and time limits are consistent with those of the Committee for the Settlement of Banking Disputes (CSCD), as both committees follow the same procedural rules (Shoult, 2006).

From a theoretical standpoint, creditors are often better served by



pursuing claims involving commercial papers directly through the CPC rather than the CSCD. This is due to the CPC's ability to resolve such disputes more quickly; typically, claims before the CPC are resolved within about 12 months, whereas disputes handled by the CSCD can take up to three years without a definitive judgment (Boshoff, 1985). This efficiency makes the CPC an attractive option for creditors seeking timely resolutions.

However, in practice, the situation may differ. Legally, the CPC is required to base its rulings strictly on the commercial paper itself. Yet, it has been noted that the CPC may review the underlying transaction if the defendant requests this as part of their defense (Baamir, 2010). If such reviews become common, it could potentially reduce the attractiveness of commercial papers as a secure form of payment. This is because the certainty and speed traditionally associated with CPC rulings may be compromised, impacting the perceived reliability of using commercial papers as security (Baamir, 2010).

Overall, while the CPC serves a critical role in the swift resolution of disputes concerning commercial papers, the potential for examining underlying transactions could introduce complexities that diminish its effectiveness as a fast-track legal resource.

The Committees for the Settlement of Labour Disputes (CSLD) in Saudi Arabia

The Committees for the Settlement of Labour Disputes (CSLD) were established under the Labour and Workmen Regulations of 1987, tasked specifically with resolving labor-related disputes. These Committees are organized into primary and higher Committees, structured to effectively manage various cases across different levels of complexity.

The primary CSLD branches are located in every city that houses a labor office and are overseen by the Ministry of Labour. According to Article 173 of the Labour Regulation, these Committees possess exclusive jurisdiction over several types of disputes: claims involving sums less than SR3000; requests for the enforcement of rulings regarding the termination of labor



contracts; and disputes concerning employer-imposed fines on employees as detailed in Article 125 (Labour Regulation of 1987). For decisions arising from these specified claims, an appeal can be lodged with the higher Committees within 30 days of receiving the decision notification.

The decisions of the higher Committees are final and binding for all disputes referred to them. Both levels of Committees decide cases based on the majority vote of their members, and any dissenting member is required to justify their dissent, as stipulated in Article 187. This structured approach has allowed the CSLD to function effectively within its assigned jurisdiction, ensuring that labor disputes are resolved in a fair and orderly manner.

However, in a significant shift aimed at consolidating judicial processes, the Saudi government decided to dissolve these quasi-judicial bodies. In their place, as of 2018, the Labour and Commercial Courts were established with the jurisdiction to hear all labor and commercial disputes. This move, reported by the Saudi Gazette in 2018, was designed to streamline dispute resolution and increase the efficiency of judicial processes in handling labor and commercial cases within the Kingdom.

This restructuring reflects the Saudi government's ongoing efforts to improve and modernize its legal framework, ensuring that it can more effectively meet the needs of its rapidly changing economic and social landscape.



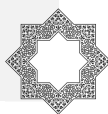
The Role of Judicial Precedents in the Legal Framework of Saudi Arabia

In examining the hierarchical structure and judicial capacities within the Kingdom of Saudi Arabia (KSA), it becomes imperative to explore the implications of judicial decision-making and the doctrine of judicial precedent. The doctrine of judicial precedent operates under the principle that decisions should adhere to previously adjudicated cases when the facts are analogous, thereby enhancing the consistency and predictability of legal outcomes (Garner et al., 2016). The adherence to precedents varies significantly across different legal jurisdictions.

In jurisdictions such as the United Kingdom, judicial precedents rigidly bind future rulings unless the presiding judge can differentiate the current case from previously decided ones, or can legitimately overrule or reverse prior decisions. This limitation is typically confined to decisions rendered by a court at the same hierarchical level or by a superior court, thereby mandating that lower courts follow the decisions of higher courts, while judges in higher courts are not bound by decisions from lower courts (Duxbury, 2008; Cross and Harris, 1991).

Conversely, the judicial system in Saudi Arabia adopts a distinct approach where judicial decisions are considered advisory rather than obligatory. This framework allows judges the discretion to adapt to evolving legal challenges and the nuances of legal interpretation that may not have been anticipated by previous rulings. This flexibility is particularly pertinent given the reliance of KSA judges on both Sharia law sources and domestic regulations, which necessitates a dynamic interpretation that can vary significantly across different eras (Alabdli, 2007). Binding judges to decisions from markedly different contexts could potentially compromise the equitable administration of justice.

However, the absence of a formal system of precedents in Saudi Arabia has led to a notable inconsistency in judicial outcomes, even for cases with



similar facts and contexts, as highlighted in subsequent chapters of this discourse. This inconsistency is exacerbated by the varying depths of understanding among lower court judges regarding Sharia law, allowing for a broad interpretation based on personal preference rather than a coherent application of legal principles (Diwan Almazalim, 2019).

Given these considerations, it may be beneficial for Saudi Arabia to contemplate the establishment of a more structured system of judicial precedents. Implementing such a system could enhance judicial consistency and reliability, particularly as decisions by more experienced judges in higher courts would set binding precedents for lower courts. Moreover, the establishment of a precedent system could positively impact the enforcement of foreign awards in Saudi Arabia, providing a more predictable legal environment conducive to international commerce. This reform could significantly advance Saudi Arabia's objective of cultivating a legal system that is attractive to foreign investors and aligned with global commercial standards.



Conclusion

The comprehensive review of Saudi Arabia's judicial reforms reveals a concerted effort by the Kingdom to modernize its legal framework and enhance the efficacy and consistency of its judicial processes. This paper has explored the significant restructuring of the Saudi judicial system, the establishment of specialized judicial bodies, and the nuanced application of judicial precedents, providing insights into the Kingdom's evolving legal landscape.

Summary of Key Findings:

- 1. Restructuring of the Judicial System:** Saudi Arabia has undertaken extensive reforms to its judicial structure, including the abolition of older quasi-judicial committees in favor of specialized courts such as the Labour and Commercial Courts. This shift is aimed at centralizing and streamlining judicial processes.
- 2. Role of Specialized Judicial Bodies:** The introduction of bodies like the Commercial Papers Committees and the Committees for the Settlement of Labour Disputes has specialized the handling of specific types of disputes, improving resolution efficiency and subject-matter expertise.
- 3. Judicial Precedents:** Unlike many legal systems where precedents strongly bind future rulings, Saudi jurisprudence traditionally uses precedents as advisory, allowing judges discretion to interpret laws based on the evolving context, which is particularly significant given the Sharia-based legal foundation.
- 4. Inconsistencies in Judicial Decisions:** The advisory nature of precedents in Saudi Arabia has led to inconsistencies in judicial decisions, particularly in lower courts where judges may have varying levels of expertise and understanding of Sharia.
- 5. Impact on International Relations:** The evolving judicial system has implications for international commerce, as the enforcement of foreign



judgments and arbitral awards becomes more predictable and aligned with international standards.

Recommendations:

1. **Establish a Formal System of Precedents:** To enhance consistency and predictability, Saudi Arabia should consider developing a formal system where higher court rulings create binding precedents for lower courts. This could be done by modifying judicial legislation to mandate adherence to higher court decisions by lower courts
2. **Increase Training for Judges:** Enhancing the depth of Sharia knowledge among judges, particularly in lower courts, through rigorous training programs can reduce inconsistencies and improve the quality of judicial decisions. This could be implemented by developing rigorous training modules focused on both Sharia law and contemporary legal issues, supported by case studies and peer discussions. Implement mandatory continuing legal education credits for judges.
3. **Expand Specialized Courts:** Further development of specialized courts could ensure that complex cases are handled by judges with specific expertise, thereby improving the efficiency and accuracy of judicial outcomes. This recommendation could be implemented by identifying needs based on current case analyses, set up additional specialized courts, and train judges with expertise in relevant legal fields.
4. **Streamline Enforcement Mechanisms:** Continued efforts are needed to streamline the enforcement of court decisions, particularly to enhance the speed and efficiency of enforcement in commercial and labor disputes, aligning Saudi practices more closely with international standards. This could be implemented by creating electronic tracking systems for the enforcement process and standardize procedures across regions to minimize delays

These findings and recommendations aim to support Saudi Arabia's



ongoing efforts to refine its judicial system, promoting a balance between traditional legal practices and the needs of a modern, dynamic society. Such enhancements will not only fortify the domestic legal environment but also bolster Saudi Arabia's position in the global economic landscape.



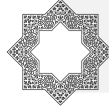
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