

Codification of Saudi Judicial rulings and its Impact on the Quality of the Judiciary The Personal Status Law as a Model

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Abstract

This research discusses the impact of codifying Saudi judicial rulings on the quality of the judiciary, with a focus on the Personal Status Law as a model. The significance of this research lies in regulating judicial discretion, reducing the variance in rulings, and organizing family law efficiently to ensure fairness. The research aims to emphasize the importance of codifying judicial rulings and its role in achieving judicial quality, as well as the role of the Saudi Personal Status Law in addressing family matters. The research employs an inductive and descriptive methodology, analyzing the subject matter from its sources and describing judicial rulings and their enhanced efficiency and quality after being codified into legal articles. The theoretical study is applied to the Saudi Personal Status Law. The research has resulted in several findings, the most significant of which is that Saudi judicial systems are continuously improving. One of the most recent improvements is the Personal Status Law, whose codified articles keep pace with legal developments and align with most international agreements ratified by the Kingdom, addressing women's rights and issues in a fair and balanced manner by which it ensures family stability and societal security.

Keywords: Codification, judicial rulings, systems, quality, personal status.

1. INTRODUCTION

Judicial systems are among the most crucial tools for achieving social order and serve as the backbone for organizing the judiciary and ensuring justice.

The judicial systems in Saudi Arabia have undergone continuous codification and updates in recent years without departing from Islamic law (Sharia), which is the source of justice, equality, and fairness in the judiciary. The aim has been to improve judicial quality and promote fair trials, especially in family matters. The codification of judicial rulings is a significant topic in the field of judiciary, aiming to organize and unify rulings according to specific guidelines and rules. It is evident that the Saudi judiciary faces considerable challenges in reconciling Islamic rulings with contemporary changes, requiring renewed jurisprudential efforts to interpret Sharia texts in a manner compatible with current realities. This research will explore the impact of codifying rulings on achieving judicial efficiency and quality, using the Saudi Personal Status Law as a case study.

2. RESEARCH PROBLEM

To what extent does the codification of judicial rulings contribute to achieving judicial quality in the Kingdom of Saudi Arabia?

And what role has the Personal Status Law played in this context as a model for implementing this approach?

3. RESEARCH OBJECTIVES

- To analyze the relationship between the codification of judicial rulings and the enhancement of judicial performance quality.
- To highlight the Saudi Personal Status Law as a contemporary model of codification.

- To explore the extent to which the codification of the Personal Status Law contributes to reducing judicial discrepancies and achieving family justice.

4. DEFINITION OF CODIFICATION

In language, codification (taqnīn) derives from "qanana" (to legislate), and "Qanun", which means the standard or method for all matters (Ibn Manzur, 1994).

Technically, codification is a modern term introduced to Islamic jurisprudence (fiqh), not addressed by earlier scholars in their books. It has been defined in various ways, including:

"The collection of legislative rulings and principles related to a field of social relations, organizing, arranging, and drafting them in concise, clear, commanding phrases in sections called 'articles' with sequential numbers, and then issuing them as a law or system imposed by the state, which judges are obligated to implement among the people." (Al-Fayruzabadi, 2005).

Since this research focuses on the Saudi judicial system, codification here refers to: enacting contemporary laws and regulations derived from Islamic jurisprudence, framing them into written formats as sequentially numbered articles by topics, facilitating easy reference for judicial authorities, and providing a basis for issuing rulings.

5. DEFINITION OF JUDICIAL RULINGS:

In language, "ruling" means judgment, with its root meaning "prevention," as in "I ruled against him," meaning I prevented him from violating it (Al-Zarqa, 2004).

The judge is called a "hakim" because he prevents the oppressor from oppression. (Abd al-Barr, 1986). Technically, most jurists did not provide a specific definition of a judicial ruling, instead focusing on defining judiciary to explain judgment. Judiciary essentially means the resolution of disputes and the ending of conflicts. A judicial ruling can be defined as: "What is issued by a judge or someone in a similar position, resolving a dispute and obliging the defendant to perform an action, refrain from an action, impose a penalty, or affirm a meaning in an appropriate context". (Abu al-Basal, 2002).

6. DEFINITION OF CODIFYING JUDICIAL RULINGS

This refers to the process of formulating judicial rulings into organized, sequentially numbered legal articles, which are then issued as a law or system imposed by the state, with judges being required to rule according to it in cases and disputes brought before them. It is important to note that in Saudi Arabia, what is referred to as "laws" in other countries are commonly called "systems." These are defined as: "General rulings or procedures issued by the ruler or his aides, binding on the subjects in matters where no specific evidence exists, aimed at achieving the public interest without violating Islamic law or its objectives. (Al-Ruqi, 2020 ;Al-Ghamdi, 2021).

7. THE IMPORTANCE OF CODIFYING JUDICIAL RULINGS AND THE NEED FOR IT

The judge's understanding of the case presented before him and his comprehensive grasp of all its aspects, followed by linking the case to the relevant legal article, requires personal effort and discretion from the judge. Not all cases are straightforward, allowing a direct application of the legal article without effort and consideration. Some cases require patience, deliberation, and consultation with others. Historical examples exist, such as a letter from Caliph Umar to Abu Musa Al-Ash'ari when he appointed him as a judge, stating: "Understanding of understanding, what is presented to you that is not found in the Book or Sunnah, then compare matters, and know the similarities, and then choose the one closest to the truth." (Al-Tusuli, 1998 ;Uthman, 1994).

Codification does not limit the judge's discretionary role or decision-making power but rather regulates judicial rulings, which may vary from one judge to another in identical cases. Historically, some Islamic regions followed the rulings of the most famous scholars of their time without deviating from their opinions. (Al-Qarawi, 1989).

Islam grants the ruler broad discretionary power in matters of jurisprudential reasoning where there is no clear text from the Quran, Sunnah, or consensus. This power allows for the management of state affairs (including issuing laws and orders) and adopting actions and regulations that suit the times and circumstances, as long as they serve the public interest. (Khallaf, 1985 ;Utaybi, 2017).

This principle is reflected in the well-known legal maxim: "The ruler's actions concerning his subjects are determined by the public interest". (Ibn Abd al-Salam, 1991; Al-Darini, 2013).

Article [67] of the Basic Law of Governance in Saudi Arabia also stipulates: "The regulatory authority is responsible for setting regulations and guidelines to achieve the public interest or eliminate harm in state affairs, according to the principles of Islamic law." (Hay'at al-Khubara' bi-Majlis al-Wuzara' website, www.boe.gov.sa) This reflects adherence to Islamic jurisprudence and its legal rulings. The codification of judicial rulings has become increasingly important in advancing the justice system due to its numerous benefits, which can be summarized as follows:

- Achieving clarity and consistency in judicial rulings by establishing clear guidelines and standards governing the work of judges, thus reducing discrepancies and variations in judgments.
- Enhancing the independence of the judiciary and the neutrality of judges: The codification emphasizes that judges are subject to no authority in their rulings except for Sharia and the legal systems.
- Developing the judicial sector's infrastructure, including the establishment of specialized courts, updating procedures, and utilizing modern technologies, that contributes to improving the quality of judgments and speeding up case resolution.
- Strengthening citizens' trust in the justice system, where codification provides greater clarity for judicial rulings and procedures.
- Keeping up with societal developments and global challenges by updating laws to match new realities and changes without compromising the society's values and principles.
- Achieving justice and protecting rights, especially in sensitive family matters such as marriage, divorce, alimony, and inheritance.

Islamic jurists have stated that it is part of the ethics of judges to be knowledgeable of the rulings of their predecessors and to be well-versed in them. (Al-Buhuti, 2014).

The judiciary has moved toward adopting judicial precedents, (Al-Asri, 1996) ,which allow for reflection on and benefit from the actions of previous judges in similar cases. This is as per Article [7] of the Saudi Judicial Law, which states: "If a chamber of the Supreme Court, regarding a case it is reviewing, decides to deviate from a principle it had previously adopted or that was adopted by another chamber of the same court in previous cases, or if a chamber of the Court of Appeal decides to deviate from a principle previously adopted by a chamber of the Supreme Court in previous cases, the matter shall be referred to the Chief Justice of the Supreme Court for referral to the General Assembly of the Supreme Court for a ruling". (Nidham al-Qadha' fi Mawqi' Hay'at al-Khubara' bi-Majlis al-Wuzara', <https://laws.boe.gov.sa>).

It is noticeable from the mentioned legal provision that the judicial system not only tends toward adopting the principle of judicial precedent but also gives it a binding nature, where deviation from it is not allowed except by a decision from one of the chambers of the Supreme Court.

If one were to question the purpose of looking into previous rulings, they would find that the answer lies in the benefits derived from them in the following ways (Al-Khunayn, 2008) :

- It increases legal awareness among all individuals and beneficiaries by allowing them to anticipate the judgment before it is issued.

Codification of Saudi Judicial rulings and its Impact on the Quality of the Judiciary The Personal Status Law as a Model

- Assisting specialists in drafting judicial rulings and the methodology adopted in handling similar cases.
- Achieving the highest standards of quality by reducing litigation duration and speeding up the issuance of rulings.

If all these benefits can be achieved by reviewing judicial precedents—perhaps where the previous judge's judgment was an individual effort, yet it is still valuable to review and learn from them—how much more beneficial would it be when the matter is thoroughly studied by specialists in Shariah and legal rulings, as well as contemporary issues and their developments? These specialists review what is documented in the books of jurisprudence, citing evidence from the Qur'an and Sunnah, and then look into contemporary developments to formulate systems and articles that make it easier for the judge and parties involved to have prior knowledge of the ruling—in most cases. These legal provisions are aligned with Shariah rulings, the latest legal trends, modern judicial practices, and are in harmony with current realities and changes.

Therefore, it can be said that the codification of judicial rulings, under another term—institutionalized judiciary—has become a pressing and necessary need for the Kingdom for several reasons, including:

- The weak ability to independently derive rulings in some judges, and the significant variation from one judge to another in similar cases (Muhaizaa, <https://tanmia-idaria.ipa.edu.sa>).
- Prolonged litigation duration in some cases due to the absence of pre-written, ready-to-apply legal templates, forcing the judge to refer to scattered books of jurisprudence and varying opinions.
- Closing the door on adopting Western legal systems that may fall outside the Islamic framework, as Islamic Shariah is capable of finding solutions to all issues.
- Preventing those who might exploit the wide scope of independent legal reasoning (ijtihad) for unethical purposes.
- Increasing predictability of the judge's ruling, in addition to raising legal awareness in society and among those coming to the country to conduct transactions, so they are aware of the prevailing laws and regulations.

In conclusion, codifying judicial rulings is an urgent necessity for improving the quality of the judiciary. Saudi Arabia has succeeded in achieving a leading model in this field through the codification of the personal status law—the subject of this study—among other laws. This achievement comes as part of comprehensive judicial reforms witnessed by the Kingdom, aimed at enhancing justice, upholding the rule of law, and achieving social security and family stability.

8. THE CONCEPT OF JUDICIAL QUALITY, ITS IMPORTANCE, STANDARDS, AND THE IMPACT OF LEGAL CODIFICATION ON IT:

6.1. The Concept of Judicial Quality and Its Importance:

The Concept of Judicial Quality: Quality is the opposite of mediocrity, and in administrative terminology, it is defined as: perfecting the work in such a way that it achieves its objectives accurately while striving for continuous improvement (Farah, 2019 'Fishush', 2022).

Judicial quality refers to the efficiency, integrity, and effectiveness of the judicial system in achieving justice and meeting the needs of society.

Judicial quality can be defined as: a set of standards and specifications within judicial systems that ensure the provision of fair, transparent, and prompt judicial services.

The Importance of Quality in Judicial Systems: In our present time, quality extends to all aspects of life, and it is regarded highly in our Shariah as it reflects the correct Islamic approach that calls for perfecting work, whether in worldly or religious matters. The Prophet Muhammad (peace be upon

him) said: "Allah loves that when one of you performs a task, he should do it with excellence".

The importance of achieving quality in the judicial system manifests in several key aspects that directly affect the effectiveness and stability of society. These can be summarized as follows (Al-Bayhaqi, 2003) :

Achieving justice: Judicial quality ensures that rulings are fair and just, enhancing trust in the judicial system and leading to the protection of individuals' rights.

- Strengthening trust in the judicial system: When the quality of judicial rulings and procedures is high, public trust in the judiciary increases. This trust leads to social and economic stability, as individuals feel secure in their rights.
- Speeding up judicial procedures: Judicial quality involves improving the efficiency of the judicial system, leading to faster case resolution. Delays in resolving cases can exacerbate disputes and increase social tensions.
- Reducing corruption: It is known that a judicial system with high quality is less prone to corruption. Transparency and effective oversight ensure that cases are handled impartially.
- Enhancing human rights: By ensuring justice and transparency, judicial quality contributes to protecting human rights and promoting fundamental freedoms, reflecting Islamic values of justice and equality.
- Developing and improving systems: Judicial quality pushes for periodic reviews and development of systems, ensuring that they meet the changing needs of society.

6.2. Standards of Judicial Quality:

The concept of quality standards refers to: "The specifications and conditions that must be met within a system to produce high-quality outcomes and meet the needs of those benefiting from the system" (Abu Shaqrah, 2015).

To ensure the presence of quality and its practice, there must be performance indicators that measure whether or not quality has been achieved, which serve as a benchmark for judicial systems. These indicators include:

- Justice standard: The fairness of rulings ensures public trust in the judiciary and the protection of individuals' rights. Justice is the foundation of governance in Islam, as Allah says: "Verily, Allah commands justice and excellence" (An-Nahl: 90.)
- Efficiency standard: This refers to the speed with which the judicial system processes and resolves cases without undue delay.
- Good administration standard: This refers to the ability to organize and manage court resources effectively, including case distribution and scheduling hearings.
- Integrity and transparency standard: This refers to ensuring that there is no bias or discrimination in dealing with cases and parties, and that judicial procedures are clear, with easy access to legal information and court decisions.
- Judges' qualification standard: This refers to ensuring that judges and those working in the judicial system receive the necessary training and qualifications to perform their duties efficiently and professionally, while adhering to professional ethics and judicial conduct.

Since the Saudi judicial system has taken it upon itself to continuously improve, and to ensure quality within its judicial systems, a recent decision was issued on 25/12/1445 AH by the President of the Supreme Judicial Council aimed at enhancing judicial guarantees and raising the quality of judicial rulings. It included a decision to have three judges review criminal cases in criminal courts only, to be implemented in phases in coordination with the relevant departments within the council and the

Ministry of Justice. It also restricted the review of personal status cases to personal status courts (Mawqi' al-Majlis al-A'la li-l-Qadha' <https://www.scj.gov.sa>).

6.3 .The Impact of Codifying Rulings on Judicial Quality:

Judicial quality is an essential element in enhancing public trust in the judicial system and ensuring the protection of individuals' rights, which contributes to social and economic stability.

The Saudi Ministry of Justice strives to develop the legislative environment for the judicial system in line with best practices and in support of the national transformation toward achieving the Kingdom's Vision 2030. This development takes into account adherence to the rulings of Islamic Shariah.

Several initiatives have been launched to achieve strategic objectives and developmental dimensions that elevate the Kingdom. One of the most important of these initiatives is the Judicial Quality initiative, which serves as an indicator for measuring the system's effectiveness and ensuring that its judicial systems are functional. It ensures that rulings align with newly enacted regulations and legislation, contributing to raising the quality and stability of judgments and enabling the predictability of court rulings (Mawqi' al-Majlis al-A'la li-l-Qadha' <https://www.scj.gov.sa>).

9. THE SAUDI PERSONAL STATUS LAW AND ITS ACHIEVEMENT OF JUDICIAL QUALITY

It is noticeable that the idea of codifying rulings began with the personal status system, (Personal Status: A contemporary term that was not mentioned by earlier jurists, but has been used by contemporary scholars in their writings. It refers to the rulings that regulate family matters, including marriage, divorce, alimony, custody, and similar issues, as well as matters related to the status and legal capacity of individuals) due to the importance of the family and the need to organize its affairs. Many countries start by enacting family-related legislation.

The Saudi Personal Status Law stands as a prominent example of codifying judicial rulings in the Kingdom, addressing all aspects related to family with the highest efficiency.

7.1. Overview of the Saudi Personal Status Law:

The Saudi judicial system has developed rapidly in various judicial fields, especially concerning personal status. Royal Decree (M/78) issued on Rajab 19, 1428 AH, established personal status courts to handle family cases.

The judicial system continued to develop and modernize its regulations until it culminated in the creation of an independent Personal Status Law, which is a set of rules and regulations that govern family matters and personal relationships, including marriage, divorce, alimony, inheritance, and custody. It aims to address family cases, reduce discrepancies between judicial rulings, and enhance judicial efficiency and quality. It helps in maintaining family stability and protecting it from disintegration.

What distinguishes this law is that it is based on Islamic Shariah, making it unique in its adherence to Shariah rules and fulfilling its purposes.

It is known that before the issuance of the Personal Status Law, judicial work in the courts was carried out according to the jurisprudential rulings established by Islamic scholars, which were suitable for specific times, places, and circumstances. Judges had to weigh multiple juristic opinions in a given issue to issue a ruling that matched the presented case, which sometimes led to delays in resolving cases and variations in rulings from one judge to another in similar cases, due to differences in judicial reasoning.

However, with the issuance of the new Personal Status Law in 1443 AH, many of the controversial juristic issues were resolved, and numerous shortcomings that were observed before the law's issuance were addressed (Al-Mutlaq, 2023).

7.2. The Importance and Objectives of the Personal Status Law (Al-Samaani, 2022):

The importance and objectives of the Personal Status Law can be summarized as follows:

- **Achieving Justice:** The Personal Status Law contributes to achieving justice among individuals in family matters by regulating relationships within the family in a way that ensures equality between its members, thus promoting social stability and reducing disputes.
- **Protecting Rights:** The law provides legal protection for individuals, especially vulnerable groups such as women and children, ensuring that they are not subjected to injustice or discrimination, and enhancing their legal standing within society.
- **Regulating Family Relationships:** The law helps regulate relationships within the family in a way that achieves balance and mutual respect among family members, aiding in maintaining family harmony and preventing disintegration.
- **Adherence to Islamic Sharia:** The Personal Status Law is based on Islamic values, which strengthens the cultural and religious identity of Saudi society and ensures that the legal systems are in line with Islamic Sharia.

In general, the Personal Status Law in Saudi Arabia represents a legal framework that enhances social justice and maintains the stability of society and the family, in accordance with Islamic Sharia.

7.3. The Codification of the Saudi Personal Status Law:

The Personal Status Law represents a model for development and codification within the Saudi judicial system. It was issued under Royal Decree No. (M/73) on 6/8/1443 AH, marking a significant leap and important reforms aimed at improving the organization of family relations and enhancing individual rights. This law has also witnessed notable development in the use of artificial intelligence technologies in personal status courts.

The Saudi government has confirmed that the Personal Status Law is derived from the provisions and objectives of Islamic Sharia, while also taking into account the best contemporary international judicial practices. It is aligned with current realities and developments and regulates the discretionary power of judges, thus reducing the variation in judicial rulings in this matter and contributing to the preservation and stability of the family unit.

Additionally, the codified provisions of this law will enhance the predictability and consistency of judicial rulings, improving the quality and efficiency of decisions (Al-Mutlaq, 2023).

Among the most prominent new changes in the Personal Status Law are:

- **Defining the Rights and Duties of Spouses:** The rights and duties of both spouses have been more accurately clarified, which contributes to reducing family disputes and enhancing family stability.
- **Divorce Procedures:** Divorce procedures have been improved to ensure the protection of the rights of both spouses and children, including determining alimony during the waiting period (*'iddah*).
- **Focus on Women's Rights:** Women's rights have been strengthened in the new law, including their rights to alimony and inheritance, reflecting the Kingdom's commitment to achieving justice and equality in family relationships.
- **Simplifying Inheritance Procedures:** Clear mechanisms have been established for the distribution of inheritance, making it easier for heirs to understand their rights and reducing inheritance-related disputes.
- **Custody Procedures:** Custody rights have been more clearly defined, ensuring the welfare of children and promoting their psychological and social stability.
- **Community Awareness:** Awareness campaigns have been launched to introduce the public to the new changes in the Personal Status Law, helping individuals understand their rights and responsibilities.

These reforms come within the Kingdom's efforts to develop the justice system and improve the quality of judicial performance, thus enhancing citizens' trust in the judiciary and serving the public interest of society.

7.4. The Impact of the Codification of the Personal Status Law on Judicial Quality:

Undoubtedly, countries that apply Islamic Sharia in their rulings and judgments face a significant challenge between two important factors:

- a. Preserving inherited religious principles and constants.
- b. Adapting to contemporary life and its developments.

A careful examination of the Saudi Personal Status Law reveals that it has achieved a balance between the need for reform and modernization while preserving Islamic values and principles.

Improving and enhancing all government actions, including the laws it enacts, is a religious requirement, a life necessity, and an adaptation to modern times. This is especially true when it comes to improving what the Sharia has given utmost care and attention to, namely the family system. A healthy family leads to a healthy society, where each individual attains their rights with justice and fairness.

The codification of the Personal Status Law has contributed to improving the quality of the judiciary in the Kingdom through the following:

First: Structuring relationships between family members and protecting their rights by:

- Establishing clear rules and regulations that organize family relationships in various aspects such as marriage, divorce, alimony, custody, and inheritance.
- Helping to define the rights and duties of family members in a specific manner, protecting their rights, and reducing disputes and conflicts.

Second: Accelerating the resolution of family disputes, as it:

- Helps in issuing judicial rulings in family disputes more quickly and efficiently.
- Reduces harm to children and ensures they are not negatively affected by prolonged family disputes.

Third: Reducing the variation in rulings on similar cases by:

- Limiting the differences in judicial rulings in similar family cases.
- Enhancing the stability and consistency of rulings, which positively reflects on family relationships and their sense of justice.

In general, the codification of the Personal Status Law significantly contributes to improving family relations by structuring these relationships, protecting the rights of family members, accelerating the resolution of family disputes, and reducing the variation in rulings on similar cases.

To further clarify what was mentioned above, I provide one example (among many):

The wife's request to annul the marriage due to the husband's absence:

This issue has been a subject of scholarly debate regarding the wife's right to request annulment, with some permitting it and others forbidding it, as well as determining the period for which annulment could be granted due to absence (Ibn 'Abidin, 1992 'al-Dusuqi, 2006 'al-Shirbini, 1996 'al-Mardawi, 1995).

This led to varying rulings by judges, reflecting the differences in scholarly opinions.

However, when the Personal Status Law introduced a codified and written provision, Article (114)

stated: "Unless the absence is due to work, the wife may request the annulment of the marriage contract due to the absence of her husband, whose place of residence is known, if he has been absent for a period not less than four months, even if he has sufficient means to provide alimony. The court shall not grant the annulment unless he has been warned either to reside with his wife or to bring her to him or divorce her. A period of no more than one hundred and eighty days from the date of the warning shall be granted " (Nidham al-Ahwal al-Shakhsiyyah: <https://laws.boe.gov.sa/BoeLaws>).

This resolved the dispute, ended the disagreement, and established the wife's right to request annulment if her husband was absent. It also specified the period after which the wife could make the request, allowing the court to grant the annulment.

Thus, the codification introduced by the new Personal Status Law has resolved many disputes by having a positive impact on enhancing the quality of judicial work. It has unified rulings in similar cases and achieved the highest standards of transparency and justice, reinforcing the principle of achieving family stability and social security.

8. FINDINGS

1. The codification of judicial systems has become an urgent necessity to improve the quality and efficiency of the judiciary.
2. The codification of judicial systems has supported knowledge and enhanced justice and equality in society.
3. The issuance of a specific law for family cases is one of the comprehensive judicial reforms being witnessed by the Kingdom as part of its plan to improve and develop judicial systems.
4. Saudi Arabia has succeeded in achieving a pioneering model in this field through the codification of the Personal Status Law, which enhances the family's position, protects its rights, and serves its interests.
5. The Personal Status Law has dealt with women's issues and their rights in a fair and balanced manner, achieving family stability and social security.

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Codification of Saudi Judicial rulings and its Impact on the
Quality of the Judiciary The Personal Status Law as a
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