



## RESEARCH ARTICLE

## Constitutional Underpinnings of Substantive Criminal Law: A Comparative Analysis of Egypt and Saudi Arabia

Mona Omran<sup>1</sup>, Renad Aldmour<sup>2</sup>, Duaa Hijazi<sup>3</sup>, Emran Alzubi<sup>4</sup><sup>1,2</sup> Assistant professor, Law Department, Faculty of Business Administration, Northern Border University, Saudi Arabia<sup>3,4</sup> literature, Law Department, Faculty of Business Administration, Northern Border University, Saudi Arabia**ARTICLE INFO****ABSTRACT**

Received: Aug 13, 2024

Accepted: Oct 16, 2024

**Keywords**Constitutional foundations  
Criminal jurisprudence  
Substantive legislation  
Egypt  
Saudi Arabia**\*Corresponding Author:**

2359588841@nbu.edu.sa

This paper examines the constitutional foundations of substantive criminal law in Egypt and Saudi Arabia. Due to their common Islamic ancestry, the two prominent Middle Eastern nations have established diverse legal systems that embody their individual historical, cultural, and political contexts. The paper investigates the equilibrium between ancient religious principles and contemporary legal frameworks in the criminal justice systems of Egypt and Saudi Arabia, emphasizing constitutional structures, classification of criminal offenses, and recent legal reforms. The study utilizes a thorough and meticulous examination of key legal materials, including constitutions and criminal codes, alongside a detailed investigation of secondary sources, such as scholarly literature and legal commentary. It emphasizes four key areas: the historical evolution of criminal law, constitutional structures, classification of criminal offenses, and contemporary revisions. This rigorous technique guarantees the reliability and authenticity of our results. The investigation indicates substantial disparities between Egypt and Saudi Arabia. Egypt's legal system exhibits a more significant amalgamation of Islamic and Western legal systems, whilst Saudi Arabia upholds a stronger commitment to traditional Islamic legal concepts. Both nations encounter difficulties in harmonizing their criminal justice systems with international human rights standards, though in distinct domains and to differing extents. This paper provides a distinctive comparative analysis of the constitutional foundations of criminal law in two prominent Middle Eastern nations. It offers new perspectives on the varied trajectories of Islamic states in the evolution of their criminal justice systems, reconciling tradition with modernity. This distinctive viewpoint will captivate legal experts, researchers, and politicians engaged in comparative legal studies and Islamic jurisprudence.

**INTRODUCTION**

The legal frameworks of Egypt and Saudi Arabia offer a fascinating comparison, especially in the domain of criminal law. Although both states are fundamentally grounded in Islamic traditions, their methodologies for integrating religious concepts into their legal frameworks differ markedly. The legal system of Egypt, a complex synthesis of Islamic Sharia, British common law, French civil law, and ancient Egyptian legal traditions, embodies the nation's extensive history and encounters with colonialism and post-colonial evolution. Conversely, Saudi Arabia has upheld a more explicit incorporation of the Qur'an and Islamic traditions into its civil and criminal legislation, retaining numerous historical Arabic legal terms and notions.

The development of criminal law in Egypt and Saudi Arabia offers significant insights into the greater issues faced by Islamic regimes in contemporary times. According to Alkhedhairy (2023), there is a continuing battle to reconcile ancient religious beliefs with modern legal notions and international human rights norms. A notable study vacuum persists in comprehending how these problems are expressly manifested in the constitutional foundations of criminal law in Egypt and Saudi Arabia.

This study seeks to fill this gap by investigating the subsequent research questions: In what ways do the constitutional frameworks of Egypt and Saudi Arabia diverge in their treatment of substantive criminal law?

What are the fundamental distinctions in the classification and management of criminal offenses between the two nations?

In what ways have recent law reforms in both countries sought to modernize their criminal justice systems while preserving their Islamic identities?

What obstacles do Egypt and Saudi Arabia encounter in harmonizing their criminal legislation with international human rights standards?

This study aims to further the understanding of how Islamic governments modernize their legal systems while maintaining their cultural and religious identities through the examination of these concerns. The comparative examination of Egypt and Saudi Arabia's methodologies provides significant insights into the varied trajectories accessible to Islamic nations in the evolution of their criminal justice systems, addressing a crucial deficiency in existing comparative legal scholarship pertaining to the Middle East.

## **1. METHODOLOGY**

The research utilizes an exhaustive examination of main legal documents, encompassing constitutions, criminal codes, and current statutes from Egypt and Saudi Arabia to do this comparative analysis. This analysis is enhanced by the evaluation of secondary sources, including scholarly literature and legal comments, to furnish context and interpretation. The study concentrates on four principal domains: the historical evolution of criminal law, constitutional frameworks, the organization and classification of criminal offenses, and contemporary reforms and problems. This methodology facilitates a comprehensive comprehension of the legal frameworks in both nations by examining the statutory provisions and their practical implementation.

## **2. FINDINGS AND ANALYSIS**

### **2.1 Evolution of Criminal Law**

The historical developments of criminal law in Egypt and Saudi Arabia demonstrate divergent pathways of legal progress. Egypt's legal system has experienced substantial changes since the drafting of the nation's inaugural modern constitution in 1923. Sherif (2021) indicates that this evolution signifies a gradual transition towards a more secularized government, while yet preserving fundamental Islamic principles. The impact of French and British legal traditions is apparent in the form and procedural components of Egypt's criminal law.

Conversely, Saudi Arabia's legal framework has continued to adhere more closely to conventional Islamic jurisprudence. The enactment of the Basic Law of Governance in 1992 codified numerous concepts, establishing a constitutional framework that underscores the supremacy of Sharia law (Teitelbaum, 2021). This commitment to religious legal principles has influenced Saudi Arabia's criminal law, affecting the classification of offenses and the required penalties.

### **2.2 Constitutional Frameworks**

The constitutional frameworks of Egypt and Saudi Arabia illustrate their divergent approaches to criminal law. The 2014 Constitution of Egypt establishes a detailed framework for criminal law, prioritizing the preservation of human rights and the assurance of due process. Rashdan (2023) observes that Article 95 of

the Egyptian Constitution enshrines the presumption of innocence, whilst Article 96 ensures the right to a fair trial. These rules illustrate Egypt's endeavors to harmonize its criminal justice system with international standards.

Conversely, Saudi Arabia's Basic Law of Governance underscores Sharia as the principal source of legal power. Article 26 of the Basic Law asserts that the state safeguards human rights in accordance with Islamic Sharia, establishing a criminal law system distinct from that of Egypt (Czornik, 2020). This essential disparity in constitutional methodology significantly impacts the framework and enforcement of criminal law in both nations.

### **2.3 Framework and Classification of Criminal Offenses**

The classification of criminal offenses in Egypt and Saudi Arabia exemplifies the differing trajectories of their legal systems. According to Nouh (2023), Egypt's Penal Code classifies offenses into felonies, misdemeanors, and contraventions. This tripartite classification system resembles Western legal frameworks, illustrating Egypt's historical influences and endeavors to improve its legal system.

Saudi Arabia's criminal law, firmly based in Sharia, utilizes a distinct classification system. Crimes are categorized as Hudud (offenses with set penalties specified in the Qur'an), Qisas (retaliatory offenses involving physical injury), Ta'zir (punishments at the discretion of authorities), and regulatory offenses established by royal edicts (Alkhedhairy, 2023). This classification system illustrates Saudi Arabia's dedication to upholding a criminal code that is closely connected with traditional Islamic legal norms.

### **2.4 Contemporary Reforms and Obstacles**

Egypt and Saudi Arabia have implemented legal reforms in recent years, however the characteristics and speed of these modifications vary considerably. Recent modifications to the Criminal Procedure Code in Egypt have sought to improve due process rights. Simultaneously, initiatives have been undertaken to update the penal code to tackle modern challenges like as cybercrime and terrorism (Arafa, 2023). These reforms demonstrate Egypt's continuous endeavor to reconcile security issues with the safeguarding of individual rights.

Saudi Arabia has enacted reforms, including the introduction of the Anti-Cyber Crime Law in 2007 and modifications to its judicial system, such as the establishment of specialist courts (Czornik, 2020). Nevertheless, as Kelly (2023) indicates, Saudi Arabia encounters distinct obstacles in harmonizing its legal traditions with international human rights standards, especially with corporal punishment and due process.

Both nations contend with the challenge of updating their legal frameworks while preserving their cultural and religious identities. Egypt confronts difficulties in tackling problems such as prison overpopulation and pretrial detention, as noted by Baughman (2021). Saudi Arabia must carefully codify criminal legislation in accordance with Sharia principles.

## **3. CONCLUSION**

This comparative research highlights substantial disparities in the constitutional foundations of substantive criminal law between Egypt and Saudi Arabia. These disparities illustrate the distinct historical, cultural, and political circumstances of each nation. Egypt's legal system exhibits a significant amalgamation of Islamic and Western legal traditions, as seen in its constitution and criminal code framework. Saudi Arabia, conversely, upholds a more robust commitment to traditional Islamic law concepts, while recent initiatives have been undertaken to codify and standardize their implementation.

The research underscores the intricacy of legal change in Islamic nations, especially in reconciling ancient religious tenets with contemporary legal frameworks. The divergent methodologies of Egypt and Saudi Arabia offer significant insights into the potential trajectories Islamic nations may pursue in the evolution of their criminal justice systems. Both nations encounter persistent difficulties in harmonizing their

criminal justice systems with international human rights standards, albeit in distinct domains and to various extents.

Future research in this domain could enhance understanding by exploring the practical execution of legal reforms in both nations, assessing the influence of international human rights treaties on the evolution of domestic criminal law in Islamic states, and examining the role of judicial interpretation in influencing the application of criminal law in systems with varying degrees of codification.

This research enhances the comprehension of how Islamic governments address the complexities of modernizing their legal frameworks while preserving their cultural and religious identities. It emphasizes the significance of incorporating historical, cultural, and religious elements in comparative legal studies, especially in the realm of criminal law. As Egypt and Saudi Arabia advance their legal frameworks, their experiences provide significant insights for other countries striving to reconcile tradition with modernity in criminal justice.

## REFERENCES

- [1] Morris I. Egypt-Culture Smart!: The Essential Guide to Customs & Culture. Kuperard; 2024 Jul 11.
- [2] Fahmy K. In quest of justice: Islamic law and forensic medicine in modern Egypt. Univ. of California Press; 2023 Feb 7.
- [3] Alkhedairy M. *Fundamental principles in Saudi Arabia's marine insurance law with reference to the law and practice in Egypt and the UK: a comparative study* (Doctoral dissertation, University of Leicester).
- [4] Rashdan MA. *Towards a Structural Judicial Approach in the Egyptian Administrative Courts: Proportionality as a Practical Solution* (Master's thesis, The American University in Cairo (Egypt)).
- [5] Teitelbaum J. Saudi Arabia:(Al-Mamlaka al- 'Arabiyya al-Sa 'udiyya). In *Middle East Contemporary Survey*, Volume XVI, 1992-2021 Nov 28 (pp. 668-701). Routledge.
- [6] Arafa M. Feeding the Cats: The Corruption Conundrum in the Failed Arab Spring-Egypt. S. Ill. ULJ. 2023; 48:21.
- [7] Nouh Y. The School of Sharī'a Judges: Sharī'a Courts' Reform and Legal Modernization in Egypt (1907-1927).
- [8] Khalil HM. "This Country has Laws": Legalism as a Tool of Entrenching Autocracy in Egypt. *American Behavioral Scientist*. 2024:00027642241267936.
- [9] Czornik K. Saudi Arabia as a Regional Power and an Absolute Monarchy Undergoing Reforms. *Vision 2030—the Perspective of the End of the Second Decade of the 21st Century*. *Przegląd Strategiczny*. 2020;10(13):179-98.
- [10] Baughman SB. Crime and the Mythology of Police. *Wash. UL Rev*. 2021; 99:65.
- [11] Kelly MJ. Restoring and maintaining order in complex peace operations: the search for a legal framework. BRILL; 2023 Sep 20.
- [12] Sherif AO. The Allocation of Power between Religious and Secular Authorities in Egypt. In *Constitutional Review in the Middle East and North Africa 2021* Aug 24 (pp. 291-306). Nomos Verlagsgesellschaft mbH & Co. KG.
- [13] Abdelaal M. Constitutional Courts as Protection Conduits: The Role of Egypt Supreme Constitutional Court in Advancing Human Rights Protection. In *The Palgrave Handbook of Democracy, Governance and Justice in Africa 2022* Oct 4 (pp. 259-278). Cham: Springer International Publishing.
- [14] Gabr AM. The Constitutional Entitlement for Litigation on Two Levels in Felonies. *International Journal of Criminal Justice Sciences*. 2023 Sep 28;18(2):370-86.
- [15] Al-Billeh T, Al-Khawaldah MH, Rabbo KK, AlQudah YA, Al Ali N, Al-Freihat M, Al-Khshelat AA. Guarantees for Questioning the Accused in the Jordanian Criminal Procedures. *Journal of Namibian Studies: History Politics Culture*. 2023 Jun 2; 34:2205-25.
- [16] Yolla Margaretha, Popo Suryana, (2023). The Effect of Market Orientation, Entrepreneurial Orientation, and Learning Orientation on Marketing Innovations and their Implications on the Marketing Performance of Micro Actors in Bandung Metropolitan Area. *Pakistan Journal of Life and Social Sciences*. E-ISSN: 2221-7630; P-ISSN: 1727-4915, Pak. j. life soc. Sci. (2023), 21(1): 478-498. [https://www.pjls.edu.pk/pdf\\_files/2023\\_1/478-498.pdf](https://www.pjls.edu.pk/pdf_files/2023_1/478-498.pdf)