



**Examining Obstacles to Saudi Women's Right to Work in
the Kingdom of Saudi Arabia**

A Thesis Submitted for the Degree of Doctor of Philosophy

By

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Dedication

This thesis is dedicated to the soul of my father.

Affirmation

This thesis, submitted for the Degree of Doctor of Philosophy, is an original work of my own and has not been submitted before for any other degree.

Abstract

This thesis determines and examines the obstacles to Saudi women's right to work in terms of religious and cultural barriers and limited access to higher education through an analysis of Sharia sources, Saudi domestic law and international human rights treaties pertaining to Saudi women's right to work in the Kingdom of Saudi Arabia. It also delineates the provisions for women's right to work in Sharia and Saudi domestic law in the public and private sectors.

The thesis also examines the reservations that the Kingdom of Saudi Arabia has entered into, and some of the international human rights treaties it has ratified, with a particular focus on the application of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It also examines Saudi Arabia's obligations under International Labour Organization (ILO) Conventions. In the context of Saudi domestic law, it identifies obstacles that underlie Saudi Arabia's decision not to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR); it examines the arguments for the Kingdom of Saudi Arabia signing up to the ICESCR; and it examines Saudi Arabia's obligations to respect, protect and fulfil women's right to work under CEDAW.

The protection of women's right to work under customary international law, by its sources will be explored. This section will look through customary international law elements; whether or not women's right to work is protected. Finally, the thesis provides recommendations for action which can be taken by the Kingdom of Saudi Arabia to provide Saudi women with equal rights to work. It also makes recommendations concerning ratified and pending international human rights treaties which have the capacity to protect Saudi women's right to work.

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List of Abbreviations

CDHRI	Cairo Declaration on Human Rights in Islam
CEDAW	Convention on the Elimination of All Form of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHRL	Conventions of Human Rights Law
CIL	Customary International Law
GAUN	General Assembly of the United Nations
GPGE	General Presidency of Girls' Education
GPSRI	The General Presidency of Scholarly Research and <i>Ifta</i>
HRL	Human Rights Law
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Law Commission
ILOC	International Labour Organization Conventions
KSA	Kingdom of Saudi Arabia
NCRH	National Commission on Human Rights
SCSL	Saudi Civil Service Law
SLA	Saudi Labour Law
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNC	United Nations Charter
UNCHR	United Nations Commission on Human Rights
UNHRC	United Nations Human Rights Office of the High Commissioner

VAW Violence against Women

Glossary

<i>Adhl</i>	Preventing women under one's guardianship from marriage 'Mankind': Name of the last sura (chapter) of the Qur'an Contract
<i>Aldrwrāt tobeh almahdorāt</i>	Necessity allowed the prohibitions.
<i>Al-Hamu</i>	The in-laws of the wife (the brothers of her husband or his nephews)
<i>Awrah</i>	Both men and women have parts that are <i>awrah</i> and must be covered in public places
<i>da'if</i>	Weak or lack
<i>Darorah</i>	Necessity
<i>Ehtlam</i>	Puberty
<i>Ekthlat</i>	Intermingling
<i>Fatwas</i>	Opinion
<i>Fiqah</i>	Second source of Islamic law
<i>Hadith</i>	(Plural, ahadith) The verbalised form of a tradition of the Prophet (pbuh) constitutive of his <i>Sunnah</i>
<i>Hanafite</i>	One of the four schools of jurisprudence founded by Imam Abu Hanifah
<i>Hanbalite</i>	One of the four schools of jurisprudence founded by Imam Ahmad ibn Hanbal
<i>Ifta</i>	Opinion of Islamic scholar
<i>Ijma'</i>	Islamic legal consensus
<i>Ijtihad</i>	Juridical reasoning of a qualified Muslim jurist
<i>Kadrah</i>	Capacity
<i>Kalwah</i>	Seclusion
<i>Kuttab</i>	Informal schooling in Saudi Arabia or Arab states in the past
<i>Madh-hab</i>	(Plural, madhhahib) School of Islamic Jurisprudence

<i>Mahr</i>	Dowry, the money and/or property that a husband must pay to his wife when they get married
<i>Mahram</i>	Male relative a woman cannot marry, such as the father and brother
<i>Makrooh'</i>	Disliked
<i>Malikiah</i>	One of the four schools of jurisprudence, founded by Imam Malik ibn Anas
<i>Mouarf</i>	A person who represented or identity women
<i>Qiwama</i>	Being in charge of women or family
<i>Qiyas</i>	Analogical reasoning opinion
<i>Radaa'ah</i>	Who become brothers or sisters from different partner when they had breastfeeding
<i>Shafi'ite</i>	One of the four schools of Jurisprudence founded by Imam Ash- Shafi'i
<i>Shaitan</i>	Devil
<i>Shari'ah</i>	Islamic Law
<i>Sunnah</i>	The tradition of Prophet Muhammad peace be upon him (PBUH)
<i>Sura</i>	A chapter of the Qur'an 'verse'
<i>Tafsair</i>	Interpreters
<i>Tafsir</i>	Exegesis of the Qur'an
<i>Taqaw</i>	Piety, fear of God
<i>Taqnin</i>	Codification
<i>Tkudar</i>	Estimated
<i>Urf</i>	Custom usage practice
<i>Usal Alfiqh</i>	Principles of Islamic jurisprudence
<i>Wahhabi</i>	Religious movement was founded by Muhammad ibn Abd al-Wahhab (1703–92), a Sunni theologian who called for a return to austere practices supposedly followed by earliest Muslims, during the 7 th century
<i>Wali</i>	The guardian (the person in charge of taking care of someone)

<i>Wali Alamr</i>	Superior
<i>Wasia</i>	The executor
<i>Zinah</i>	Sexual relationship between men and women out of marriage institution

Cases

Abdulaziz, Cabales and Balkandali v. the United Kingdom. Application nos. 9214/80; 9473/81; 9474/81.

Anna Belousova v Kazakhstan. CEDAW Communication no. 45/2012 (25 Aug 2015) UN document CEDAW/C/61/D/45/2012.

Rahime Kayhan v Turkey. CEDAW Communication no 8/2005 (3 Feb 2006) UN document CEDAW/C/34/D/8/2005.

Saudi Arabia, Collection judgments Ministry of Justice 1436 AH, (case no. 33466823, on 27/11/1433 AH, appeal no. 3431085, 20/2/1434).

Saudi Arabia, Collection judgments Ministry of Justice 1436 AH, case no. 33252287, 17/05/1433 AH, appeal no. 344533, 06/01/1434.

List of International Instruments

African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

American Convention on Human Rights, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993).

Charter of the United Nations was signed on 26 June 1945, in San Francisco, into force on 24 October 1945.

Committee on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Discrimination against Women, fortieth session, Summary record of the 816th meeting held at the Palais des Nations, Geneva, on Thursday, 17 January 2008, CEDAW/C/SR.816.

Committee on the Elimination of Discrimination against Women, Pre-session Working Group, fortieth session, 14 January-1 February 2008, Responses to the list of issues and questions contained in document number CEDAW/C/SAU/Q/2, A.H. 1428 (AD 2007) 2.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987.

Convention Concerning Discrimination in Respect of Employment and Occupation (Entry into force: 15 Jun 1960) Adoption: Geneva, 42nd ILC session (25 Jun 1958).

Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (Entry into force: 11 Aug 1983) Adoption: Geneva, 67th ILC session (23 Jun 1981).

Convention Concerning the Revision of the Maternity Protection Convention, 1952 (Entry into force: 07 Feb 2002) Adoption: Geneva, 88th ILC session (15 Jun 2000).

Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively.

Convention on the Elimination of All Forms of Discrimination against Women Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981.

Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

Equal Remuneration Convention (No. 100), entry into force: 23 May 1953. Adoption: Geneva, 34th ILC session (29 Jun 1951).

General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN, CEDAW/C/GC/28, (16 Dec 2010).

International Convention on the Elimination of All Forms of Racial Discrimination, GA Res 2106 (XX), Annex, 20 UN GAOR Supp (No 14) 47, UN Doc A/6014 (1966), 660 UNTS 195, entered into force 4 January 1969.

International Covenant on Civil and Political Rights (ICCPR), opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

International Covenant on Economic, Social and Cultural Rights (ICESCR), opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976).

League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) entered into force March 15, 2008.

Meeting of the States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women, Twelfth Meeting, UN Doc CEDAW/SP/2002/2 (26 July 2002).

Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10 December 1948 at the *Palais de Chaillot*, Paris.

Vienna Convention on the Law of Treaties (VCLT) 1155 UNTS 331, 8 ILM 679, entered into force 27 January 1980.

List of National Instruments (Saudi Arabia)

Basic Law of Saudi Arabia Governance, Royal No. (A/91), 27 Sha'ban 1412 AH-
1 March 1992

Civil Service Act, Royal Decree No. 49/M 10/7/1397 AH, Saudi Council
Resolution (No. 951 on 27/06/1397 AH)

Council Minister Resolution no (63) 11/03/1424 AH

Labor Law, Royal Decree No. M/51, 23 Sha'ban 1426/27 September 2005

Labour Minister Decision No. (1/1/3729/A), 2012

Labour Minister Decision No. (1/1/3730/A), 2012

Labour Minister Decision No. (1/1/3731/A), 2012

Labour Minister Decision No. (1/1/3732/A), 2011

Labour Minister Decision No. (2702), 2014

Labour Minister Resolution No. (1/1793) on 21/04/1425 AH

Labour Minister Decision No. (2834/1), 2002

Manpower Council Resolution No. (1/M19/ 1405 AH)

Planning of Minister of Saudi Labour to Feminisation All Women's Necessity
Shops by Female. Decision Minister No. (1/1/2473/A) on 2010

Procedure Criminal Law, issued by Royal Decree No. M/39 on 28/07/1422 (AH)

Regulation Employment of Non-Saudi in Universities, Higher Education Council
Resolution No. 7/B/16785 on 4/11/1417 AH

Regulation No. 172/8/T, on 9/9/1408(AH).

The New Law of Judiciary, Royal Decree No. (M/78), 19/09/1428 AH

Regulation of Appointment in the Public Sector issued by decision of Board of Civil of Service (1/92/) 2006

Regulation of Executive (1) 1997

Regulation of Job Duties (703/10800) 2007

Regulation of Saudi Labour Minister No. (1/2838), 2007

Regulation of Upgrade (1/686) 2001

Saudi Arabian Citizenship System, Royal Decree No. 4 on 25/01/1374

Saudi Procedure Law issued by Royal Decree No. 21/M

Chapter One: Introduction

1.1 Background

The topic of Saudi women's right to work in the Kingdom of Saudi Arabia (KSA) is not only a national labour issue, but also a key debate in KSA national affairs, as one of the most significant topics of discussion in the modern era.¹ Beyond the KSA, women's issues have become a major concern throughout the whole of contemporary Islamic Middle Eastern Culture.² There is a general consensus that the right of Saudi women to work in Saudi Arabia is not respected, protected, fulfilled or fully applied under current Saudi domestic law, including Islamic Sharia (hereinafter 'Sharia').³ Generally speaking, Saudi women rarely enjoy rights equal to those of their male counterparts, or as stipulated either in the Saudi Basic Law and domestic laws; in reality, their rights are overlooked or not protected, for a number of reasons.⁴

The right to work and dignity of labour is fully recognised under Sharia.⁵ However problematic jurisprudence is usually the result of a misunderstanding and/or misapplication of Sharia sources, resulting in cultural distortions and patriarchal bias.⁶ Indeed, many verses of the Qur'an and the *Sunnah* of the Prophet Mohammed emphasises the value of labour and work, in reference to Islamic mechanisms of social justice and equality, and its abhorrence of begging and debt.⁷

¹ Ahmad Gasam, 'Waka Amal Almrua Wa Almoamal Lah' (*Al-yom*, 6 Feb 2013) (the reality of women's work and hoped to her) <<http://www.alyaum.com/article/3071064>> accessed 10 Nov 2017; Mona Al-Mounajjed, *Women's Employment in Saudi Arabia: A Major Challenge* (Booz & company; 2010) Jonathan Chew, 'Women are Taking Over Saudi Arabia's Workforce' (*Fortune*, 10 Aug 2015) <<http://fortune.com/2015/08/10/women-saudi-arabia/>> accessed 09 Nov 2017; Saudi Gazette, 'Women Constitute 13% of Saudi Workforce: Stats Agency' *Al-Arabiya English* (10 Feb 2015).

² Barbara Freyer Stowasser, 'Liberated Equal or Protected Dependent? Contemporary Religious Paradigms on Women's Status in Islam' (1987) 9 *Arab Studies Quarterly* 260; Amélie Le Renard, "'Only for Women: Women, the State, and Reform in Saudi Arabia' (2008) 62 *The Middle East Journal* 610.

³ Badriya Al-Bishr, 'Saudi Women Obstacles and Ambitions' in Al-Jawhara Bubshait (ed), *Women in Saudi Arabia: Cross-Cultural Views* (1st edn, Ghainaa Publications 2008); Le Renard (n 2); Safaa Foud Rajkhan, *Women in Saudi Arabia Status, Rights and Limitations* (University of Washington Bothell 2014).

⁴ Le Renard (n 2).

⁵ Mashood A Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2003) 167-181.

⁶ Azizah Yahia Al-Hibri, 'Muslim Women's Rights in the Global Village: Challenges and Opportunities' (2001) 15 *Journal of Law and Religion* 40.

⁷ Baderin (n 5) 177; Qur'an 78:11 and 2:275; Reported by Sahih Al-Bukhârî, Hadith No. 1966.

Historically, as has been the case throughout the rest of the world, the rights of women in the Arabian Peninsula have developed and evolved through many phases, with some notable advances and regressions.⁸ However, regardless of cultural particularities, empirical evidence indicates that the KSA consistently fails to meet international human rights standards in regards to Saudi women's right to work in the KSA.⁹ The most famous example of this failure, and one which continues to fascinate Western critics,¹⁰ is the fact that Saudi women are not permitted to drive, which is a wholly cultural issue (in comparison with traditional forms of transport, little can be said for the proscription based on Sharia or Saudi domestic law rationales).¹¹ In addition, Saudi road traffic and driving regulations are generally not fit for purpose; according to the World Health Organization, Saudi Arabia has the highest number of deaths from road accidents in the world, being the main cause of death among adult males aged 16 to 36.¹² While this problem is a genuine one for Saudi women, other barriers, particularly with regard to the right to education, work, and equality rights with non-discrimination are more pertinent and fundamental.

The General Authority for Statistics in the Kingdom of Saudi Arabia does not provide very much information regarding the Saudi labour market in terms of gender balance.¹³ The result is that it is difficult to clearly understand the position of women in relation to men in the Saudi labour market. However, it is notable that of the candidates for civil service positions in 1436/1437 A.H., 8082 were female and

⁸ Al-Bishr (n 3).

⁹ See; World Report 2013: Saudi Arabia, (Human Rights Watch, 2013) <www.hrw.org/world-report/2013/country-chapters/saudi-arabia> accessed 09 Nov 2017.

¹⁰ Mayer, Ann Elizabeth, 'Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience' in Julie Peters and Andrea Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge 1995).

¹¹ Regarding to Saudi Traffic Law, it does not support Saudi women having a driving licence. Some Islamic scholars' views are that women should not drive. See Stéphane Lacroix, 'Islamists and Liberals: Saudi Arabia's New "Islam Liberal" Reformists' (2004) 58 *Middle East Journals* 345, 348-363.

¹² Benjamin Joffe-Walt, 'Saudi Arabia has the Highest Road Accident Death Toll in the World' (15 March 2010) <<http://www.greenprophet.com/2010/03/saudi-arabia-death-toll-driving/>> accessed 10 Nov 2017.

¹³ Population in the Kingdom by Single Age, Nationality (Saudi/Non Saudi) and Gender in Mid-year 2015 A.D <<http://www.stats.gov.sa/en/411>> accessed 03 Nov 2017.

11,951 were male; furthermore, all of these candidates were university graduates, postgraduates, institutional graduates, or college graduates (the level below university).¹⁴This shows that Saudi women have fewer higher education opportunities than men, which in turn means they have fewer opportunities in the labour market.¹⁵

At present, Saudi women are not treated as independent, in legal terms or in working practices. Even where women have achieved and enacted the right to work, their other human rights may not be protected. For instance, the government has set up a large-scale support system for the education of Saudi women abroad, but this was only accepted and respected in conservative Saudi society because it included a requirement that permission from a male guardian be granted.¹⁶ This reflects the long-standing strategic position adopted by successive Saudi regimes of introducing reforms cloaked in conservatism and religious respectability. Hence, when I say ‘cloaked in’, I mean that these factors are being used to hide the truly reformative nature of the legislation by packaging it in an attractive way to conservatives. Thus are not truly reformative – i.e. is it actually just a clever ‘repackaging’ of genuine reform? For example, King Faisal (r. 1964-1975) popularised television in the country by harnessing a classic analogy used in Islamic jurisprudence (*fiqh*), comparing it to a sword that can be used for good or bad; not surprisingly, the first television broadcast in Saudi Arabia was a Qur’anic recitation.¹⁷ Indeed, the official response of the Saudi government to accusations regarding lack of compliance with international treaties and agreements concerning complex social issues is that they must be sensitive to the will of the general population, as Echagüe and Burke observe:

“Criticism about the slow pace of the reform process is usually rebutted by the ‘official’ argument that Saudi society is too ‘traditionally conservative’ and that what is proposed is alien to Saudi culture, a mixture of western prejudices and unsuitable secular models. It is often pointed out that it has been the royal family that has led to the kingdom’s reforms, introducing modern

¹⁴ Ibid, Candidates for Civil Service Positions 1436/1437 A.H.

¹⁵ Chapter four- of this thesis has examined limited access to higher education as an obstacle to women’s right to work in Saudi Arabia.

¹⁶ Sifa Mtango, ‘A State of Oppression? Women’s Rights in Saudi Arabia’ (2004) 1 Asia-Pacific Journal on Human Rights and the Law 49.

¹⁷ Ministry of Culture and Information, Television Department <<http://www.info.gov.sa/SectDetails.aspx?id=3>> accessed 10 Nov 2017.

communications, cars, television and girls' education, all of which were rejected at the time by the broader population".¹⁸

Thus, women's rights issues, in the context of government reforms and societal responses, are one part of a highly complex matrix of inter-related factors. This thesis is primarily concerned with the right of Saudi women to work in the KSA, which is arguably key to achieving full-spectrum equality. Specifically, this concerns practical barriers, which are relatively simple to identify in the case of work. The way in which equality was achieved by women in the West was, first, to demonstrate professional competency and an ability to perform work roles, initially in occupations that were generally considered intrinsically respectable for women, such as education and nursing and, later, helped by the exigencies during the world wars, in almost all other fields.¹⁹ Just as the socio-democratic progress of working-class men was built on their supposed entitlements arising from their labour and work-related contribution to society, women came to acquire those same rights by performing the same functions in the sphere of work.²⁰

At present, Saudi women can be said to be in the initial stages of this process with regard to their right to work. In general, women have limited access to the fields of engineering, including electronics, mechanics, industrial engineering, law and other services in the KSA, but they have been able to work in education and healthcare settings due to the division of the sexes in those environments.²¹ However, even where there are no formal impediments to their working, many Saudi women may be denied opportunities due to opposition from their families, in particular from their male guardians (e.g., father, older brother or husband), which is often driven by social stigma.²² Thus, it must first be understood that there is governmental and popular pressure dictating that women's right to work means women's right to work in

¹⁸ Ana Echagüe and Edward Burke, "Strong Foundations"? The Imperative for Reform in Saudi Arabia' (2009) 84 FRIDE Working Paper 13.

¹⁹ Deborah Simonton, *A History of European Women's Work 1700 to the Present* (Routledge 1998) 11-37.

²⁰ Kathryn Branch, 'Are Women Worth as Much as Men? Employment Inequities, Gender Roles, and Public Policy' (1994) 1 Duke Journal of Gender Law & Policy 119.

²¹ Salman Saleh Al-Dehailan, 'The Participation of Women in Saudi Arabia's Economy: Obstacles and Prospects' (PhD thesis, University Durham 2007) 157-158.

²² Ibid 43-49.

lucrative sinecures, not in manual or menial labour.²³ Thus, equality in this context means equality between elite Saudi women and elite Saudi men, within an institutionally unequal socio-economic hierarchy.

Inequalities in Saudi society are generally embedded in pragmatic considerations, which certain interested parties seek to cloak in the legitimacy of Saudi domestic law or Sharia. Saudi women's right to work depends on many of these considerations, and further upon restrictions on the free mixing of the sexes. However, Sharia does not explicitly stipulate that any discrimination against or deprivation of a woman's right to work should take place, and many Arab-Islamic countries have a high level of female participation in the workforce while still respecting social norms. In addition, in order to break the relationship between Sharia and barriers to women working, many international human rights treaties to which the KSA is partly actively prohibit such barriers.²⁴ While the government ratified these treaties, it did not enact them in domestic law for reasons that remain unclear, generally citing public resistance, as mentioned previously. However, one clearly identifiable obstacle is that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²⁵ conflicts with certain interpretations of Sharia, reinforced by social practices, cultural issues and customs.²⁶

1.2 Literature Review

It is obvious that male guardianship and female discrimination in relation to women's right to work has a significant impact on Saudi women in the KSA, and on local communities. Moreover, stereotypes, customs and traditions also play a crucial role in framing male or female discrimination, whether in education, social hierarchy, level

²³ Angus McDowall, 'Foreign Workers Queue to Quit Saudi Arabia after Amnesty on Fines' (Reuters, 28May2013)<<http://in.reuters.com/article/saudi-expatriates-workers-amnesty> idINDEE94R09D20130528> accessed 9 Nov 2017.

²⁴ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) At 193, U.N. Doc. A/34/46, entered into force 3 Sept. 1981.

²⁵ Ibid.

²⁶ Committee on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Discrimination against Women, fortieth session, Summary record of the 816th meeting held at the Palais des Nations, Geneva, on Thursday, 14 January 2008 CEDAW/C/SR.816.

of income, occupation, or even health²⁷. This is particularly prominent in communities whose customs and traditions have widespread approval, and carry greater weight in practice than laws and regulations do.²⁸ Despite the fact that there are many laws and international and regional Conventions on human rights in general, and on women's rights specifically, there is a lack of and weakness in application of such laws and Conventions.²⁹ Consequently, women in the KSA find themselves with just two options in life – taking responsibility for the home, or the chance to work. But surely most women make this choice everywhere; the difference is that, elsewhere in the world, women are able to make this decision for themselves, not so shaped by social, religious Conventions as is the case in Saudi Arabia. It is thus in the context of Saudi Arabia that they – 'women' – do not have this option or at least that it is heavily limited.

It is important to begin by examining Sharia sources and documents that discuss or relate to women's right to work as, in general, Sharia affords women dignity and the same rights as men in all areas of life, and the Qur'an teaches that God created men and women from the same spirit.³⁰ When Islam is at its most liberal, women are able to participate in essential functions in all areas of life: religious, political, educational, legal, moral, economic and military.³¹ Islam draws no distinction between males and females in regard to the importance of education, as Muslims believe that those who seek knowledge will be rewarded with Paradise.³²

A number of books and studies have discussed the issue of Muslim women at work. Some of the most important works are briefly described below:

²⁷ R.J. Cook, B.M. Dickens, 'Ethical and Legal Issues in Reproductive Health Human Rights to Safe Motherhood' (2002) 76 *International Journal of Gynaecology & Obstetrics* 225, 225.

²⁸ Nora Alarifi Pharaon, 'Saudi Women and the Muslim State in the Twenty-First Century' (2004) 51 *Sex Roles a Journal of Research* 349, 364.

²⁹ UN, CEDAW/C/SAU/CO/2.

³⁰ Qur'an 53:45; Qur'an 53:6; Qur'an 49:13.

³¹ Azizah Yahia Al-Hibri, 'Islam, Law and Custom: Redefining Muslim Women's Rights' (1997) 12 *American Journal of International Law and Policy* 1.

³² Reported by Sahih Muslim, Book of Remembrance, Supplication, Repentance and Praying for Forgiveness, Hadith no. 6853.

A book by Al-Fwzan, *Women's work in the Kingdom of Saudi Arabia*, covers only these obstacles to women's work that arise from inherited customs and traditions in Saudi society; in addition, it does not differentiate between Saudi and non-Saudi women. It also does not discuss international human rights treaties and limited access to higher education as barriers to Saudi women working in the KSA.³³ A further work by Al-Eid and Al-Twijirh examines women's right to work based on the secondary Islamic sources of *Sunnah* and Islamic jurisprudence.³⁴

A work by Hellum and Aasen includes several articles. However, these consider only the value of the CEDAW, and the CEDAW under the national laws of different states, such as India, Pakistan and Zimbabwe, and exclude the KSA.³⁵

A work edited by Rehman and Breau entitled *Religion, Human Rights and International Law: A Critical Examination of Islamic Practices* examines the religious impact of human rights on Muslim states, and reflects on the role of international law. For example, in chapter two, Professor Bantekas examines "religion as a source of international law". Generally, however, this book does not use the KSA as a case study of a Muslim state, and does not discuss Saudi women's right to work in the KSA.³⁶

Mayer's book examines Islam and human rights, particularly focusing on civil and political rights in certain Muslim countries, and how Islamic traditions have been harnessed by Islamic states to achieve their political aims.³⁷ By contrast, another study has examined the position of women in Muslim family law through a case study in Pakistan, although without discussing women's right to work or women's rights

³³ Mohammed Al-Fwzan, *Women's Work in the Kingdom of Saudi Arabia*, (*Amal Al-Mara Fi Al-Mamlaka Al-Arabia Al-Saudi*, Arabic, Law and Economic Library, 2012).

³⁴ Hailh Al-Twijirh, *Women's Work in Islamic Jurisprudence* (*Amal Al-mara fi Al-Fiqh Al-Islami*, Arabic, Researcher Center for Women's Studies 2010) 36; Nwal Abdulaizi Al-Eid, *Women's Right in the Light of Sunna*, (*Hogga Al-Mra fi dw Al-Sunna Al-Nabwiah*, Arabic, Dar Al-hdarh 2012).

³⁵ Anne Hellum and Henriette Sinding Aasen (ed), *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press 2013).

³⁶ Javid Rehman and Susan Carolyn Breau, *Religion, Human Rights and International Law: a Critical Examination of Islamic State Practices* (Martinus Nijhoff Publishers 2007).

³⁷ Ann Elizabeth Mayer, *Islam and Human Rights* (Westview Press 1991).

according to the Qur'an.³⁸ A work by Baderin discusses women's right to work under Islamic law and in reference to international human rights, but does not examine Saudi women's right to work in the KSA specifically.³⁹

Undoubtedly, literature in this area tends to examine women's rights generally, but there are some aspects of Saudi women's right to work in the KSA that have not yet been studied in any detail. Hamdan has made a valuable contribution in an article discussing education for Saudi women in the KSA, referencing both key challenges and notable achievements, and highlighting the major obstacles to Saudi women's education. However, while these obstacles can be applied to Saudi women's right to work in the KSA, the study failed to do this.⁴⁰ In an article by Roda and Hamdan, it is argued that "the social experience of gender stereotyping plays a more important role than any other kind of experience in the hierarchical organisation of the category of professions".⁴¹ A paper by Williamson examined the obstacles in the path of women wanting to become prosecutors and judges in Kuwait, and while these are similar to the obstacles discussed in the present research, the case only applies to women in Kuwait, not Saudi women in the KSA, and focuses only on the two aforementioned professions.⁴² In addition, several articles examine Saudi women's rights generally, and consider the same factors as the present research does in regard to Saudi women's right to work in the KSA.⁴³

³⁸ Lynn Welchman, *Women and Muslim Family Laws in Arab States* (Amsterdam University Press 2007); John L Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (2ed, Syracuse University Press 2001); Maaïke Voorhoeve, *Family Law in Islam* (IB Tauris 2012); Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law* (Kluwer Law International 2000); Niaz A Shah, *Women, The Koran and International Human Rights Law* (Martinus Nijhoff Publishers 2006); Zainah Almihtar, 'Human Rights of Women and Children Under the Islamic Law of Personal Status and Its Application in Saudi Arabia' (2009) 5 *Muslim World Journal of Human Rights* 1.

³⁹ Baderin (n 5).

⁴⁰ Amani Hamdan, 'Women and Education in Saudi Arabia: Challenges and Achievements' (2005) 6 *International Education Journal* 42.

⁴¹ Ghsoon Reda and Amani Hamdan, 'Gender, Language, and Society: Saudi Female University Students' Perception of the Category of Professions' (2015) 4 *Multidisciplinary Journal of Gender Studies* 666.

⁴² Myra E.J.B. Williamson, 'Women as Prosecutors and Judges in Kuwait: Aspiration and Obstacles' (2015) the 3rd International Academic Conference on Social Sciences 179.

⁴³ See; Eleanor Abdella Doumato, 'Women and Work in Saudi Arabia: How Flexible Are Islamic Margins?' (1999) 53 *The Middle East Journal* 568; Amani Hamdan, 'The Role of Authentic Islam: The Way Forward for Women in Saudi Arabia' (2012) 10 *Hawwa* 200; Salah S. Al-Mannai, 'The

Many theses have been produced on the topic of Saudi women; however, they do not examine Saudi women's right to work in the KSA specifically, do not consider some of the factors highlighted in this study, or have used different methods.⁴⁴

1.3 Thesis Statement

Despite the KSA ratification of international human right treaties by affording Saudi women the *right* to work, they still do not enjoy *equal* rights to work, as several obstacles mean that they continue to face discrimination. The main argument of this thesis concerns the obstacles to Saudi women actually enacting their right to work in the KSA. These obstacles can be classified as religious, cultural, educational, and the lack of domestic legal provisions to protect this right. This thesis examines these obstacles with a view to improving respect for, protection and fulfilment of Saudi women's right to work, and provides suggestions and recommendations to this end, with reference to national and international standards.

Saudi women's right to work is affected by Saudi domestic law, Sharia and Saudi socio-cultural practices in relation to women. The latter ultimately determines the way in which Sharia is interpreted and expressed in Saudi domestic law, which can result in misunderstandings and misapplications of Sharia. This thesis will show that, as a

Misinterpretation of Women's Status in the Muslim World' (2010) 19 Digest of Middle East Studies 1; Roel Meijer, 'The Gender Segregation (*Ikhtilāf*) Debate in Saudi Arabia: Reform and the Clash Between 'Ulamā' and Liberals' (2011) 30 Journal of Islamic Studies 2; Amelie Le Renard, "'Only for Women: Women, the State, and Reform in Saudi Arabia' (2008) 62 Middle East Journal 610; Mtango (n 16).

⁴⁴ See; Abdulaziz S. Al-Rodiman, 'The Application of Shari'ah and International Human Rights Law in Saudi Arabia' (PhD thesis, Brunel University London 2013); Abdulbari Altamni, 'Reservations to International Human Rights Treaties, with Special Reference to Muslim States' Practice of Reservations to the CEDAW: Analytical Study of Saudi Arabia, Egypt, Pakistan and the United Arab Emirates' (PhD thesis, The School Of Oriental And African Studies 2013); Salman Salah Al-Dehailan, 'The Participation of Women in Saudi Arabia's Economy' (PhD Thesis, Durham University 2007); Mann Bin Abdul Haq Arif Khutani, Educational Right for Women in Islamic and International Human Rights Law: A Study of Theory and Its Application in Saudi Arabia, (University of Wollongong Thesis Collections 2013); Elin Andersson and Linn Togelius, 'Women Oppressed in the Name of Culture and Religion, Saudi Arabia and the Convention on the Elimination of All Forms of Discrimination against Women' (2011); Naeima Faraj A Abdulatif, 'Working Women and Their Rights in the Workplace: International Human Rights and Its Impact on Libyan Law' (PhD thesis, University of Wollongong 2011); Nazia Latif, 'Women, Islam and Human Rights' (PhD thesis, University of Newcastle-upon-Tyne 2002); Yahya Sullman al-Hegdhy, 'The Role of the 'Ulama (Islamic Scholars) in Establishing an Islamic Education System for Women in Saudi Arabia, (PhD thesis, Florida State University 1994).

result of this, women are often denied the right to work, contrary to their rights under Sharia, under the pretext of Sharia provisions; this runs contrary not only to Saudi Arabia's international human rights obligations, but also to the primary Sharia sources, as guaranteed by Saudi Basic Law. Furthermore, the KSA has used protestations of religious sensitivity to abstain from or express reservations concerning international human rights treaties, when in fact there is no inherent conflict with Sharia in the relevant provisions.

The scope of this thesis is limited to only those women in the KSA who hold Saudi nationality under Saudi law,⁴⁵ and who are over 18 years old, according to the Saudi Civil Service Act and Saudi Labour Law.⁴⁶ The thesis excludes women with disabilities or other categories. These specific limitations are necessary, as the obstacles that this thesis discussed do not apply to those demographics, and thus will not yield a successful solution for those groups; thus, they are excluded from consideration in this research.

1.4 Research Questions

The study aims to answer the following research questions:

- 1- Do Sharia, culture, and limited access to higher education significantly influence Saudi women's right to work?
- 2- Why has the KSA failed to respect, protect and fulfil its international human rights obligations with respect to women's right to work in its domestic law, and why has it not withdrawn its reservations?

A comprehensive examination of the above research questions also necessitates addressing the following specific questions:

⁴⁵ Saudi Arabian Citizenship System, Royal Decree No. 4 on 25/01/1374.

⁴⁶ Civil Service Act, Royal Decree No. 49/M 107/1397 AH, Saudi Council Resolution (No. 951 on 27/06/1397 AH) art.4; Labour Law, Royal Decree No. M/51, 23 Sha'ban 1426/27 September 2005, Art 2.

- 1- Can the KSA clarify the position of Sharia regarding Saudi women's right to work in its domestic law, or within its codification of Sharia?
- 2- Should the KSA withdraw its reservations about international human rights treaties, and recognise Islamic Sharia provisions regarding the right to work?
- 3- Are Saudi domestic law and practice, as applied to Saudi women, consistent with Sharia and KSA international human rights obligations?
- 4- Why do cultural and other factors affect Saudi women's right to work in light of existing law?

1.5 Research Objectives

- 1- To clarify women's right to work under Sharia, women's limitations and employment areas by religious interpretations.
- 2- To show how cultural, religious and educational factors affect Saudi women's right to work.
- 3- To highlight and justify the compatibility between Saudi domestic law and international human rights treaties with respect to Saudi women's right to work.
- 4- To analyse the impact that the interpretation and application of Sharia has on Saudi women's right to work in the KSA.

1.6 Significance of the Study

The motivation for this research is the suffering of Saudi women and the lack of protection of their right to work in the KSA. At present, in the KSA, the situation has improved; however, although Saudi women's right to work and their other, more general rights, have improved, further progress is still required. This thesis examines Saudi women's right to work in the KSA – more specifically the lack thereof – and why this right is not extended to women as fully as it is to men.

In particular, the thesis intends to highlight and examine some of the obstacles faced by Saudi women when trying to realise and enact their right to work, including

cultural factors, limited access to higher education, religious considerations, and a lack of commitment to international human rights treaties at the domestic level. The significance of this thesis lies in the highlighting and explanation of how these obstacles specifically impact upon Saudi women's right to work in the KSA.

Even though there has been change and reform in the KSA recently, Saudi women are still fighting and challenging a number of obstacles. While the State is actively attempting to ensure Saudi women enjoy equal rights, there is still an issue within Saudi society of accepting that women have an equal right to work as men have. Thus, the major challenge and purpose of this study is to provide some suggestions with regard to how these obstacles can be overcome. It is clear that Saudi women's right to work must be protected, respected and fulfilled, as part of the State's obligations toward its citizens; however, this will not happen if the State does not demonstrate a commitment to applying international human rights treaties at the domestic level, by ensuring that the necessary protective measures are taken.

To conclude, the importance of this study is that it argues that Saudi women's right to work in the KSA should be equal to men's, and that it is the State that must protect, respect, and fulfil this right. Due to the current obstacles facing Saudi women, extensive work is still required to ensure that Saudi women have the rights as men. First, the State must carefully consider the issue of Saudi women's right to work in the KSA.

1.7 Foundational Principles Applicable to Women's Human Rights

1.7.1 Human Rights-based Approach

Globally, there is an expanding accentuation on a rights-based way to deal with the acknowledgment of women's rights issues⁴⁷. Human rights are an arrangement of universally concurred lawful and moral principles. They build up the fundamental common, political, monetary, social and social privileges of each individual at any

⁴⁷D. Craissati, U. Devi Banerjee, L. King, G. Lansdown and A. Smith, 'A human rights-based approach to education for all' (2007) New York 9.

place on the planet consistently⁴⁸. Numerous universal and territorial human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, as additionally itemised beneath, allude to non-discrimination as a breakthrough of a few women's rights. A rights-based approach implemented as an applied system for the acknowledgment of women's rights which depends on human rights norms⁴⁹. Assurance of women's protection from discrimination cannot be isolated from a general rights-based approach.

The rights-based approach (RBA) identifies legal norms (i.e. human rights are respected, protected and fulfilled) for lawful enforcement and the monitoring of results.⁵⁰ The rights-based approach emphasises the implementation of the rights of the underprivileged and marginalised section of the general public. Distinctive standards illuminate a rights-based-approach (RBA), which is firmly connected to human rights measures and is investigated in depth below. The objective of the RBA is to make dynamic contribution to the social and political procedures of human rights, which calls for an interdisciplinary perspective to reinterpret and broaden the idea of the fundamental standards of human rights, i.e. "universality, indivisibility and interdependence, equality and non-discrimination", as determined through international human rights protocols.⁵¹

⁴⁸Joachim Theis, 'Rights-based monitoring and evaluation: A discussion paper' (2003) Save the Children 1.

⁴⁹Laura Lundy and Lesley McEvoy, 'What Constitutes a 'Rights-Based' Approach?' (2012) 14 Law and Childhood Studies: Current Legal Issues 88.

⁵⁰ Peter Uvin, *Human Rights and Development* (Kumarian Press 2004) 175-176; Paul Gready, 'Rights-Based Approaches to Development: What Is the Value Added?' (2008) 18(6) Development in Practice 738.

⁵¹ United Nations Development Group (UNDG), 'Report of the Second Interagency Workshop on Implementing a Human Rights-Based Approach to Development in the Context of U.N. Reform' (Stamford, USA, 3-5 May 2003) <http://www.undg.org/archive_docs/4128-Human_Rights_Workshop_Stamford_Final_Report.doc> accessed 07 Nov 2017; see also UNDG, 'The Human Rights-based Approach to Development Cooperation Towards a Common Understanding among UN Agencies' (2003) <https://undg.org/main/undg_document/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies/> accessed 07 Nov 2017; OECD and The World Bank, *Integrating Human Rights into Development* (2nd edn, The World Bank 2013) 247.

1.7.2 Equality and non-discrimination

One of the fundamental principles of a rights-based approach is non-discrimination. It rejects any kind of discrimination of a woman based on such factors as male guardianship or her status. The standards of non-discrimination and balance are focal standards of the RBA. These standards assume a noteworthy role in testing unfairness and propelling the development of ideas of equity of treatment, approach assurance under the watchful eye of the law, and equality of opportunity in the State for employment or other factors.

The Charter of the United Nations (hereinafter the UN Charter) confirms a faith “in fundamental human rights, in the dignity and worth of the human person”,⁵² and is involved in “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.⁵³ These statements are frequent in the prelude to the UDHR⁵⁴ and are upheld in the initial two Articles, which announce: “All human beings are born free and equal in dignity and rights”,⁵⁵ and “everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”⁵⁶

The RBA protects women against discrimination on the basis of their status. This principle of the RBA is integrated in all human rights instruments. These obligations are included in the values of non-discrimination and equal rights.⁵⁷ Article 7 of the UDHR provides: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement

⁵² Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, see Preamble, s 2.

⁵³ Ibid Art 1(3).

⁵⁴ The Universal Declaration of Human Rights (UDHR) G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), Preamble, paras 5 and 6

⁵⁵ Ibid Art 1.

⁵⁶ Ibid Art 2.

⁵⁷ Theo C van Boven and Fons Coomans, *Human Rights from Exclusion to Inclusion: Principles and Practice* (Kluwer Law International 2000) 4.

to such discrimination.”⁵⁸ Such an Article, at that point, displays equal protection to both citizens and foreign nationals. The right to non-discrimination is accurately related to the standard of equality; that is, equality is the foundation of the norm of non-discrimination.⁵⁹ The International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as ICERD)⁶⁰ includes the rights of all people to enjoy all human rights without discrimination “based on race, colour, descent, or national or ethnic origin”.⁶¹ It therefore implies that women have the right to be protected from all forms of abuse. However, what establishes discrimination toward women is not a target on which countries easily agree. Notwithstanding, the legal commitment to eliminate all forms of discrimination against women is an essential tenet of international human rights law.⁶² General speaking, from a RBA view, it can be inferred that the KSA is mainly responsible for the realising of women's rights without any kind of discrimination. Thus, equality and non-discrimination are norms set in international human provisions as duties on the State to promote obligation to human rights by supporting human rights monitoring, progressing access to information and justice, and addressing dispute resolution mechanisms.⁶³

What is more, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – as a particular Convention concerning migrant workers and their families – prevents any discrimination toward migrant workers founded on the basis their race, language, nationality or legal status

⁵⁸ UDHR (n 54) Art 7.

⁵⁹ Basil E Ugochukwu, Opeoluwa Badaru and Obiora C Okafor, ‘Group Rights under the African Charter on Human and Peoples’ Rights: Concepts, Praxis and Prospects’ in Manisuli Ssenyonjo (ed), *The African Regional Human Rights System: 30 Years After the African Charter on Human and Peoples’ Rights* (1st edn, Martinus Nijhoff 2011) 109.

⁶⁰ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

⁶¹ Ibid Art 1.

⁶² Rebecca J. Cook, ‘Women's International Human Rights Law: The Way Forward’ (1993) 15 *Human Rights Quarterly* 230, 238.

⁶³ Siobhan McInerney-Lankford and HO Sano, *Human Rights Indicators in Development* (World Bank Publications 2010) 34-35.

as foreigners in the State of employment.⁶⁴ Heymann et al. claim that the norm of non-discrimination subject to the RBA points towards the generally vulnerable people in the community.⁶⁵ The RBA can underpin all strategies, measures or enactments (employment regulation or migration laws) that emphasise the nearness of outside employments in the State of work (who are normally impeded by the host State) where their reality in the State is confined by strict laws and directions. Regarding employment, the standard of non-discrimination incorporates both indirect and direct discrimination. It contains conduct which is purposefully discriminatory (deliberate acts) and conduct that discriminates against employees (the discriminatory impacts of policies).⁶⁶ Subject to this norm, all employees are equal human beings and thus are entitled to the right to be protected from abuse without any kind of discrimination.⁶⁷

Saudi women's right to work in Saudi Arabia is not equal to that of men, and they are essentially discriminated against, while the State must commit on the domestic level to the above-discussed principles. The upcoming chapters show how Saudi women suffer from direct and indirect discrimination in their lives in Saudi Arabia. Also, equality of treatment among men and women in Saudi Arabia is of particular interest to this research on women's right to work and equal treatment to access jobs as is the case with their male counterparts.

Linked to the previous foundational principles applicable to women's human rights that led to the promotion of women's economic empowerment, women's economic contribution and empowerment are essential to strengthen women's rights and for

⁶⁴ Ryszard Cholewinski and Shauna Olney, 'Migrant Workers and the Right to Non-Discrimination and Equality' in Cathryn Costello and Mark Freedland (eds), *Migrants at Work: Immigration and Vulnerability in Labour Law* (1st edn, Oxford University Press 2014) 281.

⁶⁵ Jody Heymann, Adèle Cassola and Michael Ashley Stein, *Making Equal Rights Real* (Cambridge University Press 2012) 301.

⁶⁶ Patrick J Cihon and James Ottavio Castagnera, *Employment and Labor Law* (Cengage Learning 2015) 213; the ILO recognised the significance of discrimination issues in the workplace. In 1991 it launched the project 'Combating Discrimination against (Im)migrant and Ethnic Minority Workers in the World of Work' to document levels of discrimination and to propose possible remedies; see Patrick Taran and Eduardo, Geronimi 'Globalization, Labour and Migration: Protection is Paramount' (Conferencia Hemisférica sobre Migración Internacional: Derechos Humanos y Trata de Personas en las Américas, Santiago de Chile, 20-22 November 2002) 9.

⁶⁷ Cholewinski (n 64) 281.

women to take control over their lives and have an impact on society.⁶⁸ Therefore, promoting sex equality involves eliminating legal and cultural obstacles to women's economic empowerment.⁶⁹ Subsequently women's economic empowerment in society will not happen unless dignity, equality and non-discrimination between men and women exist. In this context, this may happen by supporting women to organise business networks in the formal as well as the informal sectors.

1.7.3 Dignity

The term 'dignity' has been found in numerous international and regional human rights documents. Furthermore, dignity is becoming frequently used in the legal context relating to human rights protections in several jurisdictions.⁷⁰ The term 'human dignity' currently plays a central role in human rights discourse.⁷¹ It is invoked in the Preamble of the Charter of the United Nations: "...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." ⁷²Also, the expression of dignity appears in the Universal Declaration of Human Rights, stating that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"⁷³

In terms of instruments, again the expression of the inherent dignity of the human person can be found in several legal instruments. For instance, the International Covenant on Economic, Social and Cultural Rights (hereinafter the ICESCR) states that "education shall be directed to the full development of the human personality and

⁶⁸ Sweden, Ministry for Foreign Affairs, On equal footing: policy for gender equality and the rights and role of women in Sweden's international development cooperation 2010–2015, MfA, Stockholm, 17.

⁶⁹ Ibid.

⁷⁰ Christopher McCrudden, 'Human Dignity and Juridical Interpretation of Human Rights' (2008) 19 the European Journal of International Law 655, 656.

⁷¹ Ibid.

⁷² Preamble, Charter of the United Nations was signed on 26 June 1945, in San Francisco, into force on 24 October 1945.

⁷³ UDHR (n 54), Art 1.

the sense of its dignity, "⁷⁴, while the International Covenant on Civil and Political Rights provides that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."⁷⁵ Similar provision is set up in the American Convention on Human Rights Article 5.⁷⁶

From the above meanings, dignity is the grounds of the right and thus should be protected as a facet of human rights.⁷⁷ Waldron provides a short definition of dignity as a form of 'status-concept'.⁷⁸ Thus, in short, the inequality, discrimination and limitations against women are not in harmony with the human dignity concept. As 'woman is equal to man in human dignity and has her own rights to enjoy as well as duties to perform'⁷⁹, so the human rights are concerned with the dignity of that individual.⁸⁰ Consequently it is a woman's right to be respected, protected and fulfilled. Hence, dignity has become so principal to the United Nations' formations of human rights that such instruments ought to be "of essential character and derive from the inherent dignity and worth of the human person".⁸¹ Thus, women's right to work derive from the inherent dignity of the human person and must be equal and without discrimination.

From the above principle, human rights must apply everywhere and to everyone, in all contexts of life, and they cannot be refused or ignored.⁸² There is no hierarchy of

⁷⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 3 January 1976, Art 13 (1).

⁷⁵ International Covenant on Civil and Political Rights (ICCPR), opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) Art 10 (1).

⁷⁶ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

⁷⁷ Jeremy Waldron, 'How Law Protects Dignity' (2012) 71 Cambridge Law Journal 200, 201.

⁷⁸ Ibid, 201-202; about the idea of the status, see Graveson, Ronald Harry, *Status in Common Law* (London 1953).

⁷⁹ Cairo Declaration on Human Rights in Islam, 1990, UN GAOR, World Conference on Human Rights, 4th Sess., Agenda Item 5, UN Doc A/CONF.157/PC/62/Add.18 (1993), Art. 6 (a).

⁸⁰ Abdul Aziz Said, 'Pursuing Human Dignity' (1979) 15 Society 63; Jack Donnelly, 'Human Rights And Human Dignity: An Analytic Critique Of Non-Western Conceptions Of Human Rights' (1982) 76 The American Political Science Review 303, 303-304.

⁸¹ McCrudden (n 70) 669.

⁸² Amartya Sen, 'Elements of a Theory of Human Rights' (2004) 32 Blackwell Publishing, Inc. Philosophy & Public Affairs 315, 340.

rights, and some kinds of rights cannot be split from others. Furthermore, it is emphasised that the rights need to be identified not only as a tool that can be used within the lawful system; they add a more humanised vision of the right to work including the deep-rooted values and dignity of labour. Hence, the human dignity provides a foundation for human rights as long as it is respected and protected.⁸³

1.8 Challenges

Whilst conducting this research, a number of challenges were encountered. The most significant and difficult of these challenges was referring to Sharia sources, most of which are in classical Arabic, and difficult to locate in the UK. Although many of the more common volumes are available online, it was difficult to translate the refined and archaic prose. This challenge was overcome by locating modern editions that could more easily be translated into English. In addition, the researcher sought advice from specialist colleagues in these areas, who were able to help identify and locate the most appropriate editions.

From the outset, the intention was to include case analyses in this study; however, cases are rarely published in the KSA, except for in the Ministry of Justice's *Al-Adl* journal, which is issued annually; however, this is a digest and not a comprehensive compendium. It includes only selected cases law, which are typically about personal status, debts and other issues. Women's right to work mostly falls under the auspices of the Ministry of Labour, but there is no access to these legal cases, as they are not published at all. In addition, none of the cases published by the Saudi Labour Ministry concern women's issues.⁸⁴

⁸³ Jack Donnelly, *Universal Human rights in Theory and Practice* (3rd edn, Cornell University Press 2012)130.

⁸⁴ Saudi Labor Ministry, Blogs Decisions <<http://www.labordisputes.gov.sa/single/decision>> accessed 2 Nov 2017.

1.9 Methodology

This thesis focuses on Saudi women's right to work in the KSA, and Sharia sources are used to analyse the issue of cultural barriers, limited access to higher education, and religious demands for certain provisions with regard to Saudi women's right to work. These obstacles are examined in reference to international human rights documents, relevant legislation and academic analysis. In addition, the thesis studies the actual situation of Saudi women in the KSA at present, examining arguments presented by Saudi Arabian representatives and the response from the CEDAW Committee, in order to demonstrate the complexity of religious reservations expressed in relation to women's rights. The primary Sharia sources on which this research is based include the Qur'an and *Hadiths*, and secondary sources include *Ijma'*. The version of the Qur'an used in this study is the Muhammed Taqî-ud-Dîn Al-Hilâlî and Muhammed Hushin Khân M edition.⁸⁵ Regarding the *Hadiths*, the version used is *al-Kutub Al-Sittah*, which is in Arabic.⁸⁶ However, English versions were also used, specifically Sahîh Al-Bukhârî⁸⁷, Sahîh Muslim⁸⁸, Jâmi' At-Trimidhi⁸⁹, Sunan Abu Dawud⁹⁰, Sunan An-Nasâ'i⁹¹ and Sunan ibn Mâjah⁹². For the interpretations of the Qur'an, the *Tafsir* used was the Ibn Kather edition.⁹³ The primary international law sources used in this study include customary laws, treaties, Conventions and documented dialogue between Saudi representatives and the CEDAW Committee. The secondary sources used include various scholarly books and articles.

⁸⁵ Muhammed Taqî-ud-Dîn Al-Hilâlî and Muhammed Hushin Khân M, *Translation of the Meaning of Noble Qur'ân in the English Language* (King Fahad Complex 1427 AH).

⁸⁶ Al-Shyakh S (ed), *The Six Books, (Al-Kutub Al-Sittah)*, Dar Al-Salam Li Al-Nashar Wa Al-Twzia 1419 AH).

⁸⁷ Muhammad Muhsin Khan (trs), *The Translation of the Meaning of Sahîh Al-Bukhârî* (Darusslam 1997).

⁸⁸ Nasiruddin al-Khattab (trs), *English Translation of Sahîh Muslim* (1st edn, Darusslam 2007).

⁸⁹ Abu Khaliyl (trs), *English Translation of Jâmi' At-Trimidhi* (Darusslam 2007).

⁹⁰ Yaser Qadhi (trs), *English Translation of Sunan Abu Dawud* (1st edn, Darusslam 2008).

⁹¹ Niisruddin Al-Khattiib (trs), *English Translation of Sunan An-Nasâ'i* (Darusslam 2007).

⁹² Nasiruddin Al-Khattab (trs), *English Translation of Sunan ibn Mâjah* (Darusslam 2007).

⁹³ Esmail Al-Dumashqi, *Tafsir ibn Kather* (Arabic version, 2ed edn, Dar Tibah 2002).

A textual analysis is also carried out first as part of this research – a critical analysis approach is conducted reviewing different Sharia sources, Saudi domestic laws and regulations, and providing an overview of Saudi governance relating to the international human rights legal framework, with further analysis of possible reforms. More specifically, the study reviews and evaluates Saudi reports and reservations on CEDAW, and its opportunities to participate in other relevant treaties, such as ICESCR.

1.10 Chapter Outline

The thesis is divided into six chapters. The first chapter was a general introduction to the thesis; it provided some background to the study and a literature review, presented the research questions, objectives, statement, and significance of the study. In addition, the chapter also identified the challenges that were encountered during the research journey, and, finally, presented the methodology and chapter outline of the thesis.

The second chapter discusses women's right to work in the KSA, examining the issue from two perspectives: Sharia, and Saudi domestic law. Although Sharia is a nebulous amalgam of a large number of codices and jurisprudential opinions representing over a millennium of legal thought in the Muslim world, the Sharia cited by the KSA as the source of its constitution is essentially a conservative Sunni corpus codified by the Council of Senior Scholars during the twentieth century, with a proclivity toward Hanbali jurisprudence and orthodox interpretations. The second chapter also identifies the primary and secondary sources of Sharia, and their positions on women's right to work, the conditions of work by religious interpretations, and employment areas allowed, including Qur'anic verses and prophetic *Hadiths* referencing women's right to work. Then, Saudi domestic law is explored, specifically referencing Saudi Civil Service Law and Saudi Labour Law.

The third chapter discusses religion and culture as lived realities that play a major role in influencing Saudi women's right to work. The underlying religious barrier to this right is the concept of *Mahram*, or male guardianship. It is important to examine this

factor from both theoretical and practical perspectives; in other words, from both Sharia and Saudi domestic law perspectives. It also examines how *Mahram* specifically affects women's right to work, and the relevant issues that male guardianship raises. Other religious factors, such as *Ikhtilat* (intermingling), *Kalwah* (seclusion), and the impact of sex-segregation and the codification of Sharia, also affect Saudi women's right to work, and are discussed in this chapter. In addition, cultural barriers also impose significant limitations on Saudi women's right to work; thus, the third chapter also examines the prevailing cultural view that a women's place is in the home, and that Saudi society considers 'a woman is woman'.

The fourth chapter analyses and examines how limited access to higher education is also an obstacle to women's right to work in the KSA. The early part of the chapter demonstrates and discusses how Saudi women's educational history affects their right to work in the current context. It also explains Saudi policy toward Saudi women in education, and their right to education under Saudi domestic law. It then examines how Saudi women's limited access to higher education affects their right to work in three specific ways: limiting the opportunities for Saudi women to study certain disciplines; unequal access to higher education; and inequality in the use of available facilities in educational institutions.

The fifth chapter discusses the KSA's obligations to protect women's right to work under international human rights law and Sharia. The KSA has ratified CEDAW, which prohibits any kind of discrimination against women, with some reservations. This chapter examines these reservations, as well as any barriers to the application of this treaty in Saudi domestic law. The other is the International Labor Organisation (ILO), and its domestic applications. In addition, the KSA has not yet ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which is extremely significant for protect the right to work.⁹⁴ The chapter clarifies the issues with ratifying the ICESCR in the KSA. The final part of the chapter examines the protection of women's right to work under customary international law.

⁹⁴ ICESCR (n 74).

Finally, the sixth chapter summarises the thesis findings and presents a number of recommendations resulting from the study conclusions.

2 Chapter Two: Examining Women's Right to Work in Saudi Arabia

2.1 Introduction

An examination of women's right to work in the Kingdom of Saudi Arabia (hereinafter referred to as 'KSA') must take account of many factors. Thus, it is essential to begin by establishing a general framework of reference regarding women's right to work under Islamic law (hereinafter referred to as 'Sharia'). Saudi women's right to work is considered to be an important indicator of wider social development in the KSA.¹ While in the traditional Bedouin economy of the Arabian Peninsula women ubiquitously worked in animal husbandry, and some still do, the economic development heralded by oil exploration led to urbanisation and the subsequent sheltering of women.² At the current juncture, with attempts to diversify the oil-dependent economies of the KSA and move toward a greater dependence on knowledge and service sectors, the right of women to work requires re-evaluation.³

The primary aim of the present chapter is to examine whether the current limitations on women's right to work in the KSA are consistent with Sharia and Saudi domestic law (Sdl), and specifically what is permissible or prohibited. The chapter is presented according to the following structure. First, it clarifies and explains what women's status was in the *Jahiliyyah* era, before examining women's right to work according to Sharia, drawing on primary and secondary Sharia sources. Then, after identifying women's right to work under Sharia, it discusses whether this conflicts with women's right to work in the public or private sectors under Saudi domestic law.

¹ Huda Al-Jeraisy, 'Saudi Women and Labor Market' in Al-Jawhara Bubshait (ed), *Women in Saudi Arabia: Cross-Cultural Views* (1st edn, Ghainaa Publications 2008); Dianne H.B Welsh, Esra Memili, Eguene Kaciak and Aliyah Al Sadoon, 'Saudi Women Entrepreneurs: A Growing Economic Segment' (2014) 67 *Journal of Business Research* 758; Caroline Montagu, 'On Overview of the Economic Reality of Saudi Women' in Al-Jawhara Bubshait (ed), *Women in Saudi Arabia: Cross-Cultural Views* (1st edn, Ghainaa Publications 2008).

² Montagu (n 1).

³ Kelly Sanja, *Recent Gains and New Opportunities for Women's Rights in the Gulf Arab States*, (2009) <<https://www.freedomhouse.org>> accessed on 06 Nov 2017.

The legal foundation of KSA governance is significantly influenced by the provisions of Sharia, upon which national laws are based. It should be noted, though, that inherited customs are not equivalent to Sharia, and that several social reforms have been achieved within the framework of Sharia. For example, slavery came to an end as a result of the prohibition of importing slaves, followed by the compulsory purchase and manumission by the government.⁴ As such, this chapter explores the possibilities within Sharia regarding women's right to work, and the opportunities to enhance and further women's employment within the KSA.

It also examines why women are finding it impossible to find work in some fields of employment, even though their right to work is protected by international and Saudi domestic law. This chapter explores women's right to work under Sharia, the limitations on that right in reference to Sharia resources, and what Saudi Basic Law, Saudi Service Law and Labour Law say about Saudi women's right to work. In this way, the research addresses the extent to which Sharia permits women to work in the public and private sectors, and thus whether barriers to women's employment are found in Sharia, or in Saudi domestic law. In addition, the international human rights position regarding women in Saudi Arabia is considered.

2.2 *Jahiliyyah*

With regard to the Qur'an and *Sunnah*, it should be noted that Islam instigated subtle but revolutionary social reforms at the time of its inception. It is important to present an overview on women's rights during this period in order to compare the conditions of women at that time, and their situation today. During the pre-Islamic era in Arabia, those not from the ruling oligarchy and system of tribal patronage possessed no rights, and women in general, including the elite, had virtually no rights either.⁵ By conferring on women the right to own property, inherit and work, Islam immeasurably improved the status of women, in many areas, in comparison to *jahiliyyah*

⁴ Junius P Rodriguez, *the Historical Encyclopedia of World Slavery* (American Bibliographic Center-CLIO 1997) 534-536.

⁵ John L Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (2ed, Syracuse University Press 2001) 12-13; Leila Ahamed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press 1992) 9-25; Asghar Ali Engineer, *Rights of Women in Islam* (3rd edn, Sterling Publisher Private Limited) 23-43.

conditions.⁶ Indeed, in pre-Islamic Arabian society, the birth of a daughter was itself considered a negative occurrence, resulting in widespread infanticide:

“And when one of them is informed of [the birth of] a female, his face becomes dark, and he suppresses grief.”⁷

He hides himself from the people because of the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide.”⁸

Clearly, in a society that was negatively disposed toward the birth of a female child, which often resulted in their being buried alive⁹, the very concept of women’s rights becomes farcical. Islam was thus revolutionary in its affirmation and preservation of women’s rights. While tribal customs remained entrenched in Arab-Islamic society, the huge transformation in the lives of women brought about by Islam cannot be overstated.

However, following interaction with other cultures and civilisations, and historical experiences of cultural and economic phenomena, the position of women fluctuated over time and across locations. However, generally speaking, today, the status of women in many Muslim-majority countries has reverted to a condition similar to that of the era of ignorance, in terms of their lack of rights. For instance, Mashhour states that “women’s rights in many Islamic countries have nothing to do with their Islamic nature, but rather with their patriarchal nature”.¹⁰ It can thus be argued that the

⁶ *Al-Jahiliyyah* means the era of ignorance before the advent of Islam and the social reforms it enacted, including notable advancement in the status of women. In short, the status of women in the pre-Islamic era, as with slaves, was something of no consequence in Arabian society. See Niaz A. Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan* (Brill 2006) 27-44.

⁷ Qur’an16:58.

⁸ Qur’an16:59.

⁹ See Nwal Abdulaizi Al-Eid, *Women’s Right in the Light of Sunna, (Hogga Al-Mra fi dw Al-Sunna Al-Nabwiah, Arabic version, Dar Al-Hdarh 2012)* 53- 46; Ibn Athir, *Al-Nahih fi karib al-athar* (Arabic, Al-Maktab Al-Alalmia 1979) 5:142; Mohammad Abo Algthal, *Lesan Al-Arab* (Arabic, Dar Sadr) 3:443.

¹⁰ See; Amira Mashhour, ‘Islamic Law and Gender Equality: Could There be a Common Ground? A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt’ (2005) 27 *Human Rights Quarterly* 562, 562.

deterioration of women's rights is a consequence of the patriarchal pre-Islamic era.¹¹ Whilst the pre-Islamic era has passed, Arabic society is still influenced by the values and beliefs of that period.

2.3 Women's Right to Work According to Sharia Sources

In order to fully understand Sharia sources, it is important to first have a clear definition of what Sharia is. The structure of Sharia is twofold.¹² The primary sources of Sharia are the Qur'an (divine revelation),¹³ and *Sunnah* (the Prophetic tradition – words and deeds attributed to the Prophet Muhammad).¹⁴ The secondary sources are *Ijma'* (consensus), *Qiyas* (analogical reasoning), *Istihsan* (jurists' preference), *Istis-hab* (presumption of continuity), and *Urf* (custom).¹⁵ This means that, when researching Sharia in relation to any particular matter, reference must be made to the above sources, and arguments based on Sharia sources according to their place in this hierarchy of evidence.¹⁶ As such, any reference to the right to work under Sharia must thus also make reference to these sources. In the following sub-sections, women's right to work, as described in the primary sources of the Qur'an and *Sunnah*, are examined, followed by a review of secondary sources.

2.3.1 Qur'an

First and foremost, the Qur'an is a book of spiritual guidance, and not a legal code; it is thus not surprising that, in 6239 total verses, it contains only 500 verses of legal

¹¹ Ibid, 564-571.

¹² Ibn Taymiyyah divided the methods of legal provisions in Sharia into seven methods, of which the Qur'an is the primary source and the Sunnah the secondary; other methods are ancillary and less authoritative. See Taqi Al-din ibn Taymiyyah, *Majmooa Fatwas ibn Taymiyyah*, (Arabic, Dar King Fahad Press 1995) Chapter 11.

¹³ There are two debates with respect to Sharia sources: first, those that argue that the Qur'an is the only primary source and the second argues that the Qur'an, Sunna, Ijma and Qiyas are primary sources. See =Abdulkareem Zidan, *Entrance to Study Islamic Sharia* (Arabic, Al-Mudkal La Drast Al-Shaira AL-Islamia, Dar Omar Ibn Al-Ktuab 2001).

¹⁴ See; Esposito and Delong-Bas (n 5)1-11; Wael B. Hallaq, *The Formation of Islamic Law* (Ashgate 2004); Mohammad Hashim Kamali, Kamali, *Principles of Islamic Jurisprudence*. (Islamic Texts and Society 2005).

¹⁵ H Hamid Hassan, *an Introduction to the Study of Islamic Law* (Adam Publishers and Distributors 2010).

¹⁶ Zidan (n 13).

content.¹⁷ Regarding the right to work, the Qur'an fundamentally affirms that humans have a right to work and seek sustenance on the earth, and that this right must be respected. This section explains how the Qur'an protects the right to work.

As mentioned above, the Qur'an is not primarily a legal codex, and as such it does not contain a comprehensive bill of rights for all human beings. However, used in combination with other sources, such as the *Sunnah*, which is fundamentally compatible with the basis of the Qur'an,¹⁸ numerous Islamic civilisations and schools of jurisprudence have interpreted and predicated legal issues, including women's right to work; for instance, the well-known Sharia principle that actions in *mu'amilaat* (transactions) are permissible unless proven to be prohibited (i.e. the burden of proof is on the one who claims something is prohibited).¹⁹ By this logic, women have a latent right to work, should they choose to do so.

Some verses in the Qur'an emphasise the importance of work, and that males or females should be free to work in the earth sources which are provided by God. For instance, two verses state that:

*“He it is who has made the earth subservient to you (i.e. easy for you to walk, to live and to do agriculture on it); so walk in the path thereof and eat of His provision. And to Him will be the Resurrection.”*²⁰

*“Then when the (Jumu'ah) Salât (prayer) is ended, you may disperse through the land, and seek the Bounty of Allâh (by working, etc.), and remember Allâh much: that you may be successful.”*²¹

The first verse highlights two points. The first is that God made the earth “subservient” to all men and women, meaning that they have the right to work,

¹⁷ M. Cherif Bassiouni and Gamal M. Badr, ‘the Shari’ah: Sources, Interpretation, and Rule-Making’ (2001-2002) 1 the Journal of Islamic and Near Eastern Law 135,148.

¹⁸ See about Qur'an concept on: Fikir Al-dweri & Raja Alamrat, ‘Mental Knowledge in Holy Qur'an’ (2013) 4 Interdisciplinary Journal of Contemporary Research in Business 9.

¹⁹ Ibn Taymiyyah, Fatwas Ibn Taymiyyah (Arabic, King Fahad Complex 2004) 28/386.

²⁰ Qur'an 67:15.

²¹ Qur'an 62:10.

without any conditions or limitations. Moreover, God also asks humanity to walk, to live and to engage in agriculture. The general interpretation of this verse is that the earth is subservient to humanity, and humanity must work in order to live; thus you should make this earth live by work. This is emphasised for all work of either men or women.

The second verse also states that, once prayer is complete, humans are free to disperse across the land and work. The verse has an important meaning; first, that *Salât* (prayer) is essential, and second, that after *Salât*, one is free to work by dispersing across the land.²² In response to this verse, Abi Hatim states that, "Irak bin Malik would stand by the gate of the *Masj id* and invoke Allah, saying,

*"O Allah! I have accepted and complied with Your Call, performed the prayer You ordered and dispersed as You ordered me. Therefore, grant me of Your favour and You are the best of those who grant provisions."*²³

The statement from Irak shows that Allah fulfils the rights to work: "I accepted your request and grant me of Your favour"²⁴. Thus, the right to work is derived from the verse in which Allah grants humans the right to seek the Bounty of Allah.

On women's general right to work, the Qur'an is clear:

*"And when he went towards (the land of) Madyan (Midian), he said: "It may be that my Lord guides me to the Right Way. And when he arrived at the water (a well) of Madyan (Midian) he found there a group of men watering (their flocks), and besides them he found two women who were keeping back (their flocks). He said: "What is the matter with you?" They said: "We cannot water (our flocks) until the shepherds take (their flocks). And our father is a very old man."*²⁵

The above narrative indicates that the daughters of both the Prophet Moses and Shaub would water livestock, and fulfilled the responsibilities of their fathers to care for the livestock *pro tem*, prior to Moses becoming engaged as an agricultural servant. Women's right to work can be inferred from this, and the following examples.²⁶

²² Esmail Al-Dumashqi, *Tafsir ibn Kather* (Arabic, Chapter 8, Dar Tibah 2002) 122-123.

²³ Ibid.

²⁴ Ibid.

²⁵ Qur'an 28:23.

²⁶ Qur'an 76:15.

There are some Qur’anic texts that may be interpreted as indicating a preference for women to work within the home setting when it is not necessary to work outside.²⁷

For instance, the Qur’an states:

*“And stay in your houses, and do not display yourselves like that of the times of ignorance, and perform As-Salât (Iqamât-as-Salât), and give Zakât and obey Allâh and His Messenger. Allâh wishes only to remove Ar-Rijs (evil deeds and sins) from you, O members of the family (of the Prophet صلى الله عليه وسلم), and to purify you with a thorough purification”.*²⁸

In an explanation of the above verse, Qurtubî stated that “the order women abide at home, even the statement for the Prophet’s wives; however, it includes other women.”²⁹ However, there are obvious exceptions to this interpretation, as women have a right to pray in congregation in the mosque, and even to participate in *jihad* (war).³⁰ As such, the true meaning of this verse is debated by scholars. Ibn Kather argues that it refers to “the wives of the Prophet, and the women of the nation followed them in that”.³¹ On the other hand, Ibn Qurtubi understood the verse to mean that, generally speaking, women should carry out most of their activities in the home³². However, others have interpreted the verse from the perspective that it refers only to the Prophet’s wives.³³ In this regard, while the divine of the injunction might understood intended the Prophet Muhammad.³⁴

In addition, the Qur’an requires that people should turn directly to Allah alone for guidance on all matters and concerns in their lives. For example, if one intends to travel, study, visit a place or person, He alone must first be consulted.³⁵ The principle upon which this precedent rests is that those who believe should seek the guidance of

²⁷ Hailh Al-Twijrih, *Women’s Work in Islamic Jurisprudence (Amal Al-mara fi Al-Fiqh Al-Islami*, Arabic, Researcher Center for Women’s Studies 2010) 36.

²⁸ Qur’an 33:33.

²⁹ Muḥammad ibn Aḥmad Qurtubî, *Al Jami ‘Li Ahkam Al Qur’an* (Arabic, Dar ‘Thia’ al Turath al Arabi 1967) 158.

³⁰ Al-Twijrih (n 27) 45-50.

³¹ Al-Dumashqi (n 22) chapter 6, 410.

³² Ibid.

³³ Ibid.

³⁴ Abdul Ghaffar Hasan, *The Rights and Duties of Women in Islam* (Darussalam 2004) 10-11.

³⁵ Muhammad Saed Abdul-Rahman, *Tafsir Ibn Kathir Juz’ 20 (Part 20): An-Namel 56 to Al-Ankaboot 45*, (2nd edn, MSA Publication Limited 2009) 150-151.

Allah alone, in particular the right to work, which this research investigates. The Qur'an states:

*“You worship besides Allâh only idols, and you only invent falsehood. Verily, those whom you worship besides Allâh have no power to give you provision: so seek your provision from Allâh (Alone), and worship Him (Alone), and be grateful to Him. To Him (Alone) you will be brought back.”*³⁶

However, this verse does not make a clear statement to the reader regarding one's right to work. Nevertheless, this verse emphasises that, initially, the individual should ask God alone.³⁷ In other words, one should not seek anything or anyone other than Him. The verse also commands that one should seek to acquire all provisions from Allah, who made the earth for all humans, making no distinction between individuals with regard to their right to live off and utilise the earth's resources.³⁸ Therefore, it can be said that the Qur'an sets out a requirement for both men and women to look to the earth to find sustenance. This phrase 'So seeking' meaning each individual should intend to work (job) – either men or women – to seek Him. The Qur'an required that humans work with the natural resources of the earth that God provided. This clearly implies that the right to work was a right of all; however, it must be claimed from God. In other words, the Qur'an grants the right to work in this verse by instructing that humans should seek their provisions from God. Also, with this right provided by God, individuals are to have the free choice to work. Thus, this verse could be understood and interpreted to mean that the right to work is protected, respected, and fulfilled by Allah; nevertheless this is subject to people, so seek your provision from Him.

In the following verse, the Qur'an features a clear citation regarding equality in the eyes of God, and commitment that neither man nor woman will lose their work, as follows:

³⁶ Qur'an 29:17

³⁷ Abdul-Rahman (n 35) 150.

³⁸ Ibid.

*“So their Lord accepted of them (their supplication and answered them),
“Never will I allow to be lost the work of any of you, be he male or female.
You are (members) one of another.”³⁹*

The reason for the revelation of this verse was that Prophet Mohammed asked ‘why only men are mentioned and not women?’⁴⁰ Very simply, it is to confirm that no distinction is made in the Qur’an between men and women; both are equal in terms of the rights and duties bestowed upon believers.⁴¹ This includes women’s right to work, as God states: ‘Never will I allow to be lost work for any one’.⁴²

In the next verse, God states that human beings have been provided with the sea, which they should use as a source of benefit and sustenance:

“And He it is Who has subjected the sea (to you), that you eat thereof fresh tender meat (i.e. fish), and that you bring forth out of it ornaments to wear. And you see the ships ploughing through it, that you may seek (thus) of His Bounty (by transporting the goods from place to place) and that you may be grateful.”⁴³

Thus, God created the sea in order that humanity could benefit through working on it. This verse indicates that one does have the right to work, as God has provided this source of fish and ornaments. It is one’s own choice to work, but on the other hand, God has provided free resources. Thus, the logic underlying the right to work in this verse is that God has subjected the sea to humanity.⁴⁴

The following verse highlights the importance of work:

“And say (O Muhammad صلى الله عليه وسلم) “Do deeds! Allâh will see your deeds, and (so will) His Messenger and the believers. And you will be brought

³⁹ Qur’an 3:195. `

⁴⁰ Al-Dumashqi (n 22) chapter 2, 190-191.

⁴¹ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law* (Kluwer Law International 2000)50-56.

⁴² Qur’an 3:195.

⁴³ Qur’an 16:14.

⁴⁴ Al-Dumashqi (n 22) chapter 4,562.

*back to the All-Knower of the unseen and the seen. Then He will inform you of what you used to do.*⁴⁵

This verse further enhances the right to work by stating that it is to be equally enjoyed by both men and women. The Qur'an reiterates multiple times that there is no distinction between men and women before God, whether in worship, or in their earthly work. Men and women are equal before God, and God has created them to find sustenance in the land. Both are thus equally responsible to work, and should not depend on the other.

All of these verses stress the principle of 'seeking', which means working, if one is able.⁴⁶ The meaning of that lies in "Never will I allow to be lost work for any one"; this deep meaning keeps the right for each one either man or woman who did work in the last day.⁴⁷ In addition, this gives rise to another divine principle, namely God's justice toward people.⁴⁸

According to the Qur'an, and as stated above, the right to work is implied and indicated in several different verses. However, most of these implications regarding the right to work are not clear or explicit. As explained earlier, the Qur'an is a source of spiritual guidance, and not a legal code. However, this does not mean that the right to work is not respected, protected and fulfilled in the Qur'an. The Qur'an calls to work both men and women, therefore setting out the justice and equality that God shows toward all people, without any distinction. Furthermore, the Qur'an also assures women that they have a right to full possession and control of their wealth.⁴⁹

2.3.2 Hadith

In the secondary source, the Hadiths, further evidence can be found to support the right to work for all human beings. In particular, the Hadith provides much evidence

⁴⁵ Qur'an 9:105.

⁴⁶ Qur'an 2:286.

⁴⁷ Al- Dumashqi (n 22) 191.

⁴⁸ Qur'an 5:42.

⁴⁹ Ali (n 41) 38.

with respect to women's right to work. In general, the Hadiths attach no dignity or refinement to idleness, and Prophet Mohammed said:

*"Nobody has ever eaten a better meal than that which one has earned by working with one's own hands. The Prophet of Allah, DawUd (David) عليه السلام used to eat from the earnings of his manual labour."*⁵⁰

The above Hadith shows that Sharia encourages human beings to gain from their own hands, and to avoid depending on others; and, furthermore, that this ethos is not confined to men. In another tradition, the Prophet Mohammed encouraged individuals to earn a living through cutting and selling firewood, which again was seen as preferable to being dependent on others.⁵¹ The financial independence that is achieved through work is a source of dignity in Islamic ethics.⁵²

Jabir b. 'Abdullah (Allah be pleased with them) reported:

*"My maternal aunt was divorced, and she intended to pluck her dates. A person scolded her for having come out (during the period of 'Idda). She came to Allah's Prophet (may peace be upon Him.) and he said: Certainly you can pluck (dates) from your palm trees, for perhaps you may give to charity, or do an act of kindness."*⁵³

The meaning of the above Hadith, according to the esteemed commentator Al-Ashawkani,⁵⁴ is that "women have the right to go out for that thing and what is similar by analogy".⁵⁵ A commonly cited example of women's employment is that of the Prophet Mohammed's wife, Khadijah, who initially hired him as an overseer to manage her business.⁵⁶ She was so impressed by his honesty that she proposed

⁵⁰ Reported by Sahih Al-Bukhârî , The Book of Sales 'Bargains', Hadith No. 2072.

⁵¹ Ibid.

⁵² The *Sunnah* is replete with injunctions to work, avoiding dependence on others (e.g. begging and debt) and being of use to society. For more, see Mashood A. Baderin, *International Human Rights and Islamic law* (Oxford University Press) 217-220.

⁵³ Salah Bin Abdulaziz Bin Muhammad Bin Ibrahim Al-Shyakh (ed), *Al-Kutub Al-Sittah*, (Dar Al-Salam Li Al-Nashar Wa Al-Twzia 1419 AH) Hadith, 1483 Sahih Muslim 69.

⁵⁴ Mohammed Bin Ali Bin Mohammed Bin Abdullah Al-Shawkani Al-kwalani Al-Sanani who is explained and updated *fiqh* fundamentalist (D 1255 H).

⁵⁵ Imam Muhammad Bin Ali ibn Muhammad Ashawkani, *Nail al-Awtar min Asrar Muntaqa al-Akhbar* (Dar Al-Kitab Al-Arabi 2004) Vol. 7, 99.

⁵⁶ Al-Jeraisy (n 1); Eşit Haylamaz, *Khadija: The First Muslim and the Wife of the Prophet Muhammad* (Light New Jersey 2007).

marriage, and the Prophet accepted.⁵⁷ This indicates that a woman was able to own and run a business, employ men, and own property.⁵⁸

In addition, from the very inception of Islam, women have worked as nurses, with Rofidah Al-Ansari⁵⁹ being the first Muslim nurse at the beginning of the period of Islam. They also played a role as propagandists and battlefield aides in times of war, such as Hind bint Otbah at the battle of Yarmouk.⁶⁰ In the time of the Prophet Mohammed, women participated alongside men in areas such as war, and economic and social affairs. These women's participation was in the period of Prophet Mohammed and after. This was described by Um Atiyyah Al-Ansârlyyah:

"I went out on seven campaigns with the Messenger of Allah; I would stay behind in the camp, make food for them, treat the wounded and look after the sick".⁶¹

This Hadith provides evidence that women in the time of the Prophet did indeed work as nurses and chefs. Also, it highlights the importance of the role women played in war. In addition, women were also known to carry out circumcisions at that time.⁶²

In terms of education, Aisha – God please her – the wife of Prophet Mohammed was the most educated of the women in the era of the Prophet era and afterward. Thus, her companions referred to her for guidance.⁶³ Ibn Aroah stated that, "I never saw anyone know jurisprudence nor medicine nor hair of Aisha."⁶⁴ Furthermore, women were also active in other fields, such as business and crafts.⁶⁵

⁵⁷ Haylamaz (n 56).

⁵⁸ Shah (n 6) 28.

⁵⁹ Rufaida Al-Asalmiya or Al-Ansari, Ibn Eshag stated that when Saad Bin Moad was injured in the Battle of the Trench the Prophet Mohammed commanded that he be conveyed to the tent of Rufaida Al-Asalmiya, which functioned as a battlefield hospital. See Ibn Hagar, *Al-Esabh fi Tamiz Al-sahaba*, review by Adal Mouwd (Arabic, Dar Alkotab Al-almiah, 1994) 107; Miller-Rosser, K., Chapman, Y., Francis, K, 'Historical, Cultural and Contemporary Influences on the Status of Women in Nursing in Saudi Arabia' (2006) 11 The Online Journal of Issues in Nursing 1,3-4.

⁶⁰ Ahmed Leila, *Women and gender in Islam: Historical roots of a modern debate* (Yale University Press 1992) 70.

⁶¹ Reported by Sahih Muslim, Book of Jaihad and Expeditions, Hadith no. 1812.

⁶² Reported by Abu Dawud, the Book of etiquette, Hadith no 5271.

⁶³ Al-Twijrih (n 27) 40.

⁶⁴ Nasiruddin Al-Khattab (tr), *English Translation of Musnad Imam Ahmad Bin Hanbal* (Darusslam 2012).

⁶⁵ Al-Twijrih (n 27) 40-44.

The above mentioned Hadiths provide multiple examples of women working in different fields, and enjoying their right to work. As such, these Hadiths highlight the importance of the roles Muslim women played in society in that period. Thus, the women's right to work can be said to have been respected, protected and fulfilled in the second source of Sharia, the Hadith. Thus, the Prophetic tradition has followed the primary source of the Qur'an and asserted the right to work for all human beings, both men and women. In other words, the Hadith is compatible with the Qur'an, both of which protect the right to work and draw no distinction between men and women.

2.3.3 *Ijma'* (consensus)

Reviewing women's right to work from the perspective of *Ijma'*, as a secondary source of Sharia, requires an examination of both classical and contemporary *Ijma'* opinions, in order to highlight, first, the classical opinions regarding women's right to work as judges, or of women in positions of leadership. Both classical and contemporary *Ijma'* approach any matter with reference to the primary sources of Sharia in order to set out appropriate provisions. *Ijma'* also bestows obligations upon them subject to the principles of Islamic legal tradition (*'Makassad al-sharia'*). Thus women's right to work under *Ijma'* relies on this framework.

Indeed, *Ijma'* has no issue, in general, with women's right to work, which means that there is agreement that a woman should enjoy the same right to work as her male counterpart.⁶⁶ However, Muslims jurists do set out some limitations or conditions on both men and women, based on Sharia sources.⁶⁷ The Muslim jurists in this context means the classical schools, namely Hanafi, Maliki, Shafi'i and Hanbali, who set out these rules and provisions, which contemporary jurists follow and develop. The contemporary jurists, such as Yousf Al-Qaradawi, Abdul Haleem Abu Shuqqah, and

⁶⁶ See: Abu Bakr al-Sarakhsi, *Al-Mabsoot* (Arabic, Dar Al-Marafa 1989) Vol. 16, 52-59; Yusuf ibn Abd Allah al-Qurtubi, *Kafi fi-Fiqh Ahl al-Madinah al-Maliki* (Arabic, Dar Al Kotob Al ilmiyah 2002) 295; Muhammad ibn Ahmad al-Khatib Shirbini, *Mughni al-muhtaj ila ma'rifat ma'ani al-faz al- Minhaj* (Arabic, Dar Al-Kotob Al-ilmiyah 2000) Vol.5, 106; Syarafuddin Musa al-Hajjawi, *al-Iqna' fi Fiqh al-Imam Ahmad bin Hanbal*(Arabic, Dar Al Kotob Al Ilmiyah 1984) Vol.4, 118 and 146.

⁶⁷ I have allocated the next chapter to examine the religious limitations on women's right to work

Yousf Al-Sabai developed Islamic jurisprudence by following the guidance of classical jurists.⁶⁸

Consequently, a woman's right to work is subject to *Ijma'* rules. Al-twijirh has summarised and categorised women's work under Islamic jurisprudence as: permission needed, an obligation, prohibited, not recommended, and delegated (*mandob*).⁶⁹ Al-twijirh did not find any of Muslims jurists did not support of any these categories; however, she tried to make this as a personal *Ijthad* based on their books.⁷⁰ These classifications of women's right to work do not conflict with classical Muslim jurists' opinions. In other words, there is unequivocal agreement between Islamic scholars of the four major schools of jurisprudence (Hanafi, Maliki, Shafi'i, and Hanbali) that, generally, women are allowed to work.⁷¹ Thus, classical Islamic jurisprudence supports women's right to work on a basic level.

However, traditional Islamic jurisprudence does hold different opinions regarding the intrinsic suitability of women for certain areas of work. The majority exclude women from working as judges, for example, due to the general perception that women are less objective in consideration of criminal cases.⁷² However, it should be noted that those who prohibited women from working as judges did so not "as a religious ritual without necessarily understanding the wisdom behind it," but based on particular reasons, where, if these reasons are absent, there would in principle be no objection.⁷³

One key issue and a critical matter in Islamic jurisprudence is that a woman cannot work as a judge or leader.⁷⁴ The general view of classical Muslim jurists, and also

⁶⁸ They contribute regarding women's matters through clarifying Muslim women's rights under Sharia; also extending women's rights by Sharia sources in line with modern times. See Abdul Haleem Abu Shuqqah, *Tahrir al-Mar'ah fi Asr Risalah* (Arabic, Dār-al-Qalam 1990); Yousf Al-Qaradawi, *Mar' Markaz al-Mar 'a fi-l-Hayat al-Islamiyya* (Arabic, Al-Risalah institution 2001).

⁶⁹ Al-Twijirh (n 27) 92-97.

⁷⁰ Ibid, 92.

⁷¹ Al-Sarakhsi (n 66) Vol. 16, 52-59; Al-Qurtubi (n 66) 295; Shirbini (n 66) Vol.5, 106; Al-Hajjawi (n 66) Vol.4, 118 and 146.

⁷² Muhammed Al-Monjed, Ruling on Appointing a Woman as a Judge, Islam Question and Answer < <http://islamqa.info/en/71338> >, accessed 3 Nov 2017.

⁷³ Ibid.

⁷⁴ Ali (n 41) 45-56; Md Yousuf Ali, 'the Appointment of Muslim Women as Judges in the Courts: A Textual Analysis from Islamic Perspective' (2011) 17 2nd International Conference on Humanities, Historical and Social Science 200, 201; Myra E.J.B. Williamson, 'Women as Prosecutors and Judges in

most contemporary jurists, is that women should not be allowed to work as judges.⁷⁵ Women are considered fundamentally unsuited to positions of public authority by many Muslim jurists. To support this view, most Islamic jurists refer to the following Hadith: “Such people as ruled by a lady will never be successful”.⁷⁶ This matter is the subject of consensus (*Ijma*) among these jurists.⁷⁷ The first view prohibits a woman from being a judge, based on certain Hanafi, Maliki, Shafi’I and Hanbali jurisprudence (*madhab*).⁷⁸ The second view, help by another *madhab* Imam Abu Hanifah, is that a woman can be judge, excluding *Hudud* and *Qisas*.⁷⁹ The third view, held by Ibn Jarir al-Tabari and Ibn Hazam, is that women can be judges, and in all cases are equal to their male counterparts.⁸⁰

According to *Ijma*, however, amongst Islamic jurists, women should not work in positions of leadership, or as judges.⁸¹ The general agreement is that women have no place in the judiciary at all. *Ijma* refer to that Hadith to support this.⁸² In addition, Hanafi, Maliki, Shafi’I and Hanbali agree that women should not be allowed to judge

Kuwait: Aspiration and Obstacles (2015) the 3rd International Academic Conference on Social Sciences 179,199-200.

⁷⁵ Ibn Qudamah, *Al-Mughni* (Dar Alam Al-Kutab Press, 1997) 10:8221; Bahuti, Mansur Ibn Yunus, *Kashaf al-Qana* (Dar Al-Kutab Al-alamih, 1997) Vol.6, 295; Imam Nawawi, *Rawdat Al-Talibin Wa Amdt Al-Martyn* (Arabic, Al-Maktba Al-Islami, 1991) 11-95.

⁷⁶ Reported by Sahih Bukhari, Hadith no. 4425, the Book of Al-Maghazi; Reported by Jami’ At-Trimidhi, Hadith no.2262, chapter What Has Been Related About "A People Will Never Succeed Who Give Their Leadership to a Woman.

⁷⁷ Al- Shyakh (n 53), Reported by Al-Bkahari, Hadith no. 4425; is it Permissible in Islamic Sharee’ah for a Woman to be a Ruler? < <http://islamqa.info/en/20677>> accessed 5 Nov 2017.

⁷⁸ Imam al-Hafidh ibn al-Humam al-Hanafi, *Sharh fath al qadir* (Arabic, Dar Al-Kotob Al-ilmiyah 2002) Vol.7, 298; Muhammad ibnu Rusyd Al Qurtub, *Bidayah Al Mujtahid Wa Nihayah Al Muqtashid* (Dar Ibn Hazem 1999) Vol.4, 1768.

⁷⁹ Imam Abu Bakar Ala al-Din Kasani, *Bada'i as Sanai* (Arabic, Dar Al-Kutab Al-Elmia 1986) Vol.7, 3; Abu Abdullah Ḥaṭṭāb, *Mawāhib al-jalīl li-sharḥ Mukhtaṣar Khalīl* (Arabic, 1st edn, Dar Al Kotob Al Ilmiyah 2007) Vol.8, 65.

⁸⁰ Shirbini (n 66) Vol.6, 262; Alī ibn Aḥmad ibn Ḥazm, *Al-Muhallaa bi'l Athaar* (Arabic, 1st edn, Maktabh Al kotob Al Ilmiyah 1997) Vol.8, 527.

⁸¹ Ibn Godamh, *Al-Mogunee*, (Arabic, Cairo University 1968) Vol.9, 39.

⁸² Reported by Sahih Bukhari, Hadith no. 4425, the Book of Al-Maghazi; Reported by Jami’ At-Trimidhi, Hadith no.2262, chapter What Has Been Related About "A People Will Never Succeed Who Give Their Leadership to a Woman.”?

on matters involving *hudud*⁸³ ‘restraint or prohibition’, *Qisas*⁸⁴ matters, or conflict with exception in *hudud* and *Qisas* matters.

The evidence that each *madhab* draws from the Qur’an and the Hadiths might infer the strength of the argument based on Sharia sources. This shows that each *madhab* has interpreted these sources and determined that women should not be permitted to work in certain fields. For example, those who argue that women should not be allowed to be judges reference the superiority ascribed to men over women in verse 4:34; if they were allowed to be judges, women would be in a position of superiority over men, which would conflict with the indications of this verse.⁸⁵ The Qur’an states: “Men are in charge of women by [right of] what Allah has given one over the other...”⁸⁶ This verse suggests that divine injunction has placed one sex over the other, whereby men’s duties are to financially support his family. By contrast, women have primarily stayed at home, in order to provide a stable environment for their children.⁸⁷

In addition, scholars refer to the verse, “so that if one of them (two women) errs, the other can remind her”⁸⁸. This verse indicates that a woman is likely to forget things in place of forget, thus the rights of litigants are exposed to loss.⁸⁹ Ali states that, “There is nothing in the Qur’an barring women from participation in public and political life, such as Head of State, judicial office etc”.⁹⁰ Ali also cites the Hadith quoted by many Muslims that, “Those who entrust their affairs to a woman will never know

⁸³ *Hudud* is crimes against God rights. See Etim E.Okon, ‘Hudud Punishments in Islamic Criminal Law’ (2014) 10 European Scientific Journal 227, 229.

⁸⁴ *Qisas* crimes are considered violations of the rights of individuals. See M. Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (Kluwer Law International 1999) 136; Mohamed Elewa Badar, *The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach* (Hart Publishing 2013) 205.

⁸⁵ Al-Hanafi (n 78) Vol.7, 298; Ala al-Din Kasani (n 79) Vol.7, 3.

⁸⁶ Qur’an 4:34.

⁸⁷ Hasan (n 34) 10-11; Abdullah Yusuf Ali, *The Holy Qur’an (Koran): English Translation of the Meaning*, Surah 4:34 <<http://www.streathammosque.org/uploads/quran/english-quran-yusuf-ali.pdf>> accessed 9 Nov 2017.

⁸⁸ Qur’an 2:282.

⁸⁹ For further examples; Qur’an, Hadiths used to support each *madhab* argument see Al-Twijrih (n 27) 411-437.

⁹⁰ Ali (41) 54.

prosperity”,⁹¹ and claims that the narrator of this Hadith, Abu Bakra, should be discredited, due to being convicted and flogged for sale testimony (*Qadhf*). Cooke and others make the same point, arguing that this Hadith should not be referred to, as the narrator has been discredited.⁹² However, questioning whether Abu Bakra is qualified as a narrator may not be acceptable, as the Hadith is cited by Sahih Bukhari.⁹³

Concluding on women’s right to work under Sharia, Baderin states that,

*“Generally, one finds nothing within the Qur’an and Sunnah that specifically excludes women from doing any legitimate work of their choice provided they possess the required skills and expertise and are not exposed to any hazards therefrom.”*⁹⁴

Baderin further observes that Sharia recognises the independence of women in relation to basic moral and ethical rules that apply equally to men.⁹⁵ This may be true, but it cannot be denied that Baderin expresses generalities, rather than clarifying the reality of certain interpretations of Sharia that have been excluded from the judiciary.

In reference to the *Ijma’ opinions*, it might be possible for contemporary jurists to re-think and re-consider a woman’s right to work as a judge. It has been shown that different opinions prevail on this matter. Since a woman has the ability to work in this field, by contrast, Sharia is known as a fixed set of rules, and *ijthad* is not limited by time.⁹⁶ Thus, it could play a major role in re-consideration of this matter. Surely, the Sharia was built on the ease and raise critical.⁹⁷ The Qur’an states, “And We have sent

⁹¹Ibid, 55; the hadith I quoted by Sahih Bukhari is a different version which translated the hadith to “Such people as ruled by a lady will never be successful”. Shaih Bukhari, Hadith no. 4425, Vol.64.

⁹² Miriam Cooke, 'Reviewing Benning' in Haideh Moghissi (ed), *Women and Islam: Critical Concepts in Sociology, Social conditions, obstacles and prospects* (Vol.2, Routledge 2005); Fatima Mernissi, 'A Feminist Interpretation of Women's Rights in Islam' in Charles Kurzman (ed), *Liberal Islam* (Oxford University Press 1998); Ali (n 41) 45-56.

⁹³ See Al-Twijrih (n 27) 382.

⁹⁴ Baderin (n 52) 180.

⁹⁵ Ibid.

⁹⁶ Wael B. Hallaq, 'Was the Gate of Ijtihad Closed?' (1984) 16 International Journal of Middle East Studies 3, 18-33.

⁹⁷ Qur’an 21:107.

you (O Muhammad صلى الله عليه وسلم): not but as a mercy for the *‘Ālamîn* (mankind, jinn and all that exists).”⁹⁸ If God sent the Prophet Muhammad to be merciful to mankind, then Muslim jurists should take this into account when considering matters concerning women. However, the mediator on the case with many of the opinions of contemporary women will encounter extremism and harassment contrary to the above statement of the Prophet. This might be as a result of intolerance toward this doctrine, personal opinion, scientific subjectivity, or a fear of contemporary life, causing certain individuals to reject openness to the world and culture.⁹⁹ Thus, contemporary women's issues have come to possess a different nature, with a complex reality that necessitates a new doctrinal vision consistent with the origins of Sharia; to keep pace with developments affecting contemporary women's affairs; and to balance the rulings of Sharia with the requirements of contemporary reality, so that women can exercise their role as positive actors.

In the contemporary world, in accordance with the spirit of Sharia, women's right to work as judge should be reviewed. The *Ijma'* opinions cited above are found to be consistent with the Qur'an and the Hadiths. However, this thesis argues that women should have the right to work as judge under the limited scope of *Ijma'*. The limitations should take into account aspects related to the principles of the Islamic legal tradition (*‘Makassad al-sharia'*). Ignoring and excluding women altogether will be difficult in the contemporary world, and the challenges it brings.

⁹⁸Reported by Sahih Muslim, the Book of Divorce, Hadith no. 1478.

⁹⁹ For example, the veiling of women is a duty and definitively so, but the limits of the veil, how it is done? The permissibility of covering the face, lack of coverage, which colour is appropriate and other issues is a circular highly plausible debate. See Jen'nan Ghazal. Read and John. P. Bartkowski, 'To Veil or Not to Veil? A Case Study of Identity Negotiation Among Muslim Women in Austin, Texas' (2000) 14 Gender & Society 395; Katherine Bullock, *Rethinking Muslim Women and the Veil* (International Institute of Islamic Thought 2002) 85-218.

2.4 Women's Right to Work under Saudi Arabian Domestic Law¹⁰⁰

Under Saudi domestic law, the question is whether a woman's right to work allows her to work on an equal footing with a man in any field, or not. If not, in what fields is it considered acceptable for women to work?

The KSA is an Islamic state, and is governed by the Custodian of the Holy Mosques of Islam.¹⁰¹ The KSA applies Sharia as domestic law and the State; the people are subject to the demands of Sharia (de jure) in every aspect of their lives,¹⁰² and it serves as a guideline for all legal matters in Saudi Arabia. Thus, women, men and the State itself must respect the rule of Sharia. Therefore, all of Saudi domestic law, including labour law, or any other law of the state, must be derived from the Qur'an and *Sunnah*.¹⁰³

All articles of the Basic Law of Governance are informed by and based on the application of Sharia, in regard to both the State and individuals. Sharia is thus proclaimed unequivocally as the constitution of the State.¹⁰⁴ Therefore, the incompatibility of the Saudi system and Sharia, in terms of women's right to work, presents a paradox.

Women's fundamental right to work is inferred from Article 17 of the Basic Law of Governance, according to which, "Ownership, capital and labour are basic components of the economic and social entity of the KSA. They are personal rights which perform a social function in accordance with the Sharia."¹⁰⁵ Furthermore,

¹⁰⁰ The Kingdom of Saudi Arabia uses the term of *Nezam* rather than Sharia when referring to either domestic or local legal law. The terms are commonly conflated, but the Kingdom itself maintains that *Nezam* are not compliant with Sharia as the law terms originally came from Western legalese. See: Frank E Vogel, *Islamic Law and Legal System* (Brill 2000) 174-177 and 287-359.

¹⁰¹ The Basic Law of Governance no (A/90) March 1992, Art.24, chapter 4.

¹⁰² Ibid, Art. 7, Chapter 1.

¹⁰³ Ibid, Art. 1, Chapter 1.

¹⁰⁴ Abdullha M. Almutairi, 'The Domestic Application of International Human Rights Convention in Saudi Arabia and the Need to Ratify Conventions on Migrant Workers' (2018) 54 Middle Eastern Studies 48, 49-50.

¹⁰⁵ The Basic Law of Governance.

Article 28 states, “The State shall patronise sciences, letters and culture, it shall encourage scientific research”.¹⁰⁶ From these articles, the following can be concluded:

- Every Saudi citizen has a right to labour, with no restriction based on gender.
- The State must endeavour to regulate labour to make it easier to secure employment, and to protect workers and employers where necessary.
- All the provisions made in the Basic Law of Governance are applicable to both men and women, without any discrimination on the basis of sex.

Hence, it is pertinent to note that the major sources of the Basic legal system of Saudi Arabia come from Sharia doctrine. It is codified and embodied in the legal system of the country as a positive law.¹⁰⁷ It consists of the Qur’an and *Sunnah* which gives the basic principles from which the laws are set and promulgated in the Arab society. Now, taking into consideration women’s rights in the country, it is obvious that they are protected by Sharia; however, when it comes to the law, policy and practice, the whole paradigm changes. There are many factors which impinge on their rights at this point – these could be political, cultural, or based on the issue of “necessity”. Laws are there but there is a clear margin on their implementation in which religious interpretations are vastly abundant concerning the rights of women.¹⁰⁸ These issues are thoroughly discussed in the upcoming chapters.

The binding nature of Saudi Basic Law and other Laws in Saudi Arabia is religious.¹⁰⁹ Thus, divine law includes the sources of the Qur’an and *Sunnah* which are sovereign over these regulations of Saudi Arabia.¹¹⁰ While the law in Saudi Arabia is

¹⁰⁶ Ibid.

¹⁰⁷ Vogel (n100) 3-5.

¹⁰⁸ Joas Wagemakers, Mariwan Kanie and Annemarie van Geel, *Saudi Arabia between Conservatism, Accommodation and Reform* (Roel Meijer and Paul Aarts ed, Netherlands Institute of International Relations ‘Clingendael’ 2012).

¹⁰⁹ Seaman Bryant W, ‘Islamic Law and Modern Government: Saudi Arabia Supplements the Shari’a to Regulate Development’ (1980) 18 *Columbia Journal of Transnational Law* 413, 413-421; Vogel (n100) 3.

¹¹⁰ Muhammad Al-Atawneh, *Is Saudi Arabia a Theocracy? Religion and Governance in Contemporary Saudi Arabia* (2009) 45 *Middle Eastern Studies* 721.

positive law which is enshrined by the ruler, Saudi legislators introduced statutes and codes that were not contradictory with Sharia, which technically is divine law.

On the issue of Saudi women's rights, particularly the right to work, there is a need to distinguish between the law, policy and practice. The Saudi Basic Law and other laws in Saudi Arabia indeed are respecting and protecting women's rights.¹¹¹ Generally speaking, the issue is not from the law or Sharia 'divine law'; rather the issues lie within policy and practice.¹¹²

First, by 'the law' in this context, we mean Saudi law derived from Saudi Basic Law or others, such as the Civil Service System and the Labour law.¹¹³ These represent the legal foundation for the protection for individuals who must be respected, protected and free to fulfil their human rights. Second, in terms of policies, the government's policy is to implement these laws and ensure the rights are respected and protected. Finally, the practice outlines to what extent these legal provisions are applicable and comply with law and policy of the State. The issue in Saudi Arabia for Saudi women's right to work is complicated by different distinctions between legal ground, policy strategies and implementation from the State and practice. The State intends to issue a Royal Decree to implement women's rights in general as stated in their CEDAW report.¹¹⁴ While the law provisions and State policy indeed show plans to implement women's rights in Saudi Arabia, there are still practices that violate such rights.¹¹⁵ This indeed shows how far the State is non-compliant with practice within its law and policy.

¹¹¹ Saudi Arabia, List of issues and questions in relation to the combined third and fourth periodic reports of Saudi Arabia, CEDAW/C/SAU/Q/3-4 (2017),10.

¹¹² Amira Mashhour, 'Islamic Law And Gender Equality: Could There Be A Common Ground?: A Study Of Divorce And Polygamy In Sharia Law And Contemporary Legislation In Tunisia And Egypt' (2005) 27 Human Rights Quarterly 562, 562-565.

¹¹³ On the next section will examining Saudi women's right to work in the light of these laws.

¹¹⁴ CEDAW/C/SAU/Q/3-4 (n111) 23.

¹¹⁵ The obstacles and violent women's rights has examined on the next chapters.

The weak implementation of law and policy affects human rights-based approach principles. It has thus led to discrimination, inequality and lack of dignity for Saudi women, which opposes the foundational principles applicable to women's human rights.¹¹⁶ Consequently arguably, Saudi Arabia's law, policy and practice toward women in Saudi Arabia are breaching these foundational principles, inferring a gap between policy and the practice.¹¹⁷ Therefore, it is important to ensure that the law, policy and practice are consistent with the foundational principles applicable to women's human rights that fall under the supervision of the external monitoring bodies.¹¹⁸

2.4.1 The Saudi Civil Service System

In the KSA, most Saudi women work within the public sector rather than the private sector.¹¹⁹ Working in the public sector has certain advantages, such as higher salaries, better benefits, and greater job security.¹²⁰ The public sector is overseen by the Ministry of Civil Service, which is subject to regulations of labour.¹²¹ The regulations and laws set out by the Ministry of Civil Service provide equal employment rights to men and women, with the caveat that special considerations are given to women's particular needs – for instance the provision of certain amenities. Generally speaking, no distinctions are made on the grounds of sex in terms of nomination, transport, promotion and requirements.¹²² However, women in the KSA cannot be found in certain professions and positions, such as judges, ministers or even leaders in the

¹¹⁶ Chapter one has reviewed these principles on pages 33-38.

¹¹⁷ Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia, *Human Rights Watch*, 2008; CEDAW/C/SAU/Q/3-4 (n 111).

¹¹⁸ FRA European Union Agency for Fundamental Rights, *Handbook on European Non-discrimination Law* (European Court of Human Rights Council of Europe 2011) 38.

¹¹⁹ Jihad Fakhreddine and Travis Owen, 'Lure of Government Jobs for Saudis', *Business Journal* (20 Aug 2015).

¹²⁰ Eleanor Abdella Doumato, 'Women and Work in Saudi Arabia: How Flexible Are Islamic Margins?' (1999) 53 *the Middle East Journal* 568, 571.

¹²¹ The Civil Service System, issued by Royal Decrees No. (M/49) on 10/07/1397 AH, it entered into force on 01/08/1397 H.

¹²² See the regulation of appointment in the public sector issued by decision of Board of Civil of Service (1/92/) 2006, regulation of upgrade (1/686) 2001, regulation of executive (1) 1997, regulation of job duties (703/10800) 2007.

public sector; for example, as the head of an office.¹²³ This indicates a fundamental inequality with men, despite the proclamations of equal rights to appointment or nomination.¹²⁴ The civil service system does not state what kind of roles women are eligible to hold and which they are not, but the Sharia sources on this matter are followed according to Article 7 of the Basic Law of Governance. According to this Article, the State is committed to deriving its authority from Qur'an and *Sunnah*. Indeed, in the section examined earlier, no clear text could be found explicitly disallowing women's right to work in basic Sharia. Nevertheless, Saudi women have clearly been excluded from certain kinds of work. Despite this, the KSA states that it is committed to deriving its authority from primary Sharia sources.

With the exception of positions of public leadership, primarily expressed as an aversion to appointing female judges, most examples of women's exclusion from employment arise from cultural restrictions, such as in the cases of the absence of women in the armed forces and engineering, and prohibitions on them driving.¹²⁵ Some of these issues have been inflated beyond their legal and practical importance, to become key indicators of the conflict between conservatives and liberals within Saudi society, most notably on the issue of women driving; in this way, political issues have come to obscure the provisions of Sharia. In addition, women's structural unemployment in GCC states, where overemployment of men in the public sector is being used as a technique to create jobs and disburse oil revenues, further inhibits the employment of women.¹²⁶ The only practical resolution to such complex problems is to clarify and formalise women's right to work by codifying specific aspects of Sharia.

¹²³ Committee on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Discrimination against Women, fortieth session, Summary record of the 816th meeting held at the Palais des Nations, Geneva, on Thursday 14 January 2008 CEDAW/C/SR.816; Committee on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Discrimination against Women, Fortieth and forty-first sessions, on 16-20 July 2007 CEDAW/C/SAU/Q/2.

¹²⁴ Ibid, 10.

¹²⁵ Doumato (n 120) 568.

¹²⁶ The GCC's National Employment Challenge ><http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/07/31/the-gccs-national-employment-challenge/>> accessed 5 Nov 2017.

The process of appointing a judge in the KSA does not take place via the Civil Service System; rather it is subject to Judiciary law and Board of Grievances law.¹²⁷ Article 31 sets out the requirements of a judge as the following:

- Must be a Saudi national citizen.
- Be of good conduct.
- Be in possession of the full capacity to eliminate, as stipulated by Sharia.
- Obtain a certificate from one of the Sharia colleges in the Kingdom of Saudi Arabia, or other equivalent certificate, provided that he proves success in an exam prepared by the Supreme Judicial Council.¹²⁸

Some of the above conditions set out in Saudi judiciary law are not clear; for instance, the second condition requiring that a person must have ‘full capacity to eliminate as stipulated by Sharia’. This standard requirement is vague in terms of its use of ‘Sharia’; this chapter has already shown that Sharia sources do not provide a clear conclusion regarding a woman’s right to work. Hence, it is not clear how Judiciary Law can refer to ‘Sharia’ without specifying which *madhab* opinion is being followed in this matter, which would dictate whether or not a woman can be a judge. For stance, *madhab* Imam Abu Hanifah held the view that a woman can be judge on all matters excluding Hudud and Qisas.¹²⁹ Furthermore, Ibn Jarir al-Tabari and Ibn Hazam held the view that a women can judge on all cases.¹³⁰ Thus, if a woman under Sharia sources on difference status, then it is not clear why a Saudi woman could *not* be a judge. Regarding the fourth point stipulated in the Article, which requires that a judge must obtain a certification on Sharia, both men and women can study and obtain a Sharia qualification in the KSA. The law should be very clear: in the second paragraph, a woman not a concern through this law based to that *madhab* which excludes a woman from the juridical sector.¹³¹ Again, the law refers to Sharia without

¹²⁷ The New Law of Judiciary, Royal Decree No. (M/78), 19/09/1428 AH. This law has been amended

¹²⁸ Ibid, Art 31.

¹²⁹ Imam Abu Bakar Ala al-Din Kasani, *Bada'i as Sanai* (Arabic, Dar Al-Kutab Al-Elmia 1986) Vol.7, 3; Abu Abdullah Ḥaṭṭāb, *Mawāhib al-jalīl li-sharḥ Mukhtaṣar Khalīl* (Arabic, 1st edn, Dar Al Kotob Al Ilmiyah 2007) Vol.8, 65.

¹³⁰ Shirbini (n 66) Vol.6, 262; Alī ibn Ahmad ibn Ḥazm, *Al-Muhallaa bi'l Athaar* (Arabic, 1st edn, Maktabh Al kotob Al Ilmiyah 1997) Vol.8, 527.

¹³¹ See footnote 71.

clarifying specifically what Sharia texts apply to a woman employs in the judicial sector. The absence of a codified Sharia enables such vagueness to persist.

The Civil Service System fails to protect women's equal right to work in terms of appointment and/or nomination. Article 1 clearly states that merit must be the determinant of "the selection of staff for jobs in the public sector", yet women are only employed in the education and health fields of the public sector.¹³² Saudi women are not commonly employed in other fields, particularly in leadership positions.¹³³ It must be emphasised that this is due to the failure of the government to ensure this, as a result of the interplay between bureaucratic, political, cultural and religious factors. The KSA should take its obligations toward these restrictions more seriously. First, it is the role of the legislature – i.e. the government and Saudi Islamic scholars – to make legal provisions to address the discrepancies in women's employment in the KSA, in order to protect women and enable them to enact their rights to work. This could be achieved through cooperation between the government and Saudi Islamic scholars; for instance via the General Presidency of Scholarly Research and Ifta. Second, the Civil Service System must clarify what kind of work is and is not permissible for women, according to Sharia. Finally, Saudi Arabia's international human rights obligations must be considered, and the recommendations of the UN treaty monitoring bodies, such as the CEDAW Committee, must be implemented.¹³⁴

Al-Jarboa states that the employment of women in senior positions is not prohibited by the Civil Service System, but there is a general paucity of jobs, particularly in leadership positions.¹³⁵ Thus, even if society and political trends strongly urged the appointment of more women to senior positions, this could not be achieved without the prejudiced, and certainly politically problematic, laying-off of senior male personnel in ministries and offices, or the appointment of women to roles newly created for the sole purpose of employing them. As such, any genuine solution will

¹³² Doumato (n 120) 569-570.

¹³³ CEDAW/C/SR.816 (n 123) 10.

¹³⁴ Ibid, paragraphs 4,5,15 and 28.

¹³⁵ Aiob Al-Jarboa and Khalid Al-Mohisan, *Women Legal Status in the Kingdom of Saudi Arabia*, (*Al-wada Al-Kanoni ll-mara fi Al-Mamlak Al-Arabiya Al-Saudi*, Arabic, King Fahd National library 2010) 142-143.

need to be implemented over the long term, and be sensitive to political and social realities.¹³⁶

Thus, the KSA is held back by its cultural norms, when it could utilise Sharia provisions to advance women's opportunities. In reality, women are not given equal opportunities to men, and indeed the whole discourse of public life in Saudi Arabia is to prioritise men, except where women are explicitly considered.¹³⁷ The private sector cannot be expected to lead social change in the country; it is up to the State sector to drive changes in the fields of law, policing, security, engineering, leadership, politics, and ministries, from which women are barred, either through explicit regulation or through cultural norms and understandings. Sharia is in fact highly flexible, and varies according to local context.¹³⁸

The idea that jurisprudence is variable according to the prevailing conditions is currently being utilised to violate women's right to work in the KSA. The lack of codification of Sharia in regard to gender issues entrenches the ambiguity of the Saudi system and international obligations instruments. Currently, the efforts to advance women's employment involve appointments to military service, in prisons, immigration, and the General Directorate of Investigation (*Mubahht*)¹³⁹ sectors. However, the aversion to mixing of the sexes has created what substantive employment exists for women, in gender-specific facilities in which women employees are required to deal only with women. Hence, the Saudi Civil Service System should take temporary special measures that aim to accelerate the

¹³⁶ Amani Hamdan, 'Women and Education in Saudi Arabia: Challenges and Achievements' (2005) 6 *International Education Journal* 42, 42-43.

¹³⁷ Naomi Sakr, 'Women and Media in Saudi Arabia: Rhetoric, Reductionism and Realities' (2008) 35 *British Journal of Middle Eastern Studies* 385, 389.

¹³⁸ This difference refers to the different Islamic legal traditions applied in each State separately. See, Nisrine Abiad, *Sharai Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (British Institute of International and Comparative Law 2008) 57.

¹³⁹ This is one of the KSA departments of Ministry Interior. The national mission of the General Directorate of Investigation (GDI) is to boost security and stability of the Kingdom in co-ordination with other sectors. Ministry of Interior, the General Directorate of Investigation <<https://www.moi.gov.sa/>> accessed 03 Nov 2017.

improvement of the position of women, in order that they can achieve *de facto* or substantive equality with men.¹⁴⁰

2.4.2 The Impact of Saudi Labour Law on Women's Right to Work in the KSA

The private sector in Saudi Arabia is subject to the Ministry of Labour, and its regulations of Saudi and non-Saudi individuals.¹⁴¹ The legal status of women in the private labour system is considered in certain sections of Article 14 and Royal Decree (M/51) 2006.¹⁴²

In terms of women's matters, the Saudi Labour Law sets out special provisions, including the prohibition of women working in dangerous industries or roles, and safeguarding women's right to leave to give birth. Articles 149 to 160 of Saudi Labour Law relate specifically to women. Article 149 clarifies women's rights in relation to hazardous jobs or industries:

“Taking into consideration the provisions of Article (4) of this Law, women shall work in all fields suitable to their nature. It is prohibited to employ women in hazardous jobs or industries. The Minister pursuant to a decision by him shall determine the professions and jobs that are deemed detrimental to health and are likely to expose women to specific risks; in which cases, women's employment shall be prohibited or restricted under certain terms.”¹⁴³

Articles 149 and 150 prohibit women from working in certain kinds of jobs, on the grounds of protecting them, and further determine which roles are suitable for women, based on their gender. Prohibiting an individual's access to a certain kind of work based on their gender alone is insufficient. Some women will have the ability to

¹⁴⁰ General recommendation No. 25, thirtieth session, 2004, article 4 paragraph 1, Temporary special measures, para 26.

¹⁴¹ Saudi Labour has been issued by Royal Decree No. M/21 dated 6 Ramadan 1389 (15 November 1969) Decision of the Council of Ministers No. 745, dated 23/24 Sha'ban1389 (3/4 November 1969)> http://www.saudiembassy.net/about/country-information/laws/Labour_and_Workmen_Law-1of4.aspx< accessed 17 Nov 2017.

¹⁴² Article 5 of Labour Law determines the provision of labour, which the subject of this law is in 14 groups. See the Saudi Labour Law for more details. The law determines the provision for who is the subject of this law without making any distinction.

¹⁴³ Saudi Labour Law, Royal decree no. M/51, Part IX Employment of Women.

engage in prohibited jobs, but they are effectively prevented from making these decisions for themselves under the law. In addition, the phrase ‘suitable to their nature’, used in this Article, is not clear. While this phrase could be interpreted in different ways, it is clear that the law is trying to prevent women from working in roles perceived as hazardous. It is also, however, unclear what the standard of this prohibition of women’s employment is grounded on. In other words, the distinction between a man and a woman, upon which they are judged to be capable or not of being exposed to specific risks, is not explained.

For example, the Labour Law prohibits women from working at night, in Article 150:

“Women may not work during a period of night, the duration of which is not less than eleven consecutive hours, except in cases determined pursuant to decision by the Minister.”¹⁴⁴

The legislation has based this limitation on the social status of women. A woman could be a mother or wife, and thus has a responsibility toward her children and/or husband. Working at night may be detrimental to her health, and her children might have need of her care in the night.¹⁴⁵ Thus, the law makes a positive consideration with respect to women working at night, and the negative effects this might have either on her health or her social responsibilities. In addition, Saudi Labour Law created the Night Work Convention for women, which clarifies certain points regarding women working at night.¹⁴⁶ Article 150 of the Labour Law defines the period of ‘night’ in the Night Work (Women) Convention.¹⁴⁷ Also, the minister may make an exception for women who can work for a period during the night which meet with the above Convention directives.¹⁴⁸ However, this is not a restrictive rule forbidding women from working at night. In light of recent economic growth in

¹⁴⁴ Ibid. In contrast, the principle that women may not work during a period of the night has been approved by some GCC countries’ labour laws, such as Article (95) Bahrain Labour Law, no 36, 2012; Article (81) of the Omani Labour Law, Articles no. 101/96, 2003; 27 and 28 of the UEA Labour law, no.8, 1980; Article (33) of the Kuwaiti Labour Law, no.38, 1964.

¹⁴⁵ Giovanni Costa, ‘The Impact of Shift and Night Work on Health’ (1996) 27 Applied Ergonomics 9.

¹⁴⁶ Convention concerning Night Work of Women Employed in Industry (Revised 1948) (Entry into force: 27 Feb 1951) Adoption: San Francisco, 31st ILC session (09 Jul 1948).

¹⁴⁷ Ibid, Art. 2.

¹⁴⁸ Ibid, Art.5 (1).

different sectors, this has led to an increased need for people to work over continuous periods. The private sectors also need a labour force at night. Thus, the Labour Minister has issued this regulation that enables women to work with renewable needs. Under Article 150, the Labour Minister has the authority to make exceptions and authorise women to work at night in certain cases:

- If the role relates to health, charity, education or discipline.
- If the institute does not use a member of family.
- In case of force majeure and emergency.
- If it is necessary to prevent materials from being damaged.¹⁴⁹

In addition, under Article 151, female workers are entitled to maternity leave for ten weeks, for the four weeks immediately preceding the expected date of delivery, and the subsequent six weeks.¹⁵⁰ In addition, Articles 155 and 156 prevent employers from terminating employment or giving notice or warning of the same whilst a woman is on maternity leave.¹⁵¹ These Articles represent major breakthroughs in terms of women's rights at work. However, this law relates only to women who work, rather than being the intrinsic right of *all* women, and also does not relate to women's right *to* work in the first place. In addition, the law does not clarify why women cannot work in certain fields. A conflict is clear here in Article 150 alongside the exceptions of the labour minister set in regulation no (2838).

Some commentators, however, point out that the law tries to protect women from hazardous or dangerous jobs because of their nature as women and the principle of Sharia that life should be protected.¹⁵² Yet, the law affords no such protection to men. The law restricts only women, and those under the age of 18, but a man over the age of 18 is not restricted from dangerous work, such as in a mine or a quarry.¹⁵³

¹⁴⁹ Regulation of Saudi Labour Minister no. (1/2838), 2007.

¹⁵⁰ Saudi Labour Law, Royal decree no. M/51, Part IX Employment of Women.

¹⁵¹ Ibid.

¹⁵² Azizah Yahia Al-Hibri, 'Muslim Women's Rights in the Global Village: Challenges and Opportunities' (2001) 15 *Journal of Law and Religion* 37, 40-44.

¹⁵³ Saudi Labour Law (n 140) Part XII. Art, 186.

The Labour Ministry has issued a manual entitled *Women Working in the Private Sector Guide*.¹⁵⁴ The purpose of this guide is to provide a detailed plan and schedule of the Royal Decrees for urgent resolution in the short-term future, and solutions to address the increasing number of university graduates.¹⁵⁵ Thus, the Ministry of Labour is required to take certain necessary measures to implement procedures for women at work. The first part of the general rules set out in Article 1 has redoubled its information that to employ does not necessarily to have legal permission to employ women in private department.¹⁵⁶ This text asserts that women have the right to work in their own departments. In this way, the law is trying to encourage women to work separately from men, giving them the right to work if Sharia standards are adhered to, but specifically stating that the sexes do not mix.

However, Article 3 states that a “woman does not need permission from her male guardian to work’.¹⁵⁷ While this is clearly stated in the law, in practice, Saudi women do require permission. In reality, Saudi women cannot accept any job offer without first seeking permission from a male family member, either their father or their husband, if they are married.¹⁵⁸ The positive contribution of this text thus is only that it confirms that a woman does not need to seek permission; however, the law must stipulate that employers must not ask women to seek permission from their legal guardian. This would enhance Saudi women’s right to work, providing them with a genuine free choice.

Article 6 prohibits the seclusion of men and women in the workplace. However, critically, this text does not clarify what the limitations of such seclusion are, and what is acceptable. There are some jobs that require men and women to mix; thus, the law should clarify what is unacceptable under Sharia.¹⁵⁹ Sharia sources are vague on

¹⁵⁴ Women working in the Private Sector Guide, first edition ‘WWPSG’, Muharm 1435 AH <<http://portal.mol.gov.sa/ar/DocLib1/%D8%AF%D9%84%D9%8A%D9%84%20%D8%B9%D9%85%D9%84%20%D8%A7%D9%84%D9%85%D8%B1%D8%A3%D8%A9.pdf>> accessed 04 Nov 2017.

¹⁵⁵ Royal decree no. A/121 on (2/07/1432 AH).

¹⁵⁶ Ibid, Art, 1/1,1.

¹⁵⁷ Ibid, Art, 1/1, 3.

¹⁵⁸ Human Rights Watch, ‘Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia’ (2008).

¹⁵⁹ See chapter three, section regarding seclusion, for more details.

the matter of seclusion. In addition, most advocates of women's rights are so preoccupied with the issue of sex-segregation that they fail to take into account other issues, such as sex-segregation by type of employment.¹⁶⁰

Article 160 states that, "a female worker whose husband passes away shall be entitled to a fully paid leave for a minimum period of fifteen days as of the date of death". This article conflicts with the Sharia concept of *Iddah*¹⁶¹, according to which women must not leave the house during this period for four months and ten days.¹⁶² It seems that this Article applies only to non-Muslim women. In addition, Saudi Civil Law, regarding the regulation of vacations, states that "a woman has the right to have vacation with full payment if her husband has died."¹⁶³ This provision of Saudi Civil Law does correspond with Sharia, unlike Saudi Labour Law.

In terms of dress requirements for women, women are obliged to wear the Hijab, as required by Sharia.¹⁶⁴ However, the text is vague as to whether employers can *ask* women to follow the Hijab dress code of Sharia. As such, this is a matter of debate.¹⁶⁵ However, the law might be intended to refer to 'dress code of hijab in Sharia' which is a common practice in the KSA. This is potentially critical to the law which has not adjusted what Sharia rules concerning which style of Hijab women should be obligated to wear in the work place.

The Labour Law clearly singles out female employers as distinctive from men, but ultimately serves to entrench the suppression of women's employment in many fields, due to the perception that the Ministry has a duty to protect women rather than to advance their employment. For instance, a well-known Ministry of Labour strategy

¹⁶⁰ Sifa Mtango, 'A State of Oppression? Women's Rights in Saudi Arabia' (2004) 1 Asia-Pacific Journal on Human Rights and the Law 49, 55-75.

¹⁶¹ The period of mourning a woman whose husband has died must observe 4 months and 10 days if she is not pregnant. For more, see: Shaykh Muhammad Saalih Al-Munajjid, *Widow Observing 'iddah Going Out Due to Necessity* <<https://islamqa.info/en/101546>> accessed 05 Nov 2017.

¹⁶² Qur'an 2:234.

¹⁶³ Regulation of Vocation, Civil Service Committee no. (1/1037) on 15/5/1426 AH, art, 21.

¹⁶⁴ WWPSG (n 154) art, 1/5,1.

¹⁶⁵ See: Shaykh Muhammad Saalih Al-Munajjid, *Verses and Hadeeth about Hijab* <<https://islamqa.info/en/13998>> accessed 05 Nov 2017; Shaykh Muhammad Saalih Al-Munajjid, *Correct Hijab* <<https://islamqa.info/en/6991>> accessed 05 Nov 2017.

was to employ females in lingerie shops, in order to protect customers from the unwanted attention of male shop personnel.¹⁶⁶ Many regulations were issued with the aim of making all lingerie shops female-only.¹⁶⁷ This led to a cascade of erratic and uncoordinated decisions by the Minister of Labour to organise women in the labour market.¹⁶⁸

However, a number of obstacles continue to hinder Saudi women's full participation in the labour market.¹⁶⁹ Official statistics of the *Hafiz* system indicate that most applicants are women.¹⁷⁰ The unemployment rate for Saudi women is significantly higher than that of Saudi men.¹⁷¹ Thus, the solution to this issue must be a legal one, specifically the involvement of women in the Saudi labour market, on an equal basis to men. To this end, something similar to the resolution the KSA made to 'Saudiize' the workforce, might be instigated for Saudi women, to help them to engage fully and legally in the Saudi labour market.

The overall picture that emerges is that the legislative framework enables Saudi women to work, but only on terms dictated by Saudi cultural norms.¹⁷² It has been highlighted in this chapter that women cannot work in professional roles, due to the restrictions of the Labour Law and the power of ministerial decisions, whereas they are welcomed in educational roles, teaching other females.¹⁷³ The Labour Minister's

¹⁶⁶ See the planning of Minister of Saudi Labour to feminisation, all shops for women's necessities, by females. Decision Minister no. (1/1/2473/A) on 2010.

¹⁶⁷ Saudi Arabia to enforce law for women-only lingerie shops <<http://www.theguardian.com/world/2012/jan/02/saudi-arabia-women-only-lingerie>> accessed 4 Nov 2017.

¹⁶⁸ Minister Decision no.(1/1/3732/A), 2011; Minister Decision no.(1/1/3729/A) 2012; Minister Decision no.(1/1/3731/A),2012; Minister Decision no.(1/1/3730/A),2012; Minister Decision no. (2702) 2014.

¹⁶⁹ See: The World Report about Saudi Arabia by Human Rights Watch 2013, regarding the rights of women and girls <<http://www.hrw.org/world-report/2013/country-chapters/saudi-arabia>> accessed 4 Nov 2017; see also, chapters three and four where this thesis has allocated it to other chapters.

¹⁷⁰ Hafiz is a national program established by the government to help the unemployed find work. See Hafiz official website <<https://www.hafiz.gov.sa/HRDFWeb/About.html>> accessed 1 Nov 2017.

¹⁷¹ Mona Almunajjed, *Women 's Employment in Saudi Arabia a Major Challenge* (Booz& Company 2009).

¹⁷² See chapter three. It examines Saudi cultural mores, affecting Saudi women's right to work in the KSA.

¹⁷³ Minister's Decision No. (2834/1), 2002 determined three types of business women are not allowed to work in, unless specifically permitted to by their employer: 1- Mines, quarries and other works related to the extraction of materials from the earth; 2- Industries in which they are converting

decisions restricting the zones of potential employment for women are based on the Saudi Council of Ministers No. 120 of 2004 and Royal Order no. (A/12) of 2011, both of which attempt to provide a quick-fix, short-term solution to the employment crisis created by increasing numbers of graduates.

However, the increasing number of female Saudi graduates, and the nationalisation policy, whereby firms in the private sector are compelled to hire a certain proportion of Saudi nationals, is changing the potential employment scenario for women. Increasing numbers of Saudi female graduates in numerous fields are strong candidates for professional roles in the private sector, roles hitherto occupied by foreign workers.¹⁷⁴ Thus, the Labour Minister decrees have also played a positive role in terms of organising programmes to promote the employment of Saudis rather than of foreigners.

A clear disconnect can be identified between the positive role of the government in establishing programmes and initiatives, and its moribund or negative role in issuing legislation. In other words, the government strategies seem aimed towards actively encouraging women to pursue their right to work, rather than creating a legal framework that is conducive to women's employment as a passive system. This reflects the ad hoc nature of government regulation for such issues, which can be attributed to the lack of codification of Sharia mentioned previously. However, such government programmes will be ineffective without corresponding issuance of regulations, laws and decisions.

This is why the intrinsically straightforward issue of women's right to work has been debated and stalled in the KSA for many years, because official directives or initiatives do not have legislative power and protection. Furthermore, most previous studies of women's employment in the KSA have fallen under the umbrella of other

materials for power generation, conversion and transport; and 3- Work in sanitation or combinations, gas distribution and petroleum derivatives.

¹⁷⁴ Saudi Women Unhappy with Feminisation of Lingerie Stores
<<http://www.arabnews.com/news/466776>> accessed 1 Nov 2017.

disciplines, such as sociology or economics, rather than human rights.¹⁷⁵ Scholars in the KSA should thus take more serious steps toward studying Saudi women's right to work under Sharia, using secondary Sharia sources, such as *Ijthâd* and *Qiyâs*, in order to ensure that the interpretation and application of Sharia in the KSA is consistent with KSA's international human rights obligations. The KSA's obligation must be respected under Sharia. As such, the Saudi government must issue, implement and enforce legislation promoting equal protection of women's right to work.¹⁷⁶

2.5 The Saudi Arabia's Vision 2030 Goals to Achieve International Obligations

King Salman Bin Abdulaziz Al Saud became the Head of State on 23 January 2015 upon the death of Custodian of the two Holy Mosques, King Abdullah. He has since established a new strategy in order to develop of the State.¹⁷⁷ He issued a Royal Order to establish two new councils for developing the state. The Council of Economic and Development Affairs has set a national plan to be achieved by 2030. This Council will contribute to the development of Saudi Arabia, which aims to become a global investment powerhouse,¹⁷⁸ dependent not upon oil but on developing human capital and attracting foreign investment, and trying to produce rather than receive. Generally speaking, the Saudi vision has covered many points regarding the development of the country, and women's issues have been considered within this.

The Saudi vision refers specifically to 'providing equal opportunities' for everyone – men and women. This has implications for the implementation of women's right to work and freedom of movement, etc., by the Saudi vision's emphasis on the Saudi economy to provide opportunities for everyone. As such, the vision encourages the

¹⁷⁵ See Salman Saleh Al- Dehailan, 'The Participation of Women in Saudi Arabia's Economy: Obstacles and Prospects' (PhD thesis, University Durham 2007); Philippe Fargues, 'Women in Araba Countries: Challenging the Patriarchal System?' (2003) 13 *Reproductive Health Matters* 43; Al-Mounajjed (n 171); Sanja (n 3) 2.

¹⁷⁶ Ibid.

¹⁷⁷ 'Profile: King Salman Bin Abdulaziz Al-Saud' (*Aljazeera*, 23 January 2015) <<http://www.aljazeera.com/news/middleeast/2015/01/prince-salman-bin-abdul-aziz-al-saud-2015168325196385.html>> accessed 22 Nov 2017.

¹⁷⁸ See: the Saudi Arabia's 2030 vision <file:///acfs4/lwpg/lwpgghaa/Downloads/Saudi_Vision2030_EN.pdf> accessed 22 Nov 2017.

contributions of all, to the best of their abilities.¹⁷⁹ With more than half of the Saudi population being below 25 years old, it is possible to involve them in the Saudi visions in order to achieve success.¹⁸⁰

One of the Saudi vision goals is to provide equal opportunities in every aspect. The government has stated in its vision that:

*“Saudi women are yet another great asset. With over 50 percent of our university graduates being female, we will continue to develop their talents, invest in their productive capabilities and enable them to strengthen their future and contribute to the development of our society and economy”.*¹⁸¹

The vision goals state that over 50% of the Saudi universities’ students are female, which has a large influence on the Saudi labour market. This may help the country to respond to international human rights reports, such as Human Rights Watch, by showing that Saudi Arabia is changing. Furthermore, Saudi women’s right to work can be enhanced by providing them with more education opportunities, and enabling them to be better prepared for the labour market.

The National Transformation Programme 2020 can enhance the Saudi Vision 2030 to be successful.¹⁸² The purpose of this programme is to recognise national overall directions, policies, goals, and aims, working through twenty-four government bodies operating in the economic and development sectors. The programme makes reference to key points regarding women’s right to work, related to the public sector and how to develop women’s right to work in it. The Civil Service Ministry’s plan to empower women to reach their potential in this sector, and has stated initial targets to be achieved by 2020, including a target to increase the percentage of the Civil Service workforce to be female from 39.8% to 42%.¹⁸³; and an increase in females occupying top positions (Grade 11 and above) to 5% from the current 1.27%.¹⁸⁴ While not at particularly high levels, these targets constitute a good start, and meet the

¹⁷⁹ Ibid, 37.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² See the National Transformation Program 2020
<http://vision2030.gov.sa/sites/default/files/NTP_En.pdf> accessed 17 August 2017.

¹⁸³ Ibid, 44.

¹⁸⁴ Ibid.

requirements of equality. In addition, the transformation programme does not include a clear strategy to empower the Saudi women in this sector by enforcing the law in this sector. Generally speaking, the programme focuses on the empowerment of women, but its vision is vague. The Kingdom of Saudi Arabia, in its official report, states that:

*“to develop and continually affirm the increasing participation of human resources, raise efficiency by means of training and upgrading to meet the demands of the national economy....”*¹⁸⁵

Neither the report nor the Saudi vision is consistent or clear about targets or how to achieve them. Unequivocally, the presented plans omit the legal aspect to address women’s right to work in the Kingdom of Saudi Arabia, as they do not consider the CEDAW recommendations. Although the government has a new strategy to encourage Saudi workers into the private sector, with a target of 50% private-sector employment by 2020,¹⁸⁶ the plan does not focus on women as hoped. For example, strategic objective 8 of the transformation programme is to provide suitable jobs for citizens. The current baseline of female employment is 23%, and the target is to achieve a 28% proportion of the labour force to be female.¹⁸⁷

The transformation programme does specifically refer to the limited access issue, examined in chapter four, which recognises that limited access to higher education is an obstacle to women’s right to work in Saudi Arabia. However, it did not specifically address Saudi women’s issues in relation to limited access to higher education, where Saudi women are prohibited from some fields.¹⁸⁸ Therefore, the Saudi government should consider this important aspect in order for Saudi women to gain qualifications, thus making them more appealing to the labour market.

¹⁸⁵ Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of Discrimination against Women, CEDAW/C/SAU/2, (2007) part 1.

¹⁸⁶ The National Transformation Program (n 182) 56.

¹⁸⁷ Ibid.

¹⁸⁸ For more about this issue, see chapter four, this thesis, sections 4.3, 4.3.1, 4.3.2, and 4.4.3.

2.6 Codification of Sharia

There are two perspectives on the codification of Sharia, which in turn focus on the advantages and disadvantages of this system. Codification of Sharia in Saudi Arabia might be seen as an issue focused on the protection or clarification of rights or, where referred to in Sharia resources, as the lack of clarity regarding the rights and obligations that people have.¹⁸⁹ One of the key issues in Saudi Arabia has been the reservations expressed regarding international instruments that appear to be reinforced by Sharia.¹⁹⁰ It has been noted that substantive articles of Sharia have not yet been subject to codification. Thus, most hard-line points regarding substantive articles of Sharia cannot yet be clear to international bodies. For instance, the Kingdom, when referring to CEDAW, has expressed the following general reservation: “In case of contradiction between any term of the Convention and the norms of Sharia, the Kingdom is not under any obligation to observe the contradictory terms of the Convention”.¹⁹¹ As, Desphande states, “It is unfair to characterise Islam as an ‘evil’ or anti-women religion”.¹⁹² Criticising Sharia for being ‘anti-women’ indicates a misunderstanding of Sharia, and exposes it to unfair blame.¹⁹³

The idea behind the codification of Sharia is to transform Sharia from an unwritten constitution of Saudi Arabia to a formalised written code. It might be possible to do this by utilising secondary sources of Sharia, such as *Ijihad*, which is a common method amongst jurists. Indeed, such of Sharia method not easy to codify.

It does follow, however that there is a divergence between the academic model of Sharia and the rights and duties protected in practical Saudi law. The highest religious

¹⁸⁹ Committee on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Discrimination against Women, fortieth session, Summary record of the 816th meeting held at the Palais des Nations, Geneva, on Thursday, 14 January 2008, CEDAW/C/SAU/CO/2.

¹⁹⁰ Ibid.

¹⁹¹ Declarations, Reservations and Objections to CEDAW

<<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 2 Nov 2017.

¹⁹² Purva Desphande, ‘The Role of Women in Two Islamic Fundamentalist Countries: Afghanistan and Saudi Arabia’ (2001) 22 Women’s Rights Law Reporter. 193, 195.

¹⁹³ Ibid.

body has given the green light to codify most unwritten Sharia regulations;¹⁹⁴ however, the Sharia position in the case of conflict must be clarified.¹⁹⁵ On the other hand, there is no constitutional court to judge on such contradictions, because of the immutability of Sharia and the State claim that is on that law.¹⁹⁶ There have been numerous calls for the codification of Sharia, specifically to devise a basic codex that sets out all the rights and duties in the KSA.¹⁹⁷ However, this would be unacceptable to most scholars, as it negates the principle that verdicts are dependent on their individual context, and thus can vary according to time, place, and other circumstances. In short, the ambiguity of the current *modus operandi* gives the government and the judiciary flexibility which is what has enabled the unequal application of women's right to work.¹⁹⁸

Such legislation as exists pertaining to women's employment in the KSA can be found in Saudi Domestic Law, Labour Law and other articles. Clearly, there are numerous deficiencies in these instruments, but men's and women's rights generally are represented. For instance, the Saudi Basic Law, which is discussed in chapter five, highlights the rights and duties of the State toward its citizens,¹⁹⁹ including in cases

¹⁹⁴ Saudi to codify Sharia 'for clarity' (*The National World*, 2011) <<http://www.thenational.ae/news/world/middle-east/saudi-to-codify-sharia-for-clarity>> accessed 1 Nov 2017.

¹⁹⁵ This is one of the issues that Saudi Arabia has with ratifying the Convention against All Forms of Discrimination against Women on 7th of September with the following reservations:

- 1- In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.
- 2- The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention." See UN Human Rights Treaty chapter IV <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec> accessed 1 Nov 2016.

¹⁹⁶ Karl David J, 'Islamic Law in Saudi Arabia: What Foreign Attorney's Should Note' (1992) 25 *George Washington journal of international law and economics* 135.

¹⁹⁷ See the experience of Maldivian to codification of Criminal law with international law: Paul H Robinson, *Codifying Shari'a: International - Norms, Legality and the Freedom to Invent New Forms*, - University of Pennsylvania <https://www.law.upenn.edu/fac/phrobins/books/CLRG_11%203%2006%20SNT.pdf> accessed 1 Nov 2017.

¹⁹⁸ Abdulrhman Al-Shatry, *Codification of Sharia between Analysis and Prohibition*, (Dar Alfadilh, 2006); Islamic Law in Saudi Arabia, Saudi Arabia gets ready to put order in its courts <<http://cnpublications.net/2011/02/25/islamic-law-in-saudi-arabia/>> accessed 1 Nov 2017.

¹⁹⁹ *Ibid*, see chapter 5 on art, 25, 26, 27, 28, 30, and 31.

pertaining to disagreement between jurists.²⁰⁰ However, the problems facing women are primarily attributable to the lack of codification of Saudi law, which omits women's rights generally, with no particular law or chapter which is concerned specifically with the requirement to protect, respect and fulfil. The only thing that can be found in this regard is Article 26 of Saudi Basic Law, which asserts that the State has an obligation to protect human rights, according to Sharia. However, this article is widely criticised, as it not clear exactly what 'according to Sharia' means. Thus it supposed to be clearer by enacting other laws or chapters concerning human rights for individuals according to Sharia.

The Kingdom recognises Sharia as the only source of legal authority in Saudi Arabia. The scope of the present study is such that it will not be possible to discuss this matter in detail, as it is not the subject of the study, which specifically focuses on women's right to work. Thus, when the codification of Sharia is referred to in this study, it is only as applies to women's rights.

In general, such a project would be created as one part. It must be a completely integrated system, intended to help all parts. It might be, as stated above, one solution amongst many, intended to clarify the rights and obligations under Sharia through full codification. However, this project has thus far been neglected, and is a source of huge divisions amongst scholars.²⁰¹ Zanki concludes that "the Arab and Muslim countries to make a further step and revise their codes or amend their legal system in the light of Sharia".²⁰² As such, all Muslim countries should work together to produce a uniform law based on Sharia, through the harmonisation of Sharia and positive law.²⁰³

²⁰⁰ Who disagrees with such ideas, that their argument based on codification will avoid the door of *Ijithad* which is one of the Islamic legal doctrines? See: Al-shatry (n 198); Islamic Law in Saudi Arabia, Saudi Arabia gets Ready to Put Order in its Courts <<http://cnpublications.net/2011/02/25/islamic-law-in-saudi-arabia/>> accessed 1 Nov 2017.

²⁰¹ See: Najmaldeen K. Kareem Zanki, 'Codification of Islamic Law Premises of History and Debates of Contemporary Muslim Scholars' (2014) 4 International Journal of Humanities and Social Science 127.

²⁰² Ibid, 135.

²⁰³ Ibid.

The issue of women's right to work in Saudi Arabia, as it relates to the various provisions and sources of Sharia, has not yet been studied by authorities, such as scholars or judges. Different opinions are usually established through *Ijihad*. Thus, codification of Sharia is an ideal solution for several reasons. First, it will help women to know and understand their rights under Sharia, in written form. It will also serve to clarify, at an international level, what rights women have under Sharia. In addition, it would help the State to ratify relevant international treaties with clear reservations, instead of the general reservation expressed at the CEDAW.

The need for codification of Sharia is an important consideration in light of present global relations.²⁰⁴ It is could be not work-codification - at one side to whom conservative parties. By contrast, this might be work who called to that. Women's issues in the current context commonly involve rights that are not clear, nor protected; thus, it is necessary to codify Sharia in order to safeguard and guarantee women's rights. Regarding women's right to work in Saudi Arabia and the codification of Sharia, the latter can help to determine the conditions and nature of prohibited roles. Once women in Saudi Arabia understand their right to work more clearly, this may resolve some of the issues discussed above; it will also help to prevent abuse from men, which are typically due to a misunderstanding or mis-application of Sharia, arising from a flawed understanding of the same. As such, present-day reality calls for the introduction of much needed legislation through the codification of Sharia.

2.7 Conclusion

After reviewing Sharia sources on women's right to work, it is clear that women do have a basic right to work. However, a woman's right to work in reality is subject to certain limitations stipulated by Muslim jurists, based on the *ijma'*. Generally, these limitations are considered to apply to women, although they in fact govern interactions between parties and responsibilities laid upon them, as women, by Sharia. This may create potential conflicts with international (i.e. post-industrial Western)

²⁰⁴ Anver M Emon, 'Shari'a and the Modern State' in Mark S Ellis, Anver M Emon and Benjamin Glahn (eds), *Islamic Law and International Human Rights Law* (Oxford University Press 2012).

norms concerning gender roles. However, both the Western and Sharia perspectives on women's employment rights are motivated by a sense of the principle of justice, although they differ in terms of what they perceive to be the best way to achieve this.

Aside from academic legal issues and jurisprudence, women's right to work is a real and pressing issue in the KSA, and most of the discussion revolves around the interpretation and application of Sharia and Saudi law, and culturally sensitive issues. Furthermore, the lack of codification in Sharia as implemented in the KSA prevents any serious legal reforms improving the position of women in work.

In terms of Sharia itself, no Islamic text categorically prohibits women from working *per se*; rather, it stipulates certain general principles that must be observed. In fact, the issues with women's right to work arise mainly from the restrictive application of Sharia provisions. *Ijthad* is an important and commonly used method in Sharia. In this way, it might be possible to develop women's right to work in the KSA to fit the needs of the current labour market. The advantage of '*Ijthad*' to contemporary jurists is that it is a flexible method. Undoubtedly, in most Muslim states, and particularly the KSA, women's right to work has been circumscribed by custom, tradition and other socioeconomic factors, rather than by Sharia. Thus, it is important to move away from blaming Sharia, and instead be critical of those who mis-apply Sharia, or who separate Sharia and these factors. Codification of Sharia is one of the most important early steps that can be taken in this regard.

Sharia imbues both men and women with rights and responsibilities that are designed to be generally applicable to all times and places. The general right of women to work is immutable, as long as the general limitations of Sharia are met; however, the application of this right in different times, places, and cultures changes. Throughout history in the Arabian Peninsula, most women have been engaged in some form of work other than raising children, for instance animal husbandry, textiles manufacture, and even petty trading. It is only during the twentieth century, as a result of specific economic factors, that most indigenous women have become cloistered and excluded from the realm of work. In this context, it is time to reconsider the issue of women's right to work as a judge, which has been subject to certain limitations under *Ijma'*, in

this era of change. However, this cannot happen unless the classical opinions are updated to become consistent with the present age.

Under Saudi Law, women's right to work is subject to the local interpretation of Sharia. While Sharia does not forbid women the right to work, and the Civil Service System, Labour Law and the Governance Law emphasise their compliance with Sharia, in practice women are barred from numerous areas of employment, either through a substantive, if debatable, Islamic decree, for example being prevented from being judges, or due to cultural norms with little, if any, basis in Sharia, such as their effective exclusion from the armed forces. Thus, politically and socially determined government measures are veiled in declarations of Sharia-compliance, when in fact Sharia is more complex and, in many cases, more permissive than is being claimed.

In the era of the globalised economy, the KSA remains cripplingly dependent on oil revenues, and its male population on lucrative and ineffectual State-sector employment, with native women constituting a leisure class of conspicuous consumption. The urgent need for economic diversification and increasing over-population requires that the right of women to work be accelerated in legislation, drawing on the heritage of Sharia to provide culturally sensitive but innovative solutions for the modern knowledge economies, which the KSA aims to become. Sharia requires that women be enabled to enact their rights and contribute to society, rather than being passively protected. More open-minded (i.e. less culturally determined) readings of the provisions of Sharia can enable women to work in a situation of equality and justice. By integrating genuine social reform and the advancement of women's rights within the framework of Sharia, what would otherwise be perceived as a universalist neo-colonial agenda can be perceived as a cultural reset appealing to all sectors of Saudi society, by advancing women's employment rights within a Sharia framework, which can be achieved through a codification of Sharia.

3 Chapter Three: Examining Religion and Culture as Barriers to Women's Right to Work in Saudi Arabia

3.1 Introduction

In general terms, women's human rights have been a serious cause for concern for a long time, and continue to be in the present day. Women's issues have both international and local significance; however, women's right to work in Saudi Arabia is a matter of more specific concern, in light of changing global values, globalisation, changing economic circumstances, and an increasing awareness amongst women of their need to participate in economic developments.

In the previous chapter, women's right to work was discussed in reference to Sharia and Saudi Law, examining women in work using primary and secondary sources relating to aforementioned Sharia and Saudi Law. The present research has already demonstrated that women's right to work does exist under these systems, and is, in principle, protected. Nevertheless, in practice, women in Saudi Arabia have struggled to enjoy equal rights to men, particularly with regard to their right to work, which is the topic of this study. For this reason, this chapter aims to identify and examine the role of religion and culture, two factors that play a very important role in determining women's rights in Saudi Arabia.

The chapter is divided into four sections. Section 1 introduces religion and culture in Saudi Arabia. Section 2 examines the religious barriers to women's right to work in Saudi Arabia, and Section 3 discusses the effects of culture on women's right to work in Saudi Arabia. The final section sums up the arguments and analysis of this chapter.

3.2 Religious Interpretations as a Barrier to Women's Right to Work in Saudi Arabia

Religion is an important factor to take into account when considering the issue of women's rights, especially in Saudi Arabia, where religion is not only a set of

personal or individual beliefs, but forms the basis of the law of the Kingdom.¹ In addition, the Islamic religion dictates not only what one believes, but also how one must conduct oneself.² For this reason, it is essential to consider religion, Islam specifically, when examining all aspects of women's rights in the Kingdom of Saudi Arabia. Religion is at the heart of all issues in Saudi Arabia; Wagemakers states that "The 1979 rebellion saw a greater public display of religiosity by the state, more control over civil society by both the government and the official 'Ulama', increasingly limited rights for women, and a broader mandate for the State's Islamic scholars".³

It is true that, as Peñalver states, the concept of religion is regularly used and commonly understood in everyday language, and not a vague term in need of a technical definition.⁴ However, the Human Rights Committee has clarified that "a religion is recognised as a State religion, or that it is established as official or traditional, or that its followers comprise the majority of the population".⁵ For example, in the KSA, Islam has been established as the religion of the State.⁶ Thus, the religion influences the laws of the State, the prevalent beliefs, the prevailing culture, and community life and practices. It is not necessary for the individuals or the State to interpret the religions into domestic law or culture correctly.

The relation between Sharia and women's role in the home may have a Qur'anic foundation, specifically the verse by An-Nisā, which states that "men [are] in charge of women". In fact, this part of the verse has been interpreted in various different

¹ Roel Meijer, 'The Gender Segregation (*Ikhtilāf*) Debate in Saudi Arabia: Reform and the Clash Between 'Ulamā' and Liberals' (2011) 30 *Journal of Islamic Studies* 2; Seaman Bryant W, 'Islamic Law and Modern Government: Saudi Arabia Supplements the Shari'a to Regulate Development' (1979-1980) 18 *Columbia Journal of Transitional Law* 413.

² Donna E. Arzt, 'The Application of International Human Rights Law in Islamic States' (1990) 12 *Human Rights Quarterly* 202.

³ Joas Wagemakers, Mariwan Kanie and Annemarie van Geel, *Saudi Arabia between Conservatism, Accommodation and Reform* (Roel Meijer and Paul Aarts ed, Netherlands Institute of International Relations 'Clingendael' 2012).

⁴ Eduardo Peñalver, 'The Concept of Religion' (1997) 107 *the Yale Law Journal Company* 791, 791.

⁵ Human Rights Committee, General Comment 22, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994), para 9.

⁶ The Basic Law of Governance, Royal Decree No 90/A, 1 March 1992, Art. 1.

ways by different Muslim scholars and commentators.⁷ However, none of these interpretations takes the verse to imply that a woman's place is at home. The religious interpretations, by interpreting these verses regarding a women's place being in the home, in support of the view that only man has the right to go out and work, in order to provide for his family.⁸ In fact, interpretation (*tafsir*) of this verse leads to the revelation of more meanings and different perspectives in relation to women's rights, in accordance with proper Muslim interpretations. Thus, if these texts or verses are incorrectly employed in the wrong circumstances, or based upon limited knowledge, this can only create confusion about women's rights generally, or more specifically. For instance, when Ibn Kathir states that "the man is responsible for the woman, and he is her maintainer, caretaker and leader..."⁹, this does not necessarily imply that a woman's place is at home. By contrast, one alternative interpretation of this verse is that it is the man who is in charge of the family, not the woman. It should be noted that the remainder of the verse in question concludes that this is "because Allah has made one of them to excel the other".¹⁰

In order to clarify the issue of a woman's 'rightful place', the following two points must first be considered. First, the religion 'Sharia; second, the other one arises, *inter alia*, from misconceptions, from misunderstandings, and from a patriarchal culture that, for instance, sees women's place as being at home. The ideology behind women's place being at home as a society classifies women in this class.

The use of religion, or Islamic legal precedents or texts to further personal interests and in the name of religion involves an incorrect reading or interpretation of Sharia. For instance, where Sharia states that a woman's place is at home, what it means is that it is in her best interests for this to be so, and for the man to be in charge of the

⁷ Mohammed Kaosar Ahmed and Sultana Jahan, 'Feminist Discourse and Islam: Critique' (2014) 6 International Review of Social Sciences and Humanities 1; Azura Omar and Marilyn J. Davidson, 'Women in Management: A Comparative Cross-Cultural Overview' (2001) 8 Cross Cultural Management 35, 46-48.

⁸ Tafseer ibn Kathir, Vol.4, 34.

⁹ Ibid.

¹⁰ Qur'an 4:34.

family.¹¹ Going further, to interpret Sharia in line with personal convictions invites accusation and blame to Sharia itself. Thus, one must be very careful when citing or using Sharia texts to interpret and apply them correctly, rather than doing so in a general context, or according to individual understanding. Islamic scholars take on this burden, clarifying the rights and duties under Sharia, in order to protect women from wrongful social application or practice of Sharia.

It should be noted that women have worked outside of the home throughout Islamic history, alongside men. In addition, there is no textual legal evidence disputing women's right to work, other than prohibiting immodesty and mixing with unrelated men.¹² Thus, varying interpretations of religious text and doctrine have given rise to a plethora of women's rights issues. Specifically, the barriers to women's right to work in Saudi Arabia arise from the following religious concepts: *Mahram*, *Ekthlat* and *Kalwah*.

3.2.1 The Impact of Interpretations of the Religious Concept of *Mahram* in the KSA

The concept of *mahram* is an essential starting point, due to its importance. This concept is derived from *Sunnah* and *Fiqah* ('second source'). The term *mahram* is not found in the Qur'an, either in the text or in context. Nevertheless, the *tafsair* ('interpreters') of the Qur'an developed the concept of *mahram* based on verses of the Qur'an. By definition, a woman's male *mahram* is any person whom she is not allowed to marry, for instance because they are already close relatives of hers, such as a father, son, uncle, or brother.¹³ This means, in effect, that any person who is not

¹¹ Dina Mansour, 'Women's Rights in Islamic Shari'a: Between Interpretations, Culture and Policies' (2014) 11 Muslim World Journal Human Rights 1, 3-14.

¹² Salman Salah Al-Dehailan, 'The Participation of Women in Saudi Arabia's Economy' (PhD Thesis, Durham University 2007) 349.

¹³ Other kinds of *marham* can include her son, grandson, great-grandson, etc., her paternal and maternal uncles, her brother, brother's son and sister's son, or because of *radaa'ah*, or breastfeeding, the brother and husband of the woman who breastfed her, or because they are related by marriage, the mother's husband, the husband's father, grandfather, etc., and the husband's son, grandson, etc.; for a full explanation see Shaykh Saleh AL-Munajjid fatwa (5538) < <http://islamqa.info/en/5538> > accessed 5 Nov 2017; see also Mohammed Al-Makdasih, *Kitab Alfroa* (4th edn, Al-Alam Al-Kotab 1985) 239.

related to a woman cannot marry at all. In Sharia, several different types and degrees of *mahram* are identified.¹⁴ Shaykh Al-Munajjid provides the following definition of a *mahram*, “A woman’s *mahram* is a person whom she is never permitted to marry because of their close blood relationship (such as her father, grandfather, great-grandfather, etc.)”.¹⁵ The other statement of Prophet Mohammed warns all men to “Beware of entering upon the ladies.” A man from the Ansar said, “Allah's Apostle! What about *Al-Hamu*, the in-laws of the wife (the brothers of her husband or his nephews, etc.)?” To which the Prophet (ﷺ) replied: “The in-laws of the wife are death itself”.¹⁶ This *hadith* has informed the prophet announce a woman must be not with someone even that a person close to her without a mahram. Furthermore, the prophet statement warns even with her husband brother that could be led to danger situation or illegal relation. In another *hadith*, the Prophet Mohammed states, “No man should stay with a lady in seclusion except in the presence of a *Dhu-Muhram*”.¹⁷ These *hadiths* have been interpreted to mean that a woman’s male *mahram* is a person not available to her to marry, but to travel with, work with, go out with, or remain with in an enclosed place.

Once it can be established who, according to Islamic religion, a woman’s *mahram* is, it can be established who is able to act as a legal guardian to that woman, and on whom she will depend throughout her life. Submitting to such guardianship is a requirement of Saudi women under Sharia. According to some interpretations in Saudi Arabia, a *mahram* carries out the role of legal guardian, which means he plays two roles at one time. In Saudi Arabia, every *mahram* is regarded as a legal guardian.¹⁸ The latter role involves, for instance, the *mahram* granting permission for a woman to apply for a job¹⁹, marry, go out, worship; and so on. Thus, it is

¹⁴ See, Tafsir Ibn Kathir, *Degrees of Women Never Eligible for One to Marry*.

¹⁵ See, ‘Who are the *Mahrams* in Front of Whom a Woman can Ucover? <<http://islamqa.info/en/5538>> accessed 5 November 2017.

¹⁶ Sahih Al-Bukari, Vol. 7, Book 62, Hadith 5232.

¹⁷ Ibid, Vol. 7, Book 62, *Hadith* 5233.

¹⁸ Reema Alswael, ‘Education and the Role of Women in Saudi Arabia’ George Mason University, 14<<http://mason.gmu.edu/~ralsweel/portfolio/artifacts/Microsoft%20Word%20-%20Final%202.pdf>> accessed 09 Nov 2017.

¹⁹ Amani Hamdan, ‘Women and Education in Saudi Arabia: Challenges and Achievements’ (2005) 6 *International Education Journal* 42, 64.

paramount to understand who that person is. In addition, the relevance of the *mahram* in Saudi Arabia extends to women's right to work, given the need to seek their permission to go out to work. Hence, it is very important to clarify the meaning and purpose of *mahram* at the levels of both Sharia and Saudi law.

Due to the particular interpretation of the concept of *mahram* in Saudi Arabia, A woman cannot travel, accept a job, be operated on at a hospital, or carry out affairs in the public sector unless she possesses a *mahram*.²⁰ Thus, the existence of a *mahram* for Saudi women is essential in every aspect of their daily lives, according to current religious interpretations in the KSA.²¹ Furthermore, this requirement also applies to non-Saudi women, as long as they are resident in Saudi Arabia. However, this can be a legal barrier, if a woman's *mahram* abuses his authority to violate the rights inherent in their relationship.

As explained earlier, religious interpretations of what a *mahram* is can vary. They might follow the above understanding, that of a guardian to a woman. However, primarily, the term refers to those men that a woman is not allowed to marry. As such, a *mahram* could be a guardian, but a guardian is not necessarily a *mahram*. In this study, the concept of *mahram* will be understood specifically in the context of guardianship, where the man in question acts on behalf of, and in the interest of, an ineligible person, and in particular with respect to women's right to work in Saudi Arabia. Specifically, who is the *mahram*, or guardian, according to Saudi Law? It is important to clarify his identity, given his power to affect decisions relating to women's right to work. Furthermore, what is the extent of the *mahram's* power in decisions related to women's work?

Upon examining primary Sharia primary sources, is it clear that nothing in the Qur'an or *Sunnah* indicates that a woman needs a *mahram* in order to work. However, one possible interpretation of Islamic jurisprudence is that the concept of *mahram* is found in primary Sharia, which describes, for instance, who women can stay with when in seclusion. Returning to the aforementioned point, in the KSA, women require a

²⁰ Ibid.

²¹ Ibid.

mahram. Simply, this means that women are affected by the requirements that follow from particular interpretations of Islam in at least some, if not all, aspects of their affairs; the need for a *mahram* is one such requirement. Not only this, but women must also take other factors into account, such as no *Kalwah* – that is, ‘seclusion’.

Identifying the relationship between religious interpretations such as *mahram* and women’s right to work in this study allows for a clearer examination of *mahram* under the present system of law in the KSA. This part of the thesis discusses the relationship between the concept of *mahram* and women’s right to work. For example, Muslim jurists have determined that the conditions under which a woman may work, or appoint relating to work, first require the approval of her *mahram*,²² as a result of specific interpretations of the Qur’an or *Sunnah*, which requires women to have a *mahram*, and to seek their approval if she wishes to work.²³

However, Saudi domestic laws are derived from Sharia, which means it is not necessary to mention all provisions in each domestic law. In other words, the requirement for a *mahram* is not necessarily codified by law. As the Saudi Basic of Governance Law states, the Kingdom of Saudi Arabia derives its authority from the Book of God and the *Sunnah* of the Prophet (PBUH);²⁴ this is to ensure that workplace conditions satisfy Sharia requirements. Specifically, the *mahram* is not only able to withhold his approval of a workplace for a woman, but he might also be needed by women if they must travel to work. He might also be called upon to mediate, should there be a conflict between two interests, namely family responsibilities and external work. If so, his role will be to settle any dispute by determining what is in the best interests of the family, and how the family might be affected if the mother goes out to work. Finding a solution to such situations is difficult and, consequently there are no clear standards by which a *mahram* can measure the relative advantages of a woman staying home or going out to work.

²² See chapter 2 page 4, 17; Mohammed Al-Fwzan, *Women’s Work in the Kingdom of Saudi Arabia*, (Law and Economic Library, 2012) 103; Hailh Al-Twijrih, *Women’s Work in Islamic Jurisprudence* (Researcher Center for Women’s Studies 2010) 36.

²³ See the Saudi domestic law such as Saudi Civil System or Saudi Labour Law.

²⁴ The Basic Law of Governance, Royal Decree No 90/A, 1 March 1992, Art, 7.

The issue is not only who the *mahram* is; the age of a mahram is also a critical issue, specifically the question of whether a specific age range or limit should be in place. For instance, should a woman be subject to the control of her son, according to the rules of Saudi society?²⁵ In other words, who has the authority to decide who a woman's legal guardian should be? Thus far, Islamic jurists have not set any specific age limit; however, they have identified the age of puberty for boys and girls.²⁶ Logically, would not accept with who disagree²⁷, however, it is possible in Saudi Arabia for a son to control and restrict his mother.²⁸ Indeed, whatever the underlying logic, a woman must have a *mahram*, whether this is her son, or someone else deemed eligible to perform this role, according to varying religious interpretations. In a situation where a woman in the Kingdom of Saudi Arabia does not have a *mahram*, the precedent is unclear. In this case, the researcher recommends applying the *Aldrwrat tobeh almahdorat* principle of Islamic jurisprudence, which is that 'necessity knows no law'. When a woman falls under the *Darorat* 'necessity' which means according to other Islamic principle *Aldrwrat Tkudar bi Kadrah* that 'necessity should not be exaggerated', she might be considered an exception from the general principle. In other words, general Islamic provisions do allow for exceptions.²⁹

Returning to the issue of *mahram* eligibility, and specifically whether Sharia offers any guidance regarding the age restriction of a *mahram*, or the nature of their relationship to their ward, there is some relevant content. For instance, the *Hanfi* jurisprudential opinion on the age of a *mahram* is that he should be of 'adult' age, namely, at least fifteen years old.³⁰ Al-Malikiah argues that the *mahram* should be both discerning and an adult, meaning the ability to understand speech and to

²⁵ Shaykh Saleh AL-Munajjid, fatwa (161002) <<http://islamqa.info/en/161002>> accessed 5 Nov 2017.

²⁶ Jamal J. Ahmad Nasir, *The Islamic Law of Personal Status* (3rd edn, Brill 2009)190.

²⁷ Shaheen Sardar Ali, 'Women's Human Rights in Islam: Towards a Theoretical Framework' (1997) 4 Yearbook of Islamic and Middle Eastern Law 117; Yvonne Yazbeck Haddad, 'Islam and Gender: Dilemmas in the Changing Arab World' in John L Esposito and Yvonne Yazbeck Haddad (eds), *Islam, Gender, & Social Change* (Oxford University Press 1998).

²⁸ AllanRock, Stuck in Saudi Arabia (The Huffington Post 2010) <<http://www.hrw.org/news/2010/04/08/stuck-saudi-arabia>> accessed 5 Nov 2017.

²⁹ Hilla Abdulraq Alyafy, *Al-Kwad Al-Fighi Wa Tatbikatha fi Al-Mahakm Al-sharia* (Al-Mutahd Lkanon 2012) 34-37.

³⁰ Zain Al-Dain bin Ibrahim Al-Hanfi, *Al-Bahr Al-Raaq Sharh Kanz Al-dakak*, (1st, Dar Al-ketab Al-elmiah, 1997) 339; Nasir (n 26) 190, 191.

respond.³¹ In the *Hanbali* school, the *Al-magna* states that a *mahram* should be an adult, and of sound mind.³² *Hanbali* sets out the following standard requirements regarding what constitutes an adult:

- *Al-Ehtlam*, which means that he can produce semen, usually when he is sleeping or dreaming.
- Aged fifteen years.
- Hair in the armpits and below.³³

Thus, the position regarding the age of a *mahram*, according to general consensus amongst Muslim scholars, is that a *mahram* should be an adult, though they differ as to whether a teenager is considered an adult or not, and primarily, he should be discerning, as determined by *Malikiah*.

However, what is of primary concern regarding a *mahram*, for the purposes of this study, is not his age, but rather the nature of his position in relation to women's right to work. There are two very important factors here that must be distinguished, *Wali* and *mahram*. These are two completely different systems, which work in very different ways. First, a *wali* can also be a *mahram*, and vice versa. However, the *mahram* concept is imposed in matters relating to worship. By contrast, *wali* is similar to guardianship, but mostly exists for the purposes of dealing with civil and marriage contracts, and the custody of women.³⁴ Thus, agreement and conflict between these positions, as they relate to women, might lead to a misunderstanding or misapplication of these religious concepts. Women in Saudi Arabia apply the concept of *wali* rather than male guardianship in generally, even though the term *mahram* is used to describe male guardianship. When women want to work, their *wali* merely gives their approval, rather than actually acting as a guardian. This distinction must be

³¹ Shams Al-dian AL-magrabi, *Mwahb Al-Jalia fi sharh muksar al-kalil*, (Dar Alfakr 3edn 1992) chapter 3, 493; Nasir (n 26) 190,191.

³² Ibn Godamh, *Al-Mogunee* (Cairo University 1968) Vol. 6, 302.

³³ Ala Aldin Al-Hanbli, *Al-ensaf fi marft al-rajah min al-klaf*, (2edn, Dar Ehia Al-Trath Al-arabi) Vol. 5, 237.

³⁴ Aayesha Rafiq, 'Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World (An Analysis)' (2014) 4 *International Journal of Humanities and Social Science* 268,269; Nasir (n 26).

clearly understood in order to fully understand the exact position of women under Sharia.

Generally speaking, no texts in the Saudi National Law require women to have a *mahram* in certain sectors. Furthermore, neither Saudi Basic Law, nor any other categories of law, provides an explanation of what or who a *mahram* is, unless certain internal regulations, scholarly opinions, or customs offer a definition of the concept. For instance, Saudi women who travel abroad to study must have a *mahram*.³⁵ However, in Saudi Arabia the matter of *mahram* is referred to Sharia, its judicial decisions and circulars, which are issued in the public sector, and in community or culture-based religious beliefs.³⁶ To give a specific example, if a woman in Saudi Arabia wanted to travel abroad, an airport official would seek permission from her *mahram* based on circulars from the Ministry of the Interior.³⁷

Certain parts of internal Saudi law make reference to matters relating to *mahram*, either directly or indirectly. For instance, Article 32 of Saudi Procedure Law states that “married women who do not have guardianship ‘*Wali*’”.³⁸ Regarding the home, inspections and the presence of a woman there alone without a *mahram*, it reiterates the need for another woman to be present.³⁹ The Minister of Justice has issued regulation stating that, in the case of a criminal investigation, a woman must be

³⁵ Saudi Arabian Cultural Mission to the U.S., Dependents Affairs Department <<http://www.sacm.org/Departments/Dependents/dependentmain.aspx>> accessed 06 Nov 2017.

³⁶ Asma Lamrabet, ‘An Egalitarian Reading of the Concepts of *Khilafah*, *Wilayah* and *Qiwamah*’ in Ziba Mir-Hosseini, Mulki Al-Sharmani and Jana Rumminger (eds), *Men in Charge?* (Oneworld Publications 2015); Aiob Al-Jarboa and Khald Al-Mohisan, *Women’s Legal Status in the Kingdom of Saudi Arabia*, (*Al-wada Al-Kanoni ll-mara fi Al-Mamlak Al-Arabiya Al-Saudi*, Arabic, King Fahd National library 2010) 60-85.

³⁷ Saudi Women Celebrate: Monitoring System of Cross-border Movements Suspended <<http://rt.com/news/saudi-suspends-women-travel-619/>> accessed 9 November 2017; Women on Cloud Nine as Travel Notification Halted, Arab News <<http://www.arabnews.com/news/508841>> accessed 9 Nov 2017.

³⁸ Saudi Procedure law issued by Royal decree no 21/M on 20/05/1421 AH, Art 32.

³⁹ Procedure criminal law, issued by Royal Decree no m/39 on 28/07/1422 (AH), Arts 52 and 53.

accompanied by her *mahram*.⁴⁰ Regarding these legal articles, the conclusion is that the concept of *mahram* is applicable, to the extent that a woman in Saudi Arabia is not allowed to be investigated, to get married, or have her house or herself inspected, without her *mahram* being present. Thus, it is clear that women's status in Saudi Arabia is closely linked to their guardian, and they are not fully independent, as set out by internal Saudi law. In addition, Saudi women are subject to these rules even when they are outside of the Kingdom of Saudi Arabia. As mentioned above, the Saudi Arabian Cultural Mission in the US requires the following from Saudi women:

- *Mahram* must be with her during her study and scholarship period.
- A woman has to have *Mahram* instrument from his *Wali Alamr* or 'superior' – either her *mahram*, brother, uncle or other male relative. If a woman is married and wants her *mahram* to be her father, she must have a *mahram* instrument from her husband.
- The *mahram* must not be occupied in a job in their home country.
- The *mahram* must remain with her in the US. through the tenancy contract.⁴¹

The above conditions show that female Saudi students, both those studying abroad and domestically are heavily restricted. As such, Saudi women who do not satisfy these conditions may not be permitted to study abroad.

The legal standing of women in Saudi Arabia is not equal to that of men in terms of human rights, when considered from an international perspective.⁴² By contrast, the Sharia can be judged to be fair and just, to the extent that it follows Sharia principles, including Qur'an and *Sunnah*, in its application of justice rather than equality.⁴³ Under Sharia, a woman is subject to certain rules and provisions, which are derived from religious interpretations of Sharia. Most of these restrictions upon women are

⁴⁰ Regulation no 172/8/T, on 9/9/1408(AH).

⁴¹ Saudi Arabian Cultural Mission U.S; Add *mahram*
<<http://www.sacm.org/ArabicSACM/Dependents/addmehrem.aspx>> accessed 07 Nov 2017.

⁴² See The Charter of the United Nations signed on 26 June 1945, in San Francisco which came into force on 24 October 1945; Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly on 10 December 1948 at the *Palais de Chaillot*, Paris; Convention on the Elimination of all Forms of Discrimination against Women, 3 September 1981.

⁴³ The Qur'an stated justice rather than equality such as verse of Fatir and Ali Imran. See, Qur'an 35: 12; Qur'an 3:36; Qur'an 35: 19, 20, 21 and 22.

enforced in the forms of *Wilaya*, *Qiwama* and *Wasia*.⁴⁴ However, these do not comply with international human rights standards, in terms of the provisions they make for equality and independence. In addition, they contain special provisions prohibiting the mixing of men and women, known as '*Khlwa*', which helps to explain the existence and importance of the *mahram*, who can best be understood as a guardian.

In terms of the public and private sectors, women mostly need, whether by law, to have a *mahram* or identity (*Mouarf*).⁴⁵ These restrictions on women might be understood to imply that a woman is not considered equally competent to a man in Saudi Arabia, from an international human rights law perspective. However, the Muslim perspective takes a different view of Western and human rights law, as they believe that Sharia is an alternative manifestation of justice, peace, and equal law, and cannot possibly be unfair, from a human perspective.⁴⁶ God demands that people are just, amongst themselves and toward each other – Almighty of Allah: “Indeed, Allah orders justice and good conduct”.⁴⁷

The ways in which Sharia sources have been interpreted by the General Presidency of Scholarly Research and *Ifta* (GPSRI) in Saudi Arabia have led to the issuance of a number of *fatwas* prohibiting women being in the company of a foreign man without their *mahram* present.⁴⁸ A large number of *fatwas* have been issued by the GPSRI regarding women's place in education, work and other areas, which also prohibit the presence of women without their *mahram*.⁴⁹ All of these *fatwas* have reinforced the importance of *mahram* in women's lives. Thus, in Saudi Arabia, people typically refer

⁴⁴ Al-Jarboa and Al-Mohisan, (n 36) 60-73.

⁴⁵ Mouarf a person who identified a woman is by the virtue of his knowledge of her or his relative. See; 'Boxed in Women and Saudi Arabia's Male Guardianship System' (Human Rights Watch 2016) <http://Boxed In Women and Saudi Arabia's Male Guardianship System> accessed 7 Nov 2017.

⁴⁶ Mashood A. Baderin, *International Human Rights and Islamic law* (Oxford University Press) 58-65; N. J. Coulson, *A History of Islamic Law* (Aldine Transaction a division of Transaction Publisher 2011) 20-36; Ann Elizabeth Mayer, *Islam Tradition and Politics Human Rights* (3rd edn, Westview Press 1999) 9-17.

⁴⁷ Qur'an 16: 90

⁴⁸ The General Presidency of Scholarly Research and Ifta, Fatwa no (13814) < <http://www.alifta.net/> > accessed on 9 Nov 2017.

⁴⁹ The General Presidency of Scholarly Research and Ifta, Fatwas Ibn Baz no (276) part.6 < <http://www.alifta.net/> > accessed on 9 Nov 2017.

to these committees or religious men as a consequence, to make sure they are following Sharia according to their best knowledge in this field. In the case of most women's matters, be those related to work, study or travel, it is typically required that she be in the company of her guardian.⁵⁰ While these opinions are not legally binding, people are generally committed to them in their daily lives. The *fatwas* issued in a period of time may not apply in modern life, which is characterised by changing needs. Indeed, religious interpretations are changeable depending on different circumstances and times. Hence, people in the current time are not bound by outdated religious opinions or interpretations.

If women want to have a passport or identity card issued to them, again, they first need to obtain permission to do so from their guardian.⁵¹ In addition, if women in Saudi Arabia receive an offer of work, one of the prerequisites to their accepting the offer is that they first gain approval from their *mahram*. In terms of education, a woman is unable to go to university without the approval of her *mahram*. However, some women do study away from their hometown, and therefore need accommodation on campus, for which they need their *mahram*'s approval; they also cannot leave campus without his permission or authorisation.⁵²

Women in Saudi Arabia must also obtain permission from their guardian "*Wali Al-Amr*"⁵³ if they want to advance in certain areas. For instance, the Manpower Council Resolution emphasises the need for "acceptance of a guardian,"⁵⁴ and the Saudi Council Minister has stated that "the prospect of new jobs in the private sector should comply with Sharia and the Manpower Council Resolution".⁵⁵ In addition, the Saudi Labour Minister has underlined the importance of following the resolutions of the Manpower and Minister Councils regarding the extension to women of opportunities

⁵⁰ Ibid, fatwa no.177, part.21.

⁵¹ Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia, *Human Rights Watch*, 2008

⁵² Ibid, 10-33.

⁵³ This meaning of Wali AL-Amr can have different definitions which depend on the case. Generally meaning is leader; however, is it leader of a nation, judge or family. For the purposes of this study, we will use it in relation to family.

⁵⁴ Manpower Council Resolution no (1/M19/ 1405 AH), paragraph 2.

⁵⁵ Council Minister Resolution no (63) 11/03/1424 AH.

to work and roles as set out in the Manpower Council, in strict adherence to Sharia.⁵⁶ These substantial resolutions imply an assessment of women's competence in Saudi Arabia, whereby women are not able to manage or make decisions, without the permission of their guardian, on issues regarding education, work rights, or social and economic participation in general. In terms of Sharia, these roles are not considered to be an issue; conversely, according to international human rights standards, such roles do not meet the expected levels of equality between men and women.

As shown above, it is only evident in areas in which women must be under the supervision of their guardian. Thus, women's status is intimately related to their *mahram*'s acceptance or approval. In very few cases, it appears that such restrictions may be lifted if a judge considers a *mahram* to have abused his role as guardian. It should be noted that Saudi Labour Law does not explicitly require a women's *mahram* to accept or approve her working; rather, that is the subject of religious interpretation.⁵⁷ As women should not be dependent only on national law, they must also refer to Sharia, from which Saudi law derives its provisions, as stated in basic law.⁵⁸ The control and rule over women's right to work in Saudi Arabia might therefore be more effectively understood in terms of religious interpretation, rather than in relation to internal law.

3.2.2 Mahram as it Relates to Women's Right to Work

In regard to the concept of *Mahram* as it relates to women and their rights in Saudi Arabia, one perspective appears to be favoured, according to some scholars.⁵⁹ Mtango states that

“Women in Saudi Arabia are subject to a strict notion of male guardianship over women (qawama), based on Shari'a family law, which is consequently characterised

⁵⁶ Labour Minister Resolution no (1/1793) on 21/04/1425 AH.

⁵⁷ See chapter one of this thesis, pages 49-54.

⁵⁸ The Basic Law of Governance, Royal Decree No 90/A, 1 March 1992, Art 1.

⁵⁹ Usually those who adopted this approach in Saudi Arabia, namely the so-called liberalist approach or the approach of Human Rights advocates, are in disagreement with the so-called conservatives. See Amelie Le Renard, “‘Only for Women:’ Women, the State, and Reform in Saudi Arabia” (2008) 62 Middle East Journal 610; Safaa Foud Rajkhan, *Women in Saudi Arabia Status, Rights, and Limitations* (University of Washington Bothell 2014); Eleanor Abdella Doumato, ‘Women and Work in Saudi Arabia: How Flexible Are Islamic Margins?’ (1999) 53 the Middle East Journal 568.

by many features of differential treatment that may be discriminatory between men and women in marriage...and related matters”.⁶⁰

Conversely, some Muslim scholars consider *mahram* to be a legal system that is useful to women, and that protects their rights and equality.⁶¹ Once a woman is subject to a *mahram* in some specific area of her life, the influence of this concept could come to apply to other areas. Hence, religious interpretations are not limited in their impact on a woman's right to work.

According to statistical figures, in Saudi Arabia, women's right to work is not equal to that of men in certain fields. For instance, Al-Munajjed has stated that 85.6% of Saudi nationals in the labour force are men, whereas Saudi women have an unemployment rate of 26.9% whereas the rate for men is 6.8 %.⁶² This shows that men in Saudi Arabia enjoy a superior position over women in the workforce, and thus that they cannot be said to be equal. Nevertheless, Saudi Law provides both men and women with an apparently equal right to work, with no allowance for discrimination.⁶³

In short, there are numerous examples of *mahram*, as it relates to women, in Saudi Arabia. However, these examples in fact highlight the inaccurate application of the concept of *mahram* through the guardianship system, which is being used against women. As a result of certain Sharia interpretations, Sharia has imposed this rule upon women for several reasons that were not intended to work against them. However, the reality in Saudi Arabia suggests a very different interpretation of this rule, one that equates to a misunderstanding of men's rights over women, as a consequence of which women undeniably suffer. Thus, women are affected by this

⁶⁰ Sifa Mtango, 'A State of Oppression? Women's Rights in Saudi Arabia' (2004) 1 Asia-Pacific Journal on Human Rights and the Law 49, 55.

⁶¹ Nawal Abdulaziz Aleid, *Women's Rights in the light of Sunna* (1st edn, Dar Al-Hatharh Press 2012) 900- 908.

⁶² Mona Al-Mounajjed, *Women's Employment in Saudi Arabia: A Major Challenge* (Booz & company 2010) 2.

⁶³ The Basic Law of Governance, article 28; Also in Saudi Labour Law there are not any such articles that grant or provide more rights to man; conversely, the law grants more rights and duties to the employer under Chapter (X), Employment of Juveniles and Women

misapplication and misunderstanding of Sharia, which is the result of inaccurate religious interpretation.⁶⁴

One aspect of the guardian system that is imposed on women that is of particular concern here relates to her right to work in Saudi Arabia.⁶⁵ Women in Saudi Arabia are required to obtain permission from their guardian before accepting the offer of a job. Sharia does not consider women less competent than men; the purpose of guardianship is to allow her guardian the opportunity to participate in the decision as to whether or not, and if so where, a woman will work, in order to ensure that her work is compatible with Sharia. In addition, her guardian, as the head of the household, has the right to determine whether or not the female members of his household are allowed to go out or not.⁶⁶ Thus, a woman's right to work is affected by this concept, as referenced in Qur'anic texts.⁶⁷

However, the issue of guardianship over women sometimes involves the practice of abuse, even though a *mahram* enjoys this right under internal Saudi regulation, and such abuse arises chiefly out of misconceptions of the *mahram*'s role. For instance, a man or guardian may refuse a woman's right to work under Sharia or Saudi regulation, in the belief that he has the right to accept or refuse the offer of employment on her behalf. However, it is not clear that this accurately reflects what Sharia considers a *mahram*'s role to be in relation to women. In reality, in Saudi Arabia, a different perspective of Sharia is taken regarding women's right to work, and the role of a *mahram* in this situation. As a result, it has been noted that abuse has been inflicted on women in the KSA, through depriving them of their right to work. Furthermore, there is a lack of an internal system capable of protecting women from

⁶⁴ Ali (n 27) 63-84.

⁶⁵ The matter of *mahram* not only highlights her right to work, but also other rights such as rights to education, health, travel, accommodation, to start a business and legal protection. Saudi Arabia has established a new programme called King Abdullah Scholarship to help both men and women study abroad. Permission for women to accept opportunities to study abroad is dependent on their *mahram*. See: Stalemate on *Mahram* Conditions Continue <<http://www.arabnews.com/node/314145>> accessed 9 Nov 2017.

⁶⁶ Qur'an 2:228, But the men have a degree over them [in responsibility and authority].

⁶⁷ Qur'an 2:228; 4:34; 33:33; see also Tafser Ibn Kather (1/363); the reason why the husband is regarded as superior and is given the role of *qawwaam* (protector and maintainer, fatwa no 43252<<http://islamqa.info/en/43252>> accessed 9 Nov 2017.

these explicit violations of Sharia. In addition, in Saudi Arabia, a man has the ability to counter a woman's accusations with the justification that he is her guardian, and thus has the authority and right to disallow her to work, without the need to provide any reason other than that Sharia gives him the right to do so. By contrast, as a consequence of the courts' lengthy processing time, women are rendered effectively unable to appeal or complain, causing them to lose job opportunities by default.

Undoubtedly, while women working in private-sector employment was considered unacceptable a generation ago, they have been moving steadily into new areas, in both the public and private sectors, but especially private.⁶⁸ This is symptomatic of similar changes in wider Saudi society, rather than of other more specific factors, such as Sharia. The consequence is that women enjoy more opportunities to work today, despite the fact that Sharia itself has not changed. In fact, it is women themselves who have been the greatest source of change, more so than any other factors. Most of the longstanding parties that were established a generation ago have not opposed recent change, although Sharia remains the legal system of Saudi Arabia. Simply put, the religious interpretations of Sharia have changed alongside women's rights. Hence, the function of *mahram* in relation to women's right to work indeed refers to who interprets women's right to work.

The true and proper application of women's right to work under Saudi law or Sharia comes about as a result of a correct understanding of Sharia as it relates to women. This involves a realisation that Sharia does not impose this system on women in order to restrict their movements or rights, but rather to protect them. Therefore, any abuse inflicted on women by definition arises out of a misunderstanding of Sharia, or of a misplaced of socio-cultural concepts with belief and assertion validity. It may also result from a transfer of these socio-cultural concepts to legal contest under Sharia.⁶⁹ Thus it can be understood this is Sharia, and not something else.

⁶⁸ Doumato (n 59) 568.

⁶⁹ David E. Long, *Cultural and Customs of Saudi Arabia* (Greenwood Press 2005) 17-34; Mtango (n 60) 60.

3.2.3 The Issue of Male Guardianship

The system of male guardianship is considered, both locally and internationally, to be an obstacle to women's right to work,⁷⁰ and as a restrictive system by some.⁷¹ In Saudi Arabia in particular women are suffering as a result of this system. The issue of male guardianship, as described in previous sections, which is commonplace in Saudi Arabia, places the following restrictions on women:

- Not allowed to attend schools or universities, or to undertake postgraduate studies without permission from a guardian.⁷²
- Not allowed to travel abroad except with a guardian's permission. If a woman does not have a guardian, then her father, husband, brother or son must act as her guardian.⁷³
- Not allowed to work except with a guardian's permission.⁷⁴
- Not allowed to take a car that she owns out of the country unless she has acquired permission to do so from the Minister of the Interior or the Governor.⁷⁵
- Not allowed into restaurants or cafés unless in the company of a *mahram*.⁷⁶
- Not allowed to have an operation without the consent of a guardian, especially when it is a gynaecological operation.⁷⁷
- Not allowed to enter a hospital for the delivery of a baby except with a guardian's approval, nor can she be discharged from a hospital or prison without a male guardian's signature.⁷⁸

⁷⁰ Saudi Arabia Events of 2015 < <https://www.hrw.org/world-report/2016/country-chapters/saudi-arabia> > accessed on 15 Nov 2017.

⁷¹ Abdullah Abdul Elah All Sallam, 'Where is Saudi Arabian Society Heading?' (2013) 5 Contemporary Readings in Law and Social Justice 141, 147-149; Mohammed Jamjoom, 'Saudi women raise their voices over male guardianship' *CNN* (U.S, 7 Sep 2010); Johnson, Toni, and Lauren Vriens, 'Islam: governing under Sharia' *Council on Foreign Relations* (25 July 2014) 24.

⁷² The Shadow Report of CEDAW prepared by 'Saudi Women for Reform' Saudi Arabia, the executive summary Dec 2007 < <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/womenreform40.pdf> > accessed 20 Nov 2017, 2-3.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

- Not allowed to register her baby's birth notification. Only its father or a male relative over 17 years old can register a new born child.⁷⁹

Anyone who approaches the system of male guardianship as not meeting certain international standards of human rights, or as constituting an unfair system, will consider it to be a significant issue. While opponents of this view can consider the guardianship system or rules as the product of a particular interpretation of Sharia, rather than any text or law that has binding power, in reality, male guardianship is a system that imposes restrictions on women. It does this not in order to abuse them or deprive them of their rights; rather, Muslim jurists view the practice as a rational and fair concept. However, in Saudi Arabia, the reality is that women are suffering as a result of the male guardianship system in general and especially as it pertains to their right to work.⁸⁰ Several studies and statistical data have highlighted the issues that women face as a result of such a system.⁸¹ However, the critical cause underpinning Sharia is based on this system which, in turn, is derived from Sharia. Whilst this plays a major influential role, it is not to blame; rather, it is misconceptions and misunderstandings of the system that cause critics to blame Sharia.

One of the issues with the male guardianship system is men's abuse of this right, perhaps due to a desire for power. In Saudi Arabia, a father, husband or brother has the authority to grant, or not, a woman who is under his supervision permission to work.⁸² Furthermore, if they refuse to grant permission without giving a reason, or are abusive, women find it difficult to appeal. The circumstances of the court to which women can appeal create a further barrier. For example, due to the length of time it would take for a woman to prosecute a *mahram*, it is likely that she will lose the offer of work regardless, particularly if there is any delay in the local court's review of the

⁷⁹ Ibid.

⁸⁰ Ibid, 7-11; Sallam (n 71) 147.

⁸¹ Purva Desphande, "The Role of Women in the Tow Islamic Fundamentalist Countries: Afghanistan and Saudi Arabia" (2001) 22 Women's Rights Law Reporter 193; Amani Hamdan, 'The Role of Authentic Islam: The Way Forward for Women in Saudi Arabia' (2012) 10 Journal of Women of the Middle East and the Islamic World (2012) 200; Hossein Esmaeili, 'On a Slow Boat Towards the Rule of Law: The Nature of Law in the Saudi Arabian Legal System' (2009) 26 Arizona Journal of International & Comparative Law 1.

⁸² Saudi Arabia Events of 2015 (n 70).

case. Thus, a lack of and/or delay in judicial proceedings does not help to safeguard women's right to work.

Men are given full authorisation to use this authority without codifying or limited this power to use it against women; this has a negative impact on the system and on Sharia generally. A codified *mahram* role would thus help to reduce abuse against women. The latter's absolute wielding of power in relation to this authority, unrestricted by sanctions, is what generally leads to this kind of problem.

It is thus clear that male guardianship plays a major role in affecting women's right to work in Saudi Arabia. This type of barrier to women's participation in the workforce creates a negative perception of the system itself and of Sharia. For instance, if a *mahram* refuses to let a woman who is under his supervision work or accept a job offer, without giving a reason, this creates a problem. Therefore, absolute power with no or limited restriction is the primary issue, and it is this that must be resolved, which can be achieved without acquiescing to international calls to end the legal guardianship system. The ideal solution is to restrict the extent of male guardianship, rather than putting an end to it altogether. Both recent and past researchers have argued that the idea of ending this system in Saudi Arabia is not acceptable, as a consequence of this system considered, for example, *jus cogens* in international law. In other words, male guardianship is considered one of many Islamic provisions that cannot be nullified as they are derived from the Qur'an or the Hadiths by Muslim jurists.

3.2.4 *Ikhtilat* ('Intermingling')

Under Sharia, the concept of *Ikhtilat* (intermingling) requires that women and men do not mix in a space without the presence of a legal relative.⁸³ This means, in effect, that it is unlawful for women or men to sit or be together.⁸⁴ Any such action is prohibited

⁸³ Hanisah Osman and others 'Islamic View on the Muslim Ethics of Loving' (2013) 27 World Applied Sciences Journal 1380, 1381-1382.

⁸⁴ Sahih Al-Bukari, Vol. 7, Book 62, Hadith 5232 and 5233; Sahih Muslim, Vol. 6, Book 39, Hadith 5673 and 5674.

under Sharia.⁸⁵ However, there are exceptions, as other kinds of intermingling are permitted under Sharia, which allows *ikhtilat* in certain circumstances. In terms of the relationship between *ikhtilat* and women's right to work in Saudi Arabia, the implication is that women may not be able to work in environments in which they must interact with or be in the same room as men. Therein lies the importance of *ikhtilat* to the present study.

In Sharia, *ikhtilat* is a much wider issue, it is not solely concerned with the act of intermingling; rather, it also pertains to the legal controls that govern this matter. Disputes relate not to the meaning of the term, however, but to legal controls. This is because the issue of intermingling in Sharia is not referenced in any direct text in the Qur'an, but rather is found in *Sunnah*. Furthermore, the definition and rules governing such matters are derived from secondary Sharia sources, such as the *Ijthad*, which makes the issue more complex in many ways. In general, the meaning of *ikhtilat* in Sharia is not problematic; rather, the difficulty lies in knowing how to apply and determine the related rules and legal standards. For instance, women in public places, such as supermarkets, streets, Makkah⁸⁶ and so on, will not be considered guilty of an illegal action. However, women working with men in a common workplace run the risk of being found guilty of a prohibited action under Sharia.

Al-Musaymīrī and Al-Habdān explain *Ikkalt* as follows: “direct meeting between sexes is intended incest avoided with possibility of it”.⁸⁷ Ibn Baz explains it as the “meeting of [a] man with foreign women at [the] same place for reason working, travelling, buying, selling or so on”.⁸⁸ The common thread running through these understandings of mixing of the sexes is that men and women are not allowed to sit together without relatives being present, whether this is in a public or private place. In

⁸⁵ Abdulaziz Bin Baz, Al-Tubrij wa Khatr Mosharkt Al-Mara Lrajah fi Midan Amalh <<http://www.binbaz.org.sa/node/8194>> accessed 11 Nov 2017.

⁸⁶ Makkah here means the place of worship, particularly at a mosque where Muslims pray together which is allowed by Sharia and is one of the exceptions to *ikhtilat*.

⁸⁷ Riyāḍ ibn Muḥammad al-Musaymīrī, n Muḥammad ibn ‘Abd Allāh al-Habdān, *Al-Ikhtilāṭ bayna al-jinsayn : aḥkāmuhu wa-āthāruh* (1st edn, Dar Ibn Al-Jwazih 2010) 14.

⁸⁸ Fatwa and various articles by Ibn Baz (1/420); for more about *ikhtilat* see also, Al-Habdān (n 87)13-19.

addition, the purpose of the intermingling can be for any reason or under any circumstances.

The effect of the prohibition of intermingling on women's right to work in Saudi Arabia is that women are not found in some sectors, as this would be an action against Sharia. Thus, liberal international human rights law, and feminist movements are opposed to the regulation of intermingling.⁸⁹ On the other hand, the principles of Sharia do not accord with those who call for women to have the same right to work as a man without any restrictions. Some hold the view that intermingling of men and women in work places is dangerous for society generally, and for women specifically, in that it can lead to adultery ('*Zinah*'): violation values legitimacy and moral decay within the community.⁹⁰ It is also believed that *ikhtilat* may lead to serious crimes being committed, and that it should not be permissible for Muslims to long for such things in that they can lead to unlawful action under Sharia, as set out in the Qur'an and *Sunnah*. For instance, Ibn Baz used Qur'anic evidence to sanction the prohibition of intermingling in the workplace,⁹¹ citing the following verses: "And abide in your houses and do not display yourselves as [was] the display of the former times of ignorance";⁹² "O Prophet, tell your wives and your daughters and the women of the believers to bring down over themselves [part] of their outer garments".⁹³ Ibn Uthaymeen agrees with Ibn Baz on this point,⁹⁴ which shows how different religious interpretations impact on women's right to work.

⁸⁹ Ahmed Ali Alhazmi, 'What it Looks Like to be in a Mixed Gender Society: The Essence of Transitioning Experience from Gender Segregated Environment to Mixed Gender Environment' (2015) 3 Journal of Foreign Languages, Cultures and Civilizations 49.

⁹⁰ Abdulaziz Bin Baz, *Finery: And the Risk of the Participation of Women to Men in the Field of work*, (Arabic); Al- Habdān (n 87); several *fatwas* have been issued on intermingling by the Kingdom of Saudi Arabia Portal of the General Presidency of Scholarly Research and Ifta < <http://www.alifta.net/3> > accessed 20 Nov 2017.

⁹¹ Ibid.

⁹² Qur'an 33:34.

⁹³ Qur'an 33:59; see also, *Fatwas of Ibn baz*, Part no. 1;Page no. 119 and Part no. 1;Page no. 120 < <http://www.alifta.com/Fatawa/fatawaDetails.aspx?language=en&BookID=14&View=Page&PageNo=1&PageID=25> > accessed 20 Nov 2017.

⁹⁴ See Mohammed Ibn Uthaymeen, 'A Set of Questions of Interest to the Muslim Family', 23-24 < http://www.ibnothaymeen.com/all/books/article_16956.shtml > accessed 20 Nov 2017.

Intermingling is explicitly prohibited by Muslim scholars, both the older and more modern authorities, as a result of clear evidence from the Qur'an and *Sunnah*.⁹⁵ In addition, they used this evidence to suggest the potential effects of such action on the community. As such, religious interpretation should be respected in this matter, by avoiding *ikhtilat* between males and females. Thus, it is prohibited for women to work in a place where men also work, with the exception of certain cases, such as hospitals. In general, the religious interpretation of the action of *ikhtilat* is that it is unlawful in whatever context, thus women are not allowed to work in a place where a man would work alongside them, with no barriers and without the existence of a *mahram*. For instance, Saudi Arabia has strong influence and that affects national regulations by prohibiting interaction between men and women in all public and private sectors of the State.⁹⁶ While these regulations are long-standing, the impacts of these are still felt today.

In the context of the present study, it is not *ikhtilat* itself that is the issue, but the fact that women are prevented from working in an *ikhtilat* environment. In addition, although the State prohibits women from working in certain conditions, based on religious rules, it does not provide suitable alternative places of work that comply with religious rules. However, as long as the State derives its constitution from Sharia, it is obliged to provide facilities that enable women to work. Differing interpretations of Sharia should not be interpreted in favour of imposing the obligations or rules, without finding an alternative way to respect women's right to work. Thus, women are prevented from working, with certain jobs only being available to men; as such, an equal right to work cannot be said to exist for both men and women in Saudi Arabia.

3.2.5 *Kalwah* (Seclusion)

Kalwah, or seclusion, in Sharia has very sensitive provisions attached to it, which are deemed 'unlawful'. The concept of *kalwah* in Sharia is very clear. Most, if not all,

⁹⁵ Bahuti, Mansur Ibn Yunus, *Kashaf al-Qana* (Dar Al-Kutab Al-alamih, 1997) Vol.3, 1035; Al-Habdān (n 87); Ibn Baz (n 93).

⁹⁶ See Saudi Council Ministers Decision no. 120 in 6/1389 AH; High Circular no. 8/759 in 15/10/1421 AH, High Circular no 26/20/54938 in 25-06-1429 AH, High Circular no. 20/12/127039 in 08-11-1424 AH, High Circular no. 20/10818/652 in 22-12-1421AH.

Muslim jurists are in agreement that any such action is unlawful, and there are only very occasional exceptions in which *kalwah* is allowed.⁹⁷ There is also a link between intermingling and seclusion, as in both cases the action involves men and women; the difference is that in the case of seclusion there is no actual contact. Before discussing the relationship between seclusion and women's right to work under Sharia, it is first necessary to explain the concept of seclusion under Sharia by reviewing the arguments of Muslim scholars.

In *Sunnah*, the Prophet Mohammed is credited with many statements relating to the concept of *kalwah*. For example:

“No man should be alone with a woman unless there is a *mahram* with them”.⁹⁸

“No man is alone with a woman unless the *Shaytaan* is the third one present”.⁹⁹

From the two *hadiths* cited above, there is a clear indication as to the prohibition on men and women sitting alone in a closed space, whether they are Muslim or non-Muslim; this is essentially what is meant by *kalwah*. Different interpretations of the concept of *kalwah* come into play when a man and a woman are found to be in either a private or public place without a *mahram* present, as this is generally considered unlawful in Islam. Moreover, there are many *hadiths* that confirm that this activity is unlawful for both female and male Muslims.¹⁰⁰

However, the application of the concept of seclusion to women in all aspects of life is unequivocally clear in the reality of Muslim communities. For instance, in Saudi

⁹⁷ Shaykh Muhammad Saalih al-Munajjid, Ruling on a Woman being Alone in a Room with an Officer so that She May Get What She is Entitled to > <http://islamqa.info/en/146441> < accessed 10 Nov 2017; Abdul Rahman Abdullah Al-Odhyany, ‘The Forbidden Khulwah and its Punishment in the Islamic Sharee`ah’ (Master Dissertation, Naif Arab University for Security Science 2005).

⁹⁸ Salah Bin Abdulaziz Bin Muhammad Bin Ibrahim Al-Shyakh (ed), *Al-Kutub Al-Sittah*, (Dar Al-Salam Li Al-Nashar Wa Al-Twzia 1419 AH) Jami at-Tirmidhi, Vol. 4, Book. 7, Hadith 2165.

⁹⁹ Sahih Muslim, Book: 7 Hadith: 3112.

¹⁰⁰ Abu Dawud Hadith No. 4933, 4931 and 5273; Ibn Majah No.1001.

Arabia a woman is not allowed to study, work or sit in a restaurant or coffee shop alongside a man who is not a relative, as this is deemed to be illegal.¹⁰¹

Women's right to work must meet religious requirements, one of which is that the principle of seclusion must be observed.¹⁰² This means that the work she does can be deemed to be legal, yet it may not meet the requirements of Sharia relating to seclusion, intermingling, or the presence of a *mahram*.

Nevertheless, there are some exceptions to the rule. For example, women in Saudi Arabia may be permitted to work in the healthcare environment, which does not easily allow for the principles of seclusion or intermingling to be applied, and women are thus typically exempt from punishment in such cases.¹⁰³ However, this lenience is not evident in other contexts. Thus, a question might be asked regarding why exceptions are made in one field, whilst others are more heavily restricted. According to the Sharia references given above, such restrictive actions must be applied across all context and situations without exception, unless extreme necessity calls for it.

The situation as it currently exists in Saudi Arabia cannot be justified on legal grounds, even if Sharia is broken in this case. The conflict between Sharia provisions and the reality of daily life raises questions as to Sharia's position vis-a-vis women's right to work. In addition, the status of the State in relation to the international community exposes it to criticism, thereby drawing unwanted international attention. The conflict arising from different religious interpretations and practices has had a negative effect on women in Saudi Arabia.

For instance, Doumato states that:

"Just as in Egypt, Kuwait, and everywhere else in the region [...] has undergone rapid development, "ruralization" of the cities has reconfirmed

¹⁰¹ Human Rights Watch, Saudi Arabia: Country Summary 4 (Jan. 2008) < <http://www.hrw.org/legacy/wr2k8/pdfs/saudiarabia.pdf>.> accessed 10 Nov 2017; Hawazen O. Rawas and others, 'Cultural Challenges to Secondary Prevention: Implications for Saudi Women' (2012) 19 Collegian 19, 52; Esmaili (n 81) 45.

¹⁰² Al-Twijrih (n 22) 92-97.

¹⁰³ Girija Vidyasagar and David M. Rea, 'Saudi Women Doctors: Gender and Careers within Wahhabic Islam and a 'Westernised' Work Culture' (2004) 27 Women's Studies International Forum 261.

*gender hierarchies and sex-segregation practices that are at the core of tribal identities and inscribed in parochial interpretations of religion”.*¹⁰⁴

Doumato sees one of the reasons for the rapid development that is referred to above as being inscribed in the parochial interpretation of religion, giving the example of Egyptian and Kuwaiti experiences. This argument holds weight if it refers to people’s changing cultural and religion concepts, to the extent that those concepts comply with Sharia. A parochial interpretation of religion here should mean that not scholars rather than people, as to so-called Muslim scholars are close or parochial to religion not logically to who specialist in this field. In addition, different opinions and interpretations do not equate to parochial views. Thus, criticism should not necessarily be targeted at scholars on the grounds that they have a close view or interpretation of religion as it relates to women’s right to work.

The argument that one of the obstacles to women’s right to work in Saudi Arabia is seclusion may not accord with general reality. In fact, sex-segregation is considered to be a principle of Sharia, which Muslims of both genders should therefore respect.¹⁰⁵ Thus, such an arrangement constitutes an existing solution, and protects men and women’s equal right to work at the same time as satisfying religious principles. However, for such a suggestion to become reality, it should be the responsibility of the State and the subject of basic law.¹⁰⁶

Imposing a ban on women’s right to work in a place in which non-relative men are also working could be seen as a barrier to an equal right to work for both sexes, with the result that fewer job opportunities and workplaces are available to women if they do not meet the conditions required by the Islamic faith. By contrast, this is likely to lead some commentators to argue that women’s right to work is hindered by religious restrictions. However, it is in fact again the responsibility of the State to provide allotted workplaces for women only. In other words, the fault lies with religious

¹⁰⁴ Doumato (n 59) 572.

¹⁰⁵ Ibid, 578.

¹⁰⁶ The Basic Law of Governance (n 25) Article 28.

interpretations, because it imposes rules on women and requires sex-segregation, which is not fair. Critics should instead address their criticism to the State, whose obligation it is to properly apply Sharia through interpretations that are consistent with the current reality in the KSA. Thus, one element of the State's responsibility is its role in allocating suitable workplaces for women so that they can enjoy equal rights to work, rather than arguing that seclusion is lawful under Sharia or religious interpretations. Thus, the State must take action, first by no longer stating that Sharia imposes conditions or requirements on women's right to work; and second, the State should protect women's right to work by providing or creating environments in which this right is guaranteed. The role of the State should thus be to affect internal reform of government and to attempt to reform the legal system, introduce modern laws, and create a modern religious state.¹⁰⁷

3.2.6 The Impact of Sex-segregation

It is true that sex-segregation in Saudi Arabia is present in all workplace aspects. The impact of sex-segregation can be observed in all aspects of life.¹⁰⁸ Women in Saudi Arabia cannot be in the same place as a man who is not her relative. This is a complex system that applies to both genders and is very carefully designed to keep men and women separate. All public facilities, such as restaurants, transportation systems, workplaces, schools, and coffee shops are strictly segregated, by law.¹⁰⁹ Examples of the application of segregation can be seen in the services provided to women and men, and the different manners in which each of these is accessed. Such rules are imposed on men and women, and are very respectful in that they take account of personal beliefs and religious obligations.¹¹⁰

¹⁰⁷ Amira El-Azhary Sonbol, 'Shari' Court Records and *Fiqh* as Sources of Women's History' (2010) 42 *Religion & Literature* 229.

¹⁰⁸ Doumato (n 59); Rawas and others (n 101) 52.

¹⁰⁹ Mtango (n 60) 59.

¹¹⁰ The impact of segregation, as seen from the perspective of Islamic law, is motivated by many reasons, such as the wish to stop propaganda or to prevent an unlawful relationship i.e. one which is prohibited by Islamic law. See: Vidyasagar and Rea (n 103) 265; Ruqaya Al-Aloola, 'Singal Sex-Education in Saudi Arabia' in Al-Jawhara Bubshait (ed), *Women in Saudi Arabia: Cross-Cultural Views* (1st edn, Ghainaa Publications 2008).

Mtango describes how the restrictions on women in Saudi Arabia are connected to sex-segregation, which is one of the most significant factors and plays a major role in imposing restrictions on and depriving women of their rights through a misunderstanding of religion.¹¹¹ By contrast, the *mahram's* role is very important to women regarding sex-segregation, in that women require a *mahram* if they are to avoid risking any unlawful action.¹¹² The segregation of men and women is one of the major rules affecting the public and private sectors in Saudi Arabia, and is derived from religious interpretation. However, it is also one of the most significant barriers for women in actively enjoying their right to work, and causes them to have fewer job opportunities. It should, however, be possible for this religious interpretation to be respected and taken into account, whilst also ensuring that women and men have an equal right to work. The best solution to this issue is most likely to be provided by the State, which is responsible for and accountable to society under Basic Governance Law.

Saudi Law states that “Economic and social development shall be carried out according to a fair, wise plan”.¹¹³ One example of action that might be taken to this end is to locate or create more workplaces in which women can work in accordance with Sharia.

The impact of sex-segregation on the right to work is twofold; one of these effects might be said to be advantageous, and the other disadvantageous. These impacts have been considered generally from the perspective of religion interpretations, in many sources of Sharia. Gender segregation is one Sharia provision that focuses on the importance of moral value and the protection of the family.¹¹⁴ Religious beliefs prohibit men and women from being in the same place without the presence of a *mahram* because this may lead to *Zinah*, i.e. an illegal relationship.¹¹⁵ On this point, Almighty Allah decreed the following: “And do not approach unlawful sexual

¹¹¹ Mtango (n 60) 55-62.

¹¹² Al-Aloola (n 110).

¹¹³ The Basic Law of Governance no (A/90) March 1992, Art 22.

¹¹⁴ Ibn Baz (n 93) 12-13.

¹¹⁵ Ibid.

intercourse. Indeed, it is ever an immorality and is evil as a way”.¹¹⁶ This verse does not directly mention sex-segregation as an unequivocally prohibited illegal relation; however, it is possible to interpret this text as prohibiting sex-segregation between genders in all public places. Sharia thus makes it clear that men and women must be kept separate, whether in public or private places, in order to ‘close the door’ to *Zinah*.

However, this is not a wholly restrictive rule.¹¹⁷ For instance, Saudi Arabia applies this rule to all public and private sectors, except the *Al-harm* mosque, supermarkets, and other public spaces. It can thus be understood that this prohibition, which is derived from the interpretation of Muslims jurists includes the protection of family, and saving offspring, as well as following *Sunnah*, etc.

Alternatively, separating the genders is regarded by some as disadvantageous, unequal, discriminatory and incompatible with international human rights law.¹¹⁸ Indeed, this view is very close to that held by those who believe such practices constitute a violation against women.¹¹⁹ Indeed, women can be denied their right to work in some instances; for example, where certain public or private sectors in Saudi Arabia are not ready for women to work segregated from men. This constitutes a denial of a woman’s right to work, and reduced job opportunities for women in general. It should be noted that in Saudi Arabia, according to statistics, the proportion of men and women in employment reveals that most jobs are held by men, and as a result, men and women cannot be said to have equal access to employment.¹²⁰ While the State in principle asserts equal rights, it does this without providing a designated

¹¹⁶ Qur’an 17:32.

¹¹⁷ Muslim jurists allow mixing in some cases such as in Makkah, particularly at an Al-Harm mosque. See; Saeed Al-Ghtani, ‘Mixing between Man and Woman: Definition, Types, Provisions and Damaging under Qur’an and Sunna’ (*Al-Ektalt bain Al-Rajal wa Al-Mara: Tarifah, Anwah, Ahkamh Athrarh fi Al-Quran wa Al-Sunna*, Arabic, unpublished 2012) 9-14.

¹¹⁸ See Saudi Arabia: UPR Submission September 2013, Human Rights Watch Report <<http://www.hrw.org/news/2013/09/30/saudi-arabia-upr-submission-september-2013>> accessed 9 Nov 2017; Saudi Arabia – Country of Concern, Corporate Report , Foreign Commonwealth Office, The Rt. Hon William Hague MP and Senior Minister of State <<https://www.gov.uk/government/publications/saudi-arabia-country-of-concern>> accessed 09 Nov 2017.

¹¹⁹ CEDAW, Arts 1 and 2 (a).

¹²⁰ Hamdan (n 81) 202.

space for women to work, and there are very restrictive rules regulating this matter. However, the State is in fact obliged, under basic law, to commit to ensuring both men and women have an equal right to work.

The impact of sex-segregation has had a clear and influential effect on women in their attempts to enjoy their equal right to work, resulting in fewer chances and opportunities, specifically due to the requirement for women to be in a separate place to men as a result of the religious prohibition of mixing between the genders.¹²¹

However, this does not necessarily mean that women's right to work is linked to sex-segregation; rather, it is subject to religious interpretation, and the provision of a work environment that is in accordance with Sharia.

Women must be able to enjoy their right to work, as men do; this means that they must be provided with a workplace that satisfies the requirements of Sharia, rather than arguing that there is an issue with segregation. In this way, women can be guaranteed their right to work in accordance with Sharia and religious beliefs.

3.3 Limitations on Women's Work under Sharia

Certain interpretations of Islam have also created some limitations for women in terms of applying for accepting a job; both limitations may be present directly or indirectly.¹²² These limitations are derived from specific understandings of the primary sources of Sharia. There are also common limitations for both men and women. This section is divided into three analyses: first, the general limitations on the right to work applicable to both men and women; second, the limitations on the right to work applicable to women only; and finally, what jobs are restricted for women, i.e. which jobs Muslim scholars have restricted women from performing.

Al-Twijrih explains that women's right to work involves the following dimensions: permission, obligation, prohibition, not recommended, and delegation (*Mandob*).¹²³

These dimensions are classified into different opinions of Muslim jurists, and Al-

¹²¹ Evidence prohibiting the mixing of men and women, fatwa no. 1200 < <http://islamqa.info/en/1200> > accessed 9 Nov 2017.

¹²² Al-Fwzan (n 22) 103.

¹²³ Al-Twijrih (n 22) 92-97.

Twijrih created these according to those jurists.. First, women are permitted to work in Sharia.¹²⁴ Second, women are obliged¹²⁵ to work in two regards, when society requires them to do a specific job, or when no one else can do a particular job. For example, when a woman wishes to work in order to provide for their household, and the responsible male in the family cannot work, or provide, for some reason. Third, prohibition¹²⁶ comes into play when the job itself is prohibited by Sharia, whether intrinsically or due to gender issues. Fourth¹²⁷, women's work is not recommended under Sharia when it is unnecessary, i.e. if sufficient quantity and quality of expenses are already being met (*nafkah*).¹²⁸ Furthermore, it is considered unethical for a woman to take a job when there is another person, male or female, who is better qualified, or in greater need. This is an Islamic practice that equates to a moral value.¹²⁹ Finally, delegation¹³⁰ comes into play when women are needed by society due to their knowledge, to help her sponsor (partner) and to work at home for her own sustenance.¹³¹ Therefore, women's work, according to the interpretation of Sharia sources by *Ijhad*, is affected by the above factors, and women should evaluate the nature of the job and their own situation before deciding to work.

The classification and determination of women's right to work is thus a highly complex affair necessitating a calibration of rights and responsibilities in line with the provisions and goals of Sharia.¹³² Thus, we need depend upon these classifications and contexts in order to explore women's right to work in relation to different religious interpretations, and to clarify how they approach women's right to work, in

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibn Taymiyyah, *Fatwas Ibn Taymiyyah* (Arabic, King Fahad Complex 2004) 340-347.

¹²⁹ Sharia calls for justice which lies in Qur'an. See Qur'an 16:90 and 6:152. It is not fair and just under Sharia for anyone to take a job when there is another who is better qualified or who needs the job more. Should a Muslim consider Sharia value in his or her decision?

¹³⁰ Al-Twijrih (n 22) 92-97.

¹³¹ Ibid.

¹³² Using '*fiqh*', instead of the more abstract term of 'Sharia', is more accurate. See Asifa Quraishi, 'What if Sharia Weren't the Enemy? Rethinking International Women's Rights Advocacy on Islamic Law' (2011) 25 *Columbia Journal of Gender and Law* 214.

terms of both general limitations on the right to work as applicable to both men and women, and limitations on the right to work that apply to women only.

These limitations refer to one of the Sharia methods to find the provision by *ijthad*. Islamic jurists, through *ijthad*, have looked to the Qur'an or the *Sunnah* for guidance on women's matters, or both men and women generally to give provisions. General limitations with very clear provisions prohibit some specific areas of work. However, there are some special provisions made for women only. With respect to the right to work under Sharia, this is guaranteed to all men and women. Thus, there is no issue under Sharia regarding the right to work for women. However, limitations might apply, which arise out of the interpretation of Sharia sources; these are a matter of debate, as some scholars agree and some do not. Each opinion is based on certain evidence(s). Thus, Muslims are entirely free to decide upon their own actions. However, there are some provisions that are generally agreed upon, and there is so-called consensus.

3.3.1 General Limitations on the Right to Work Applicable to Both Men and Women under Sharia

In Sharia, there are certain general limitations that both men and women must take into account when applying for work. Furthermore, their employer is also required to consider these factors when appointing individuals. Sharia fundamentally forbids certain kinds of work, such as selling alcohol.¹³³ Such occupations are known as *Amall Ghyr Shari'ah* (literally 'lawless work'). The general limitations on the right to work under Sharia are:

- The work must be in itself completely legal. For instance, selling alcohol, usury, prostitution and gambling are all forbidden.¹³⁴

¹³³ Qur'an 5:90, 5:91 and 2:219; Al-Shyakh (n 98) 2681/3382; Al-Falah Foundation (trs), *The Lawful and the Prohibited in Islam*: Sheikh Yusuf Al-Qaradawi (Al-Falah Foundation for Translation, Publication and Distribution) 67-76.

¹³⁴ Al-Falah Foundation (n 133).

- The work must not be in tandem with naturally unlawful (*haram*) activities, such as selling alcohol along with permissible foods and drink.¹³⁵
- The work should not involve any kind of fraud, deception or lying in the workplace, including in terms of employment as well as to customers.¹³⁶
- If the job is suspicious (i.e. it falls in a grey area), the Muslim should leave it in search of employment that is clearly permissible.¹³⁷

These general limitations apply to both men and women, and indeed they theoretically apply to all humans in Islamic ideology. Clearly, the provisions of Sharia are intended to protect the life, property and honour of human beings, and not to impose undue restrictions on their lives. This legal framework of Sharia, which is the result of religious interpretation, is based on Sharia sources prohibiting certain kinds of work. The reasons for these restrictions come directly from God via the Qur'an, whether the work itself is prohibited, or the manner of earning money contradicts Sharia moral principles, such as fraud. Thus, Sharia ensures that humans treat each other with respect, and it prevents them from cheating in any aspect of life. This standard is set as a basic standard for all individuals, and must be followed.

A good example of this is the Saudi case of the 'defect vehicle', in which the complainant claims that there is an issue with the car that he has purchased, but only discovers this issue after he has purchased the car. He therefore claims that the seller has interfered with the car. Since the issue is a major one, he wants a replacement car. The judge agrees that there is a major fault, according to the technical report provided to the court and that the seller did not inform the complainant of this fault at the time of purchasing the car. Cheating and dishonesty of this kind is prohibited by Sharia in both daily life and in business,¹³⁸ because that decision by Islamic scholars to prove

¹³⁵ Ibid.

¹³⁶ Al-Twijrih (n 22); Al-Fwzan (n 22).

¹³⁷ Ibid.

¹³⁸ Qur'an 83:1-4; in *Sunnah* Prophet Muhammed states 'Whoever deceives (people) does not belong to me'. Sahih Muslim, chapter he saying of The Prophet, "Whoever deceives us is not one of us", hadith no.284.

the defect option is either...¹³⁹The complainant chose to return the car and receive a refund.¹⁴⁰

This case shows that, under Sharia, fraud in business is unacceptable and as such it invalidates any contract. It also asserts that any such kind of work or deal with people is prohibited. Thus, Muslims, either male or female, must avoid any kind of cheating or fraud in their work. In addition, anyone who suspects that they have been a victim of fraud has the right to complain before a court.¹⁴¹

3.3.2 Limitations on the Right to Work Applicable to Women Only

Some of the limitations on women's right to work are the consequence of specific religious interpretations. Legal reasoning or legal analogy, which is highly subject to debate, has resulted in the formulation of the following specific conditions of a woman's employment in Sharia:

- The male responsible for her (e.g., father or brother) must give his permission for her to work.¹⁴²
- The job should not prevent marriage, which is fundamentally encouraged by Islam to a greater extent than professional work for women.¹⁴³
- A married woman's job must not be at the expense of her duties towards her husband and children, because she is primarily responsible and obliged to maintain her work at home.¹⁴⁴
- Women must conceal their body in the workplace. Men and women are both encouraged to dress modestly; for instance, it is generally considered shameful

¹³⁹ Collection judgements, the Kingdom of Saudi Arabia Ministry of Justice 1436 AH, case no. 33466823, 27/11/1433 AH, appeal no. 3431085, 20/2/1434.

¹⁴⁰ *ibid.*

¹⁴¹ Collection judgements, the Kingdom of Saudi Arabia Ministry of Justice 1436 AH, case no. 33252287, 17/05/1433 AH, appeal no. 344533, 06/01/1434.

¹⁴² Adnan Al-wzan, *Encyclopedia of Human Rights in Islam: And Feature in the Kingdom of Saudi Arabia* (Al-Rsealah Publishing House 2003) 408-410.

¹⁴³ Al-Twijrih (n 22) 4.

¹⁴⁴ *Ibid.*

for a man to wear shorts in public in Arab countries.¹⁴⁵ Similarly, Islam requires that, when in public, women observe *Abiah*, which entails physically covering and not revealing the contours of the body, as affirmed in the Qur'an:

*“O Prophet, tell your wives and your daughters and the women of the believers to bring down over themselves [part] of their outer garments. That is more suitable that they will be known and not be abused. And ever is Allah Forgiving and Merciful.”*¹⁴⁶

- Women are forbidden from putting on perfume; flirtatious behaviour is also prohibited, for both men and women.¹⁴⁷
- Women should not be alone with men in any private place (*khalwa*/seclusion). If this occurs, both the man and woman involved are deemed to have acted sinfully.¹⁴⁸
- In the absence of appropriate male chaperones (i.e. *mahram*), the workplace must be reserved for women only.¹⁴⁹
- Women are forbidden from travelling alone without a *mahram*; however, this stipulation is complicated, and interpreted in numerous different ways in modern jurisprudence.¹⁵⁰
- Women must avoid using an attractive or alluring voice when talking with men.¹⁵¹ Women are required to respect Sharia provisions according to the Qur'an.¹⁵² For example, Saudi Arabia has an institution called the General

¹⁴⁵ For a man, it is consideration for the culture within society and he may respect general principles of Sharia, through dressing modestly. Such as Saudi Arabia applied these rules in public and private sectors which individuals adhere to.

¹⁴⁶ Qur'an 33:59.

¹⁴⁷ Al-Twijrih (n 22) 147.

¹⁴⁸ Ibid.

¹⁴⁹ In Islam, the basic principle of the interaction between men and women is segregation, unless the latter are accompanied by a male chaperone. This means that in all areas of life and in all places, whether private or public, unsupervised contact between non-related men and women is generally prohibited. In Islam, there are two types of mixing: *Ektlat Moharm* (unlawful mixing) and *Ektlat Jauz*. (Lawful mixing). The first type means 'totally not legally', such as when women meet men in one place without reason or necessity, whereas the other type means 'mixed allowed', whereby a woman can meet a man for a reason or special purpose, for example in Masjid al-Haram in *Makkah* or public places, like marketplaces. For more, see; Al-Ghtani (n 117) 9-14.

¹⁵⁰ Al-Dehailan (n 12) 33; Women travelling with the driver in one car, and her mahram in another car, travelling with her <<http://islamqa.info/en/211092>> accessed 23 Nov 2017.

¹⁵¹ Ibid.

¹⁵² Qur'an 33:33; 33:59 and 24:31; Reported by Sahih Muslim, Chapter: Women Who are Clothed Yet Naked, Turning Away from Righteousness and Leading Others Astray hadith no. 5582.

Precedency of the Promotion of Virtue and the Prevention of Vice, whose role is to control these kinds of behaviour in society.¹⁵³ This Islamic rule is called *hisbah*, or ‘social regulation’.¹⁵⁴

First of all, if a woman is married, she requires permission from her husband, as she is his responsibility. However, if she is not married, then a male relative – for instance her father – will take on this responsibility and position. This is confirmed by *Qyis* which is subject to Sharia sources from in the following *hadith*:

“The Messenger of Allah said: ‘Do not deny the woman their share of the Masjid, if they ask you for permission.’ Bilâl said: ‘By Allah, we will not allow them.’ ‘Abdullâh said to him: ‘I say: ‘the Messenger of Allah iW said,’ and you say: ‘We will not allow them’.”¹⁵⁵

This *hadith* confirms the principle that, in general, women should ask for permission. However, Islamic scholars agree that permission from the father or another male should be considered by the woman and taken into account only if he is supporting her financially.¹⁵⁶ The critical point in this matter is that each obligation is offset correctly. Thus, in some interpretations of Islam, a woman is obliged to seek permission from their father or another mal, and has a duty to respect that permission; and in return their male guardian has an obligation towards her.¹⁵⁷ Again, this matter is subject to particular interpretation and opinion. Such opinion(s) could be consistent with Sharia texts at a specific time, but that same interpretation or application of Sharia may not be appropriate in light of women’s status today. The Sharia is not a set

¹⁵³ General Precedency of the Promotion of Virtue and the Prevention of Vices <<https://www.pv.gov.sa/Pages/default.aspx>> accessed 25 Nov 2017.

¹⁵⁴ The rule of *hisbah* as social regulation on society, applying in all aspects of life in order to control society, practices which are against Sharia rules, and ensure that people respect Sharia. See Fadila Grine and others, ‘Sustainability in Multi-Religious Societies: An Islamic Perspective’ (2013) 34 *Journal of Beliefs & Values* 72, 76.

¹⁵⁵ Reported by Sahih Muslim, the book of *As-Salât*, hadith no.998.

¹⁵⁶ Al-Twijrih (n 22) 146.

¹⁵⁷ Ahamd Al-kouly, *Right between Jurisprudence and Law Theory (Nathryah Al-Huq bain Al-Fiqh wa Al-Kanon*, Arabic, 1st, Drusslm 1423 AH) 57.

of static rules; thus, interpretations of women's status should be reconsidered in light of the modern context.

The second point that is raised regarding women accepting jobs is that the job should not prevent marriage. Marriage is a man's responsibility, according to Sharia; thus, women should not prioritise work over marriage. In addition, if a woman is married, and leaves the house to go to work, this will create domestic issues, as there will be no one supervising the home when both are out. It is better for women to look after family matters, her children and her husband. Religious scholars argue that Sharia protects family interests by making it the responsibility of the man to work and to provide for his wife and children, by ensuring they have basic amenities such as food, clothes, and money for healthcare or education.¹⁵⁸ This is covered within the reciprocal rights and duties of men and women under Sharia.

If all of the Sharia conditions outlined in the points above are met, in principle, women can work in any sector, whether public or private, in all manner of professions. Although there are some limitations that women must take into account, these are not intrinsic limitations on women's right to work. For instance, the issue of segregation is often cited as a barrier to women's employment, but as numerous creative strategies in Saudi Arabia have shown, this is not the case; rather, it can in fact promote women's employment opportunities, for instance through the construction of female-only schools and universities.

Regarding the argument, or belief, that women's primary role is to stay at home and not to go out unless necessary, this does not necessarily prohibit women's employment, unless one is shackled to the late industrial prejudices of European labour. Modern methods of working in knowledge-based economies are decreasingly dependent on physical presence within a factory or office; even in developing countries, it is now common for both men and women to work from home, whether in

¹⁵⁸ Ibid.

cottage industries or small shop units. In short, there is no fundamental contradiction between the concepts of working and staying at home.

Furthermore, it should be emphasised again that Sharia fundamentally exists to protect people, their lives, property and honour; to this end, the rationale for the prohibition of free mixing between men and women is intended to prevent fornication, and the suspicion thereof, and the means to it, in order to protect the lives and honour of men and women, their families, potential offspring from illicit unions, the institution of marriage itself, and the social fabric upon which all members of society are dependent.¹⁵⁹

These rules therefore constitute required permissions, rather than being restrictions against women, and are intended to protect women from antisocial behaviours in societies that affirm the value of marriage and family above individual liberties. For instance, in the West, women work in prostitution and in night clubs, which is organised by law – thus it is legal and protected by law – whereas Sharia prohibits such working environments and roles, as they are fundamentally incompatible with Islamic values. This therefore raises the question of the particular employment areas that women are able to work in, in accordance with Islamic values.

3.3.3 Employment Areas for Women in Sharia

Generally speaking, there are no Sharia texts, either in the Qur'an or Hadith, that stipulate specific job roles according to gender. Sharia allows women to work, as it does men, outside of the home; however, certain interpretations require that this be in an appropriate job that should be suited to her nature, interests, and ability, and that does not undermine her femininity.¹⁶⁰ As long as the job itself, and the environment for women, does not conflict with Sharia rules, including in the Qur'an and *Sunnah*,

¹⁵⁹ See on sexual harassment? Report < <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20140401200420> > accessed 26 Nov 2017.

¹⁶⁰ Ibid 34.

then women can work in such a job. In fact, Sharia generally encourages all humans to obtain sustenance through legal means of work.¹⁶¹ Thus, the potential areas in which women can work are many, although the permissibility of such employment is subject to the considerations explained previously. In practice, areas considered suitable for women to work in are heavily influenced by cultural experience and perceptions, and tend to be within the fields of medicine, teaching, textiles and cooking. This cultural influence is informed by specific interpretations of primary and secondary Sharia sources.¹⁶² However, culture can also mitigate against the provisions of Sharia, which is where women's employment in the KSA becomes complex. For instance, in the KSA, women are not allowed to work in certain roles even though they are not prohibited from doing so by Sharia. Indeed, most of the obstacles women faces are due to what can be considered *cultural* rather than *religious* values.¹⁶³

While this matter is likely a foregone conclusion among the Islamic jurists, different Muslim countries apply these principles differently. In the KSA, women will never be judges, or at least have never been judges, as the KSA follows the Hanbali School of interpretation¹⁶⁴, and thus is obliged to prohibit Saudi women from working in this sector. By contrast, in other Muslim states, some women have been appointed as judges. On this point, Ali states:

*“In the contemporary context, many women are participating actively in almost all aspects of life in Muslim countries, such as Sudan, Egypt, Tunisia, Yemen, Bangladesh, Pakistan, Indonesia, Malaysia, and Maldives, but women’s appointment as judges in the courts is still rare”.*¹⁶⁵

¹⁶¹ Qur’an 67:15; Qur’an 62:10; Qur’an 73: 20; Reported by Sahih Al-Bukhari, Hadith no. 1470, Chapter to abstain from begging.

¹⁶² Saudi Arabia: Huge Obstacles for First Women Lawyer, Need Protection from Discrimination, End to Guardianship Restrictions < <http://www.hrw.org/news/2013/04/12/saudi-arabia-huge-obstacles-first-woman-lawyer> > accessed 17 Nov 2017.

¹⁶³ Ibid.

¹⁶⁴ Frank E Vogel, *Islamic Law and Legal System* (Brill 2000) 137.

¹⁶⁵ Md Yousuf Ali, 'the Appointment of Muslim Women as Judges in the Courts: A Textual Analysis from Islamic Perspective' (2011) 17 2nd International Conference on Humanities, Historical and Social Science 200, 201.

There are currently nine Muslim countries that allow women to work as judges: Jordan, Syria, Lebanon, Yemen, Sudan, Tunisia, Morocco, Algeria, and Iraq.¹⁶⁶ In fact, this is a different application alongside all Muslim countries apply Sharia make question mark to Saudi Arabia not allow women to work as judge. The KSA is likely right to not appoint women as judges, as they refer to the consensus, or '*ijma*', method, whereby the evidence of Islamic jurists is considered very strong and reasonable. Some might question whether, in fact, in some cases, a woman might be more able and more suitable to work as a judge than a man is; in this respect, the Sharia rule is applicable to the majority rather than the minority, as Sharia rules are being applied generally and not specifically.

Thus, the areas in which it is generally acceptable for women to work include all sectors, with the exception of positions of leadership in general, and as judges in particular. It is for this reason that in most Muslim countries, women will not be found in such positions. The Sharia ideology is that there are wide-ranging areas in which women can work, but with certain limitations that must be taken into account. In short, women's right to work, according to Sharia, in general has nothing to do with the position of Sharia, in terms of her humanity, dignity and eligibility.

Finally, if women follow the Sharia provisions, they should not be prevented from exercising their right to work, especially in the KSA, which proclaims that its constitution is formed on Sharia. The present research has shown that women's right to work under Sharia is universally affirmed by the majority of Islamic scholars, whether classical or modern. Thus, the KSA should re-address its stance on women's work in light of Sharia, and work to overcome and remove the obstacles faced by women in this regard. The employment areas open to women under Sharia are in fact determined by factors other than Sharia itself, due to specific religious interpretations

¹⁶⁶ Khalid Ahmmad Othman, 'Women Working in the Field of Judiciary and Legal Frame' (aleqtisadiyah, 8 Feb 2007)<http://www.aleqt.com/2007/02/08/article_7841.html> accessed 28 Nov 2017.

and cultures, which have resulted in women being largely absent from certain areas of work in the KSA, although this is not the explicit directive of Sharia.

3.4 Culture as a Barrier to Women's Right to Work in the Kingdom of Saudi Arabia

Much current debate in regard to the challenges surrounding the application and enactment of women's human rights is concerned with or related to culture, religion, custom, and tradition. As such, 'culture' has been widely blamed for many of the issues that are encountered; for instance, the harmful behaviour of those who use culture as a justification for serious violations of women's human rights criteria, arguing that their culture forces them to endorse restricted interpretations of international human rights duties, or to reject such obligations completely.¹⁶⁷ It is commonly male representatives or leaders of a number of religious or cultural categories that establish and claim that their culture does not permit them to recognise women's equality; women's own thoughts regarding this matter have been, in nearly all circumstances, absent or ignored.¹⁶⁸

Article 5(A) of CEDAW asserts that the obligation of the State is

*“To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women”.*¹⁶⁹

According to this request, cultural practices, or what are claimed to be cultural practices, must be modified if they create or lead to discrimination against women, or incite gender-based violence.¹⁷⁰ Shaheed surmised that culture impacts on women's rights “[b]y attributing self-propelling agency to “culture” independent of the actions

¹⁶⁷ Rikki Holtmaat and Jonneke Naber, *Women's Human Rights and Culture from Deadlock and Dialogue* (Intersentia Publishers 2011) 7.

¹⁶⁸ *Ibid.*, 8.

¹⁶⁹ CEDAW, Art 5(a).

¹⁷⁰ UN, Human Rights Council, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur in the field of cultural rights, 3 Feb 2016 (AHRC/31/59) para 25.

of human beings”.¹⁷¹This power is becoming out of control. In short, however, the influence of culture turns attention away from particular actors, institutions, and regulations that keep women subordinated.¹⁷²Thus, the effect of culture on women’s rights is often a barrier.

There is a link between culture and/or religion and women’s rights.¹⁷³ Culture plays a major role in religion in Saudi Arabia, as a consequence of which Saudi society can be considered a more traditional community.¹⁷⁴ Culture in Saudi society is significantly influenced by the imposition of rules, which the community considers to be laws, and as such must be respected and followed. Breaking these social and cultural rules results in conflict between Sharia and these cultures in Saudi Arabia, yet both must be respected. Reciprocally, these ‘cultural’ rules have come to take the place of the law.¹⁷⁵ However, on occasion, these cultural rules are not consistent with Sharia and internal laws, and at the same time hold a strong position in society.¹⁷⁶

Women in Muslim states, and particularly in Saudi Arabia, are suffering as a result of cultural misconceptions about women that do not comply with Sharia and domestic law. However, within specific communities these beliefs work well, and take precedence over law. In some cases, these misconceptions have become so prominent that no law seems to be able to overcome or prevent them. Specifically, culture has a strong influence on women’s rights via communities of people; even if the rules or provisions are said to be derived from Sharia, in fact they are merely social and/or cultural.

Some common phrases used in Saudi Arabia, which are derived from Sharia, include that ‘a woman’s place is at home’ and that ‘women will be women’.¹⁷⁷ This section has identified that these phrases are used in relation to women’s right to work, often

¹⁷¹ UN Human Rights Council, Cultural rights, 10 Aug 2012 (A/67/287) para, 3.

¹⁷² Ibid, 4-5.

¹⁷³ Holtmaat and Naber (n 167) 7-11.

¹⁷⁴ Azizah Yahia Al-Hibri, ‘Muslim Women’s Rights in the Global Village: Challenges and Opportunities’ (2001) 15 *Journal of Law and Religion* 37, 40.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Eleanor A. Doumato, ‘Gender, Monarchy, and National Identity in Saudi Arabia’ (1992) 19 *British Journal of Middle Eastern Studies* 31, 33.

reflecting cultural values, which in some cases constitute barriers. As this terminology has arisen from a Sharia context, the correlation between Sharia and culture is very strong.

3.4.1 ‘A Woman’s Place is in the Home’

One of the most prevalent cultural attitudes regarding women in Saudi Arabia is the view that the best place for a woman is in the home.¹⁷⁸ Indeed, this idea originally derives from the Qur’an, wherein it is stated: “Men are in charge of women”,¹⁷⁹ “And abide in your houses.”¹⁸⁰ Muslim men’s concept of the ‘ideal’ woman is typically based on these verses, which are interpreted according to their own general knowledge, rather than official interpretations of Sharia sources. The combination of an incorrect religious interpretation and cultural influences has led to the strong belief in ‘compulsory’ Sharia provisions that in fact are mere cultural attitudes.

Women in Saudi Arabia are suffering from patriarchal notions that constitute a barrier to the expression of their right to work. Men have continued to refuse women’s right to work, arguing that their place is at home.¹⁸¹ As such, men have more opportunities than women in terms of work.¹⁸² The logic of this might appear to suggest that it is men who are in charge of women; by offset, women may demand the right to get a job, but will be not able to secure work.¹⁸³ It is true that Sharia has granted responsibility to the man, but that does not necessarily mean that a woman’s place is at home. For example, Sharia encourages human beings to pursue employment and livelihood, as quoted in certain passages in the Qur’an, and the *Sunnah*.¹⁸⁴

¹⁷⁸ Hana Balaa, ‘Behind the Closed Doors of Saudi harems’ (unpublished article) <<http://arabian-echo.com/downloads/author.pdf>> accessed 10 Nov 2017; Seera Kirdar, ‘The Impact of Educational Empowerment on Women in Arab World’ in Colin Brock and Lila Zia Levers (eds), *Aspects Of Education in the Middle East and North Africa* (Symposium Books 2007); Myra E.J.B. Williamson, ‘Women as Prosecutors and Judges in Kuwait: Aspiration and Obstacles (2015) The 3rd International Academic Conference on Social Sciences 179,199-200.

¹⁷⁹ Qur’an 4:34.

¹⁸⁰ Ibid, 33:33.

¹⁸¹ Doumato (n 177) 33-34.

¹⁸² Doumato (n 59) 568-572

¹⁸³ Doumato (n 177) 35.

¹⁸⁴ See the Qur’an 67:15, and 9:105; Sahih al-Bukhari, Vol.3, Book.34, Hadith 286.

The reality of women's lives in Saudi Arabia is largely determined by the idea that women's place is at home. Man has taken this idea from the Qur'an, but has done so in error.¹⁸⁵ This represents a misunderstanding of the quoted verses, other verses, and hadiths that have also been incorrectly interpreted and applied. Thus, the issue, *inter alia*, is that the blame should be placed on Sharia, as this position represents a violation against women. By contrast, criticism can also be directed at culture. In addition, in Saudi Arabia, women are forced to live under constant legal and cultural prohibitions;¹⁸⁶ these restrictions are imposed by the State under its law, supported by a patriarchal structure, toward which blame can also be directed.¹⁸⁷

As stated already, it is the patriarchal culture and system rather than Sharia that supports the idea that women's place is at home. The current situation is the result of repressive regimes supported by a patriarchal system. Furthermore, the absence of any law to restrict and prohibit such cultural practices is a failure of the State to enforce relevant law.¹⁸⁸

As Saudi Arabia is a conservative State in which Sharia and Arabic cultural values are stringently followed. A number of studies on women's working lives in Saudi Arabia have confirmed that the major obstacles to women's career progress are patriarchal power relations and attitudes towards women.¹⁸⁹ The factors that influence and shape patriarchal attitudes towards women stem from the socio-cultural set-up of the region, regarding women's position in the society. Hence, women are subject to these mistaken ideas, and stereotypical views of women have become well-established among members of the community.

¹⁸⁵ Doumato (n 177) 33.

¹⁸⁶ Mantgo (n 60) 51.

¹⁸⁷ Ibid.

¹⁸⁸ General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CDEAW/C/GC/28 in 16 Dec 2010, para. 10.

¹⁸⁹ Mona Almunajjed, *Women in Saudi Arabia Today* (St Martin's Press 1997); Katlin Omair, 'Women in management in the Arab context' (2008) 1 *Education, Business and Society: Contemporary Middle Eastern Issues* 107; Mohamed M. Mostafa, 'Attitudes towards Women Managers in the United Arab Emirate: the effects of patriarchy, age, and sex differences' (2005) 20 *Journal of Managerial Psychology* 552; Mansour (n 11) 14.

As a result, Saudi culture reaffirms that a woman's place is at home. Culture should be a positive vehicle to promote respect for women's rights generally. However, often, the influence of culture on women's rights is negative, due to certain gender stereotypes.¹⁹⁰ In this case, the role of the State must accord with international human rights treaty obligations to modify social and cultural patterns of conduct, of both men and women, in its domestic law.¹⁹¹ In a periodic report on Saudi Arabia by Ms. Al-Zahrani, it is claimed that "altering customs was a daunting task in such a large and diverse country".¹⁹² This is followed by an explanation of the changes made by the Ministry of Social Affairs within communities and families in urban and rural areas.¹⁹³ Media should ensure more coverage of the issue in a non-discriminatory fashion and increase awareness of this issue.

3.4.2 Woman is Woman

This phrase is common in Arab communities and, expressed in full, it becomes 'woman is woman, and man is man'. The implication of this statement is that there is a different degree or level of privilege available to a man than there is to a woman. This concept has its roots in pre-Islamic Arab custom, the constitution of which was decided by men and a tribal culture.¹⁹⁴ As such, it is extremely important in understanding the discriminatory treatment of women in Saudi Arabia today.¹⁹⁵ In the pre-Islamic period, women were looked upon as being inferior to men. However, this does not accord at all with the Qur'an. The idea that 'woman is woman' is the direct result of a patriarchal system found in traditional Arab societies.¹⁹⁶ Al-Hibri states that, "until recently patriarchal laws prohibited women from entering the work field under the guise of protecting women's morality, or because of women's perceived

¹⁹⁰ Marcha A. Freeman, Christin. Chinkin and Beate Rudolf, *the UN Convention on the Elimination of All Forms of Discrimination against Women* (Oxford University Press 2012) 159.

¹⁹¹ CEDAW, Art 5(a).

¹⁹² Committee on the Elimination of Discrimination against Women, Fortieth session, CEDAW/C/SR.816 on 27 Feb 2008, para.11.

¹⁹³ Ibid.

¹⁹⁴ Jeri Altneu Sechzer, "Islam and Woman: Where Tradition Meets Modernity": History and Interpretations of Islamic Women's Status' (2004) 51 *Sex Roles* 263, 267-270; Rebecca Barlow and Shahram Akbarzadeh, 'Women's Rights in the Muslim World: Reform or Reconstruction?' (2006) 27 *Third World Quarterly* 1481, 1484-1485.

¹⁹⁵ Esmaili (n 81).

¹⁹⁶ Al-Hibri (n 174) 46- 62.

physical limitations”.¹⁹⁷ The origins of this idea can be traced back to a time in which Saudi culture refused women to gain education, even as the government sought to educate girls.¹⁹⁸ Advocates of this view believe that “woman is woman,” and as such they should not receive an education, as this is not important when a woman will be at home. The result is that women experience oppression in the name of culture, and sometimes in the name of religion. However, nothing in the Qur’an states that “woman is woman” and “man is man”. To the contrary, the Qur’an in fact states:

*“O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted”.*¹⁹⁹

Looking upon women as women is clearly a form of discrimination, which is completely prohibited under Sharia, which Saudi Arabia claims to be governed by. This stereotype of woman as woman, which is largely propagated by men, as well as being a form of discrimination, is a very reductive view that is reflective of a pre-Islamic era, in which women were treated as being without rights and dignity.²⁰⁰ In the sight of God, men and women are no different on grounds of gender; it is only those who have *Taqaw* (belief) that are deemed to be superior.²⁰¹ Thus, saying that ‘woman is woman and man is man’ does not comply at all with Qur’anic standards but rather creates a kind of discrimination that is completely prohibited by Sharia, as seen above in the cited verse.

As explained, the portrayal, by men, of ‘women as women’ in Saudi Arabia is a cultural construct that implies that there is a difference between man and woman that allows men to have the right to work while denying this to women.²⁰² For instance, according to the Arab mentality, men see women as incapable of working as builders, engineers, bus drivers, and in other manual roles. From this perspective, the notion that woman is woman is a real one, and one that promotes ideas of difference, in

¹⁹⁷ Ibid, 37.

¹⁹⁸ Hamdan (n 19) 47, 53.

¹⁹⁹ Qur’an 49:13.

²⁰⁰ Niaz A. Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan* (Martinus Nijhoff Publishers 2006) 27, 44.

²⁰¹ Ibn Kathir (n 67).

²⁰² CEDAW/C/SR.816 on 27 Feb 2008, para.11.

which women have less ability, agency or capital. These levels of difference are determined, however, not according to the principles of Sharia, but by man himself. In other words, the view that supports this idea is not derived from a scientific (physiological) background, but a cultural one.²⁰³

What allows Saudi men to retain a superior position to women is their resort to the notion of responsibility with regard to women, thereby giving them power over women. As long as man is in charge of the family in accordance with *Ijma*²⁰⁴, he can claim to be a level above a woman, or to have the right to work while at the same time denying it to women. However, there are no texts expressly prohibiting women from working, as seen in the examples given above from the Qur'an and *Sunnah*. The idea is solely grounded in cultural notions.²⁰⁵

Those who believe that a woman's place is at home might consider her main job to be looking after the family and acting as a housewife, which includes cooking and looking after the children. Inequality between men and women is not a recent phenomenon. Historically, women have been treated as inferior beings, lesser to men, whether they lived in Muslim, non-Muslim, Arab or non-Arab communities. This situation has given rise to feminist and liberal-democratic movements.²⁰⁶

In Saudi Arabia specifically, men may have derived their power from their own misinterpretations of Sharia texts linked to tribal custom. There exists a huge divergence because of the conflict between Islamic principles and the concepts discussed above. This conflict has been created by individuals, or by tribal custom. As Hamdan points out:

“Cultural customs that deny women equality have become entrenched in the Muslim culture to the point where they are often accepted as Islamic rules. Yet, many of the customs or rules adhered to today cannot be found in Islamic texts (for example, the

²⁰³ Samar El-Masri, 'Challenges facing CEDAW in the Middle East and North Africa' (2012) 16 the International Journal of Human Rights 931, 933-934,937.

²⁰⁴ See chapter two which examines women's right to work under Sharia sources.

²⁰⁵ El-Masri (n 203) 934-35.

²⁰⁶ Radha Kumar, The History of Doing: An Illustrated Account of Movements for Women's Rights and Feminism in India, 1800-199 (Zubaan 2002); Al-wzan (n 142) 221-245; Shah (n 200) 27-45.

*belief that women should not drive cars, or that women should not pursue Law or Engineering).*²⁰⁷

In Saudi Arabia, where women are suffering due to a strong cultural stereotype that classifies ‘woman as woman’, the lack of individual knowledge of or respect for women either by law or Sharia only serves to increase the problem, in light of an absence of any law prohibiting such behaviour or misconceptions. Thus, the results will automatically revert to law, which is Sharia. It is time to change the patriarchal nature of Saudi society, by enforcing the law and establishing a new law that can intervene in the public expression of such damaging gender stereotypes.²⁰⁸ Furthermore, in addition to enforcing this law, awareness should be increased amongst the community, facilitated by the media, education institutions, and public workshops, in order to give women more opportunities in both public and private sectors. The State should also consider temporary special measures as recommended by CEDAW.²⁰⁹

3.5 Conclusion

To conclude this chapter, it is necessary to review those factors that play a major role in influencing a woman’s right to work in Saudi Arabia. These obstacles have been identified in this chapter, and should be taken into account by both men and women. Each of these factors has been examined separately. This chapter has also examined some of the obstacles faced by women in Saudi Arabia, which make it difficult for them to enact their right to work, in accordance with Sharia and local law.

The identified obstacles are religious and cultural in nature, and play a key role in the fight for women’s right to work in Saudi Arabia; as such, these factors are the subject of critical debate at international and local levels. The religious barriers to women’s right to work include male guardianship, intermingling, seclusion, and sex-segregation.

²⁰⁷ Hamdan (n 19) 54.

²⁰⁸ CEDAW, Art 5(a).

²⁰⁹ See; General Recommendations Adopted by the Committee on the Elimination of Discrimination Against Women, General recommendation No.25 thirtieth session (2004).

Religious interpretations of Sharia cause women to face some obstacles to pursuing their rights. While these interpretations might be intended to protect women, not put up barriers, it can be seen today that, with respect to women's right to work, these factors do seem to act more as obstacles. Clearly, neither Sharia nor its provisions are inherently barriers towards women; rather, many other factors play a major role in affecting women's right to work. The subsequent discussion identified and clarified the specific role of these factors under Sharia, although there are also other factors affecting this issue.

The misapplication of Sharia by individuals, according to their own personal understanding, is a major issue in the KSA. Furthermore, because the codification of Sharia is not complete, individuals or scholars are at liberty to interpret and draw up their own rules, often making it more difficult for women to acquire the right to work. This has led to the current opinion, which criticises Sharia as an abusive system of law working against women's right to work. The absence of any controls with relation to these rules through, for example, the codification of Sharia, has exacerbated this issue. It is necessary to 'close the door' on individual interpretations or understandings of Sharia, made according to individual knowledge or best understanding. For instance, as explained earlier, certain interpretations and understandings of verses and *hadiths* suggest the view that, in some quarters, Sharia is seen to belong to the people.

Mahram, as explained earlier in this chapter, is a concept in Sharia obligation by religion interpretations intended to restrict a woman's movement in her daily life, as part of which women's right to work in Saudi Arabia is under the control and approval of her guardian. Thus, it can perhaps be argued that such a system is an obstacle to women. When man unnecessarily and unfairly uses his power in a manner that prevents women from working, this is an abuse of his right. It is, indeed, quite difficult to determine the limits of the power of a *mahram*, and consequently it is hard to know to what extent he can control a woman's right to work, unless there is a list of the work that women are not allowed to do, as determined by some general rule. In the absence of any such regulation, the best solution is to restrict a *mahram's* power

by creating a rule that both men and women are bound by. This could be achieved through the codification of a *mahram*'s role under Sharia. On the other hand, the major role that the State needs to play should be to raise awareness in the community about wrongful practices and misapplications of Sharia that arise from a flawed understanding of Sharia.

The problem of the misunderstanding and misconception of Sharia is a major issue for women in the Muslim world. In Saudi Arabia, for example, flawed concepts thought to be consistent with Sharia are sometimes applied. However, they are far from correct. Nevertheless, change has not been instigated, and women have been the victims. The mixing and merging of Sharia and socio-cultural concepts is impeding women's right to work in Saudi Arabia.

The *mahram* system, as it relates to women's right to work in Saudi Arabia, does not derive from Sharia. The issue is that the system is governed and applied by men who believe in the supervision of women. Such a patriarchal system is founded on Sharia principles, which means that, in effect, this type of discrimination and abuse of rights are apparently sanctioned by Sharia, when in reality this is not the case. Sharia must be interpreted differently in the modern era, as does the manner in which it should be applied.

The issues of intermingling, '*ikhtilat*', and seclusion, '*kalwah*', in Saudi Arabia, where women often have difficulty acquiring the right to work, are also crucial factors. Religious interpretations have created these rules for many reasons, principally to disallow mixed-gender relationships outside of marriage, and preventing any situations that might lead to this. The prohibition of intermingling and seclusion in Saudi Arabia is derived from Sharia sources, and as such, any such action is deemed illegal in all spheres of life.

However, women in the Kingdom are failing to enjoy their right to work because there are not enough workplaces in which women can work separated from men. It is the State's responsibility to provide such workplaces, so that women can enjoy the same right to work as men. These rules are regarded as barriers when the State does

not take seriously its responsibility to provide workplaces allocated specifically to women. This can lead to a misunderstanding and unfair judgement of Sharia being a restrictive and unjust system. As such, the State is obliged to ensure and safeguard the rights of women to work, and to be allocated proper workplaces.

Cultural barriers also play a significant role with respect to women's right to work in Saudi Arabia, by creating obstacles to their enjoyment of this right. The issue hinges on concepts that are thought to be derived from Sharia rules. However, these are socio-cultural concepts rather than Sharia principles. As stated above, two specific notions, specifically that 'women's place is at home' and that 'woman is woman', are completely cultural in nature, and in no way legal. Most men derive their understanding of these concepts from a misunderstanding of Sharia and its rules, and then apply their beliefs in accordance with Sharia requirements. The issue here is the mixing and merging of Sharia and cultural rules. It should be the case that Sharia clarifies the provisions with regard to these concepts, wherever these exist. On the other hand, it is the State's obligation to take action to prohibit such behaviour, which is harmful to women, by introducing legislation and regulations that forbid such actions and concepts in Saudi society. Moreover, the State must raise awareness in society regarding these actions and concepts, in order to highlight the fact that they are cultural concepts and, as such, do not constitute Islamic principles, rules or provisions.

The contributions of this chapter are primarily the clarification and explanations of the obstacles to women's right to work in Saudi Arabia, and suggestions as to how these can be overcome. Removal of these obstacles by enforcing a specific law that prohibits damaging socio-cultural beliefs and behaviours is one way to address the problem. The State has an important role to play in overcoming this issue, through increasing awareness in society and in the media by emphasising, for example, the fact that women are a part of society and should therefore participate more fully in the community. An increased awareness in Saudi society of women's roles and participation in the community could be achieved by focusing on the importance of women's work, in particular in a number of specific sectors. In addition, the State

should work to highlight misunderstandings and misconceptions of Sharia. In addition, religious interpretations should be more consistent with the current time, where Muslims jurists' opinions should be developed to help women participate equally in the labour market. However, in the current context, because of development and the current economic situation, which requires women to participate in this movement, it will be difficult to apply this text. It is quite erroneous to claim that women must remain at home in the current situation, as women are needed in the labour market. In addition, when the KSA, a Muslim country, educates women, either locally or abroad, they will be better qualified to engage in the labour market.

4 Chapter Four: Limited Access to Higher Education as an Obstacle to Women's Right to Work in Saudi Arabia

4.1 Introduction

Women's right to education in Saudi Arabia is a popular topic of research, and the right to education is an important human right. A lack of access to education affects many other issues and aspects of life, such as the ability to work. However, the right to education is linked to many different factors; and ultimately education creates and builds up society. Beyond the basic right to education in Saudi Arabia (Elementary, Secondary and High School), which is not the primary concern of the present research, access to higher education is a key issue. Saudi women find it very difficult to access higher education. In light of this, the chapter examines two questions: what factors limit Saudi women's access to higher education; and how do these factors act as an obstacle to Saudi women's right to work in Saudi Arabia, in both public and private sectors?

For the last century, women in Saudi Arabia have been deprived of the right to higher education. In contrast, the current situation is completely different, do have right to education at all levels, but available places are limited. While the situation is getting better, further improvements are needed, as there are still many factors that prevent Saudi women from having full and free access to higher education. It is not educational standards, such as a high grade point (GP), or limited places, that are standing in their way, but rather other factors, which only apply to Saudi women, not men.

The factors identified in this chapter play a major role in terms of limiting women's access to higher education, which represents an obstacle to women's right to work in Muslim Arab countries, and specifically in Saudi Arabia. The most significant factors include specific, restrictive interpretations of Sharia and observance of particular customs. The aim of this chapter is to explain the link between the right to education,

– and specifically women’s limited access to higher education – and women’s right to work in Saudi Arabia. As mentioned previously, the right to education is important in enabling women to exercise their right to work, because if women are qualified, then in principle they are able to enter the labour market according to their specific qualifications. As such, access to higher education is very important to Saudi women, as equal access to higher education will likely lead to a successful career, whereas a woman who has little or no access to higher education will be unqualified, and thus will have few or no career opportunities.

The link between women’s right to education and their right to work is thus clear: without education, a woman will not be able to find work. This is true for both men and women, so education is important to both genders. Extending access to higher education to Saudi women creates numerous opportunities for the Saudi labour market, which is one reason to facilitate equal opportunities for women and men.

This chapter is divided into three parts. The first section looks at women’s education in Saudi Arabia, including the history of women’s education, educational policy, and the women’s educational rights under Saudi domestic law. The second section examines limited access to higher education as an obstacle to women’s right to work in Saudi Arabia, specifically, the limitations on women’s opportunities to study certain disciplines, their unequal access to higher education, inequality in the use of available facilities in educational institutions, and regional obstacles to equal access to higher education. The final section provides a conclusion on these issues.

4.2 Women’s Education in Saudi Arabia

4.2.1 Historical Context of Women’s Education in Saudi Arabia

Since education extended the economic contribution that women are able to make to Saudi society through work, it is essential that learning needs to be outlined and highlighted. Education is considered a significant contributor to economic

development; it is essential for future generations, and the State is focused on making this happen with due attentiveness and conscious means.¹ An investment in the education of women secures significant economic and social benefits for individuals, households, and society at large.² Clearly, the better income and output connected with further education provide advantages for society. Investment in women's learning has been specifically demonstrated to improve the output of females employed in non-formal areas, which produces inter-generational educational features yielding substantial environmental advantages.³

In general, education in Saudi Arabia is provided to all people at all levels, whether Saudi or non-Saudi, and is provided by the government for free.⁴ Saudi Government policy provides free education to all individuals, whether male or female, Saudi or non-Saudi; however, it is not compulsory.⁵ This chapter is concerned with higher education specifically, and the obstacles preventing Saudi females from accessing and benefitting from it. In regard to higher education in Saudi Arabia, it is provided free to Saudi women; in addition, the government also supports them by giving students monthly stipends.⁶

Before 1960, Saudi women were not entitled to education, at either higher, primary or secondary level. In other words, there was no formal public education provision in Saudi Arabia. In wealthy families, daughters were sometimes formally educated at home, by private tutors. Girls from less well-off families could attend informal classes at '*Kutab* Schools', where they would learn to read the Qur'an.⁷ It seems to be that, for the majority at that time, there was no formal public education. As such, women

¹ Annemarie Profanter, 'Achievements and Challenges in the Educational Realm in Saudi Arabia' (2014) 1 *European Scientific Journal* 207,208; Haya Saad Al Rawaf and Cyril Simmons, 'The Education of Women in Saudi Arabia' (1991) 27 *Comparative of Education* 287, 288.

² Salman Saleh Al- Dehailan, 'The Participation of Women in Saudi Arabia's Economy: Obstacles and Prospects' (PhD thesis, University Durham 2007) 90.

³ Profanter (n 1) 288-290.

⁴ Al Rawaf and Simmons (n 1) 287.

⁵ *Ibid*, 287.

⁶ King Fahad University of Petroleum and Minerals, Deanship of Student Affairs <<http://www.kfupm.edu.sa/deanships/studentaffairs/default.aspx>> accessed 02 Nov 2017.

⁷ Al-Jawhara Bubshait, *Saudi Women's Education: History, Reality and Challenges* (1st edn, Ghainaa Publication 2008); Al Rawaf and Simmons (n 1) 288.

have not benefitted from their right to education in Saudi Arabia, either in the past or, largely, in the present day. Profanter states that education in Saudi Arabia falls under the umbrella of the Department of Religious Guidance, which is responsible for ensuring that the interpretation of freedom is in line with Wahhabi.⁸ Profanter tried to link Saudi women's education should not be away from the methodology Wahhabi. In fact, Saudi Governance Law states that "Its constitution is Almighty God's Book, The Holy Qur'an, and the *Sunnah* (Traditions) of the Prophet (PBUH)".⁹ Thus, the Wahhabi thought is not the religious interpretation of the State, but rather is more of a revivalist movement at that time. It is not acceptable, therefore, to connect education in light of the existing law in Saudi Arabia, which protects the rights of individuals, but also imposes duties on them. However, it has had a long-standing and significant impact on Saudi society.

The history of education in Saudi Arabia in terms of women's rights shows how education has changed from past to present, and is still changing now. Previously, it was not deemed necessary to educate women in Saudi Arabia.¹⁰ At that period of time, people believed that women should not learn or be educated and, as a result, women remained at home.¹¹ At that time, there was also a strong culture of belief that a woman's place and role was at home, and so there was no reason to educate her. In addition, society at that time viewed education as non-essential and unimportant. Thus, these views had a negative influence on women's right to education. This influence, as we will see, frequently affected women and their right to work.

Historically, in the 1950s, education for women was not easy to obtain. The first formal public primary school for girls opened in Riyadh.¹² However, the aim of the early schools was not to educate girls, but to teach them religious rituals. Women, at that time, did not have a right to education, due to cultural ideals and beliefs. Girls'

⁸ Profanter (n 1) 208.

⁹ The Basic Law of Governance no (A/90) March 1992, Arts 26 and 30.

¹⁰ Amani Hamdan, 'Women and Education in Saudi Arabia: Challenges and Achievements' (2005) 6 *International Education Journal* 42; Al Rawaf and Simmons (n1) 42-47.

¹¹ *Ibid*; also refer to chapter three in this thesis where it examines culture as an obstacle to a woman's right to work in Saudi Arabia, dealing with 'a woman her place in home'.

¹² *Ibid*.

schools opened under the *Ulama*'s own management and supervision,¹³ to ensure the curriculum and teaching approach was compliant with the teachings of Islam.

At this time, the level of education in Saudi Arabia for women was very limited and restricted, and the disciplines that women were allowed to study were also limited, being confined to religious topics that women were judged to need in their lives.¹⁴ By contrast, topics such as law, engineering, computer science, and sports were not available to women.¹⁵ The effects of this are that women's opportunities in the Saudi labour market are very limited, or non-existent, as they are not as qualified as Saudi men. However, this has now changed, and women can now more easily access these disciplines.¹⁶

Society in Saudi Arabia at that time believed that women's place was at home, and that their main role was as a homemaker¹⁷; thus, there was seen to be no reason to educate women. In addition, the reality of Saudi society at that time was based on misunderstood or misapplied Sharia. While many Islamic texts encourage education, there were still individual-level misunderstandings of Sharia, particularly held by men. The fact that women are missing from some disciplines and sectors today is a direct consequence of the marginalisation of women's right to education at that time.¹⁸ One issue today regarding women's right to work is undoubtedly the fact that women have historically not been given a right to education in order to contribute to society.

In terms of the universities in which women were allowed to study, while there was the Islamic University of Madinah, this was reserved only for males,¹⁹ and only taught Islamic studies. However, recently there have been notable changes in Saudi

¹³ Al- Dehailan (n 2) 63.

¹⁴ Rafeda Al-Hariri, 'Islam's Point of View on Women's Education in Saudi Arabia' (1987) 23 *Comparative Education* 51.

¹⁵ *Ibid.*

¹⁶ Hamdan (n 10) 48.

¹⁷ This point has already been discussed in a previous chapter. The conflict between Sharia contests and cultural concepts which is misunderstood by man. See chapter 3 at 118; Hamdan (n 10) 44.

¹⁸ Roula Baki, 'Gender-Segregated Education in Saudi Arabia: Its Impact on Social Norms the Saudi Labour Market' (2004) 12 *Education Policy Analysis Archives* 1, 3.

¹⁹ Islamic University in Madinah <<http://www.iu.edu.sa/en/Pages/default.aspx>> accessed 02 Nov 2017.

educational policies for women, marking a significant break from the past; most notably, women can now study many different subjects.²⁰

The evolution of education in Saudi Arabia, the structure of the educational apparatus, and the content of teaching in Saudi schools has been circumscribed by a concern with preserving the religious foundations of the ruling regime.²¹ This has led to female education being placed under the supervision of the *Ulama*-controlled General Presidency of Girls' Education (GPGE). The target of the presidency was to compromise and to pacify the *Ulama*, and is controlled by the religious authority.²² This no longer exists, as this function has since become absorbing into the Ministry of Education.

Today, women's right to education is completely different; Saudi women are now found in many disciplines.²³ However, obstacles still exist that serve as barriers to women's education, and they are still not treated equally to men in this regard. Saudi women have enjoyed more opportunities, which is the opposite to the case of women in the past. Today, women in Saudi Arabia have accepted places in higher education in almost all universities and fields.²⁴ Saudi women have begun to study law, medicine, science and more; however, there are still some subjects that women are either not allowed to study, or to which they have very limited access. At this point, the issue is that women in Saudi Arabia cannot work in certain fields, as they are not qualified. Thus, certain labour markets are occupied only by men, as they are qualified. The issue on the labour market in Saudi Arabia and cannot see Saudi women as result to less Saudi women qualified. Thus, men are the main occupants of these fields. Finally, the history of women's right to education in Saudi Arabia shows how women have suffered, and highlights the barriers and obstacles that they have faced, thus ultimately demonstrating the barriers to women's right to work.

²⁰ Al Rawaf and Simmons (n 1) 288-293.

²¹ Michaela Prokop, 'Saudi Arabia: The Politics of Education', (2003) 79 Wiley 77.

²² Ibid, 78.

²³ Ministry of Education, The Enrolment in Public Universities 1436/1437 AH <<http://www.moe.gov.sa/ar/AcceptedStatus/Pages/default.aspx>> accessed 10 Nov 2017.

²⁴ Ibid.

4.2.2 Education Policy for Women in Saudi Arabia

From an international perspective, the Beijing Declaration and Platform for Action has argued for the right of education at all levels, including higher education:

*“Access for and retention of girls and women at all levels of education, including the higher level, and all academic areas is one of the factors of their continued progress in professional activities. Nevertheless, it can be noted that girls are still concentrated in a limited number of fields of study”.*²⁵

Education policy for women in Saudi Arabia is different to that for men. The State has different policies for both sexes, as some provisions are made for women and not men, and vice versa. Saudi Arabia has begun to promote and assist women’s education, prompting individuals to call for better education for women.²⁶ In fact, towns, cities and villages have begun to compete with each other in their attempts to establish more girls’ schools.²⁷

In 1959, a Royal Decree stipulated the launch of public female schools in the Kingdom.²⁸ The Decree mentioned that this change was based on the wishes of the *Ulema* (Muslim scholars), and that the purpose of educating girls was so that they could learn about the Holy Qur’an, Islamic topics, and sciences that complement other Islamic lessons, such as household management and raising children.²⁹ The Royal Decree also stated, however, that this form of education would not be a path to any changes to Islamic beliefs or ideals, and would not create problems with the values or social customs of young Muslims.³⁰ This was true when the State established

²⁵ Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, held in Beijing, China, in September 1995, A/CONF.177/20/Rev.1, Art 76.

²⁶ Mona Almunajjed, ‘Women’s Education in Saudi Arabia: The Way Forward’ (2009) Booz & Company Ideation Centre 1, 1-33.

²⁷ Bubshait (n 7) 21.

²⁸ Royal Decree no. 5/3/26/4950 in 18 of Rabi’ Al-Awwal, 1373 A.H.

²⁹ Bubshait (n 7) 22.

³⁰ Ibid.

women's education through informal *Kuttab* schooling.³¹ Later, the education system in Saudi Arabia developed at all levels, in all aspects, for both genders. Policy since that time has emerged from religious ideology, which dictates that education should be consistent with Islamic religious and community values.

The Royal Decree also created a commission, consisting of Muslim scholars who seem to announced to the Grand Mufti of the Kingdom of Saudi Arabia, with the task of managing all schools, organising their courses and supervising their general performance.³² The Decree states that female instructors with strong Islamic faith would be selected to work in these schools. Furthermore, the Decree dictated that every non-public school that had recently been set up in Saudi Arabia must be governed by a new formal education office.

The Royal Decree has led to a substantial advance in women's education in Saudi Arabia. This improvement began with the establishment of the Presidency of Girls Education in 1960. The Presidency recently merged with the Ministry of Education,³³ which is now intended for both boys and girls. Hence, since its establishment and thus far, education policy has been based on Islamic values and systems. The general framework for education in Saudi Arabia must be consistent with Islamic values, which are mostly derived from religious interpretations of Sharia.³⁴

Higher education for girls was established in 1954.³⁵ Prior to this, higher education was offered exclusively to men. In 1957, there was a push to establish higher education for Saudi individuals at home, instead of sending students overseas to learn. For this reason, King Saud University was founded and inaugurated in Riyadh, the capital city of Saudi Arabia. In 1959, King Saud outlined the problems caused by the

³¹ Mann Bin Abdul Haq Arif Khutani, Educational Right for Women in Islamic and International Human Rights law: A Study of Theory and its Application in Saudi Arabia, (University of Wollongong Thesis Collections 2013) 92.

³² Ibid.

³³ Ibid, 27.

³⁴ Al- Dehailan (n 2) 66-67.

³⁵ Ibid, 67.

lack of education opportunities for females in Saudi Arabia, and asked for support from religious scholars to set up an education institution for females.³⁶ After King Saud University was founded in 1957, an additional six universities were founded in Saudi Arabia over the ensuing twenty years.³⁷ Today, the number of universities in Saudi Arabia has increased to thirty, most of which accept female students.³⁸

When discussing Saudi Arabian policy regarding women, it is very clear that they can be educated just as males are. The Basic Law of Governance Article 30 states that: “The State shall provide public education and commit itself to the eradication of illiteracy.”³⁹ According to this, the State has an obligation towards individuals, whether male or female, to provide public education. However, the State faces other challenges when it comes to enforcing education equality between the genders, particularly social challenges. This can be clearly seen during the King Faisal period, when the government tried to educate females in the same manner as males.⁴⁰ Thus, the State education policy in Saudi Arabia is, and will remain, to provide education to all individuals, making no distinction between them. However, the problem lies in other factors, rather than the State policy toward women. Cultural factors were examined in the previous chapter; these represent a significant challenge for the State when it comes to safeguarding rights, which is one of its duties toward citizens. A question can also be asked as to whether the State is making education available, accessible, acceptable and adaptable to women.⁴¹ Hence, in order to ensure that women have equal rights to men in education, the KSA must follow the standards laid out.

³⁶ King Saud of Saudi Arabia, The General Precedence for Female Education < <http://www.kingsaud.org/ar/history/article/the-general-presidency-for-female-education/328>> accessed 06 Nov 2017.

³⁷ Majed Alamri, Higher Education in Saudi Arabia’ (2011) 11 Journal of Higher Education Theory and Practice 88.

³⁸ For more see the Ministry of Saudi Higher Education about Higher Education in Saudi Arabia < <http://he.moe.gov.sa/en/studyinside/aboutKSA/Pages/default.aspx> > accessed 02 Nov 2017.

³⁹ The Basic Law of Governance no (A/90) March 1992.

⁴⁰ Ibtissam A. Al-Bassam, ‘Institutions of Higher Education for Women in Saudi Arabia’ (1984) 4 International Journal of Educational Development 225, 225-256.

⁴¹ See UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, para 6.

Furthermore, one of the State policies regarding women's education is that it must take place within a religious framework. To this end, the State seeks to provide education within the framework of Islamic concepts and principles.⁴² For instance, Sharia prohibits any kind of action that leads to prejudice. *Khalaw*, according to certain interpretations of Sharia, is prohibited. Also, one of the strategies of the State is to teach religious rituals; schooling for both genders was established for the same reason.⁴³

In fact, Saudi society has suffered as a consequence of refusing women's education. As such, today, Saudi women are notably absent from some fields, and from educational in general, as Saudi social values are such that a woman's place is seen to be at home. In addition, it is not considered necessary for women to be involved in work. The primary education was only available to women in order to read the Qur'an and to know the *Sunnah*. It was, in short, for knowing the basics of her religion. When it was first established, the policy toward women in Saudi Arabia was based on Islamic values; however, today, these standards should change. When the education was established in Saudi Arabia, its policy was based on religion, as the policy makers were seeking to give something to society which was at the same time rejected by society. Thus, they established education on a religious basis so that it would be more widely accepted by the Saudi community, as a conservative society. Saudi Arabia should amend its policy toward women's education and provide greater opportunities to them. This would have a significant effect on the Saudi labour market; women only have limited subjects available to them, so are absent from certain fields of work. The result of the current education policy in Saudi Arabia is that the requirements of the Saudi labour market are not being met.

Saudi policy toward women is influenced by both culture and religion, as stated above. On this point, Hamdan states, "Women's education did not change the

⁴² Baki (n 18) 3-6.

⁴³ Hamdan (n 10) 47.

patriarchal nature of Saudi society. Women in every field are subordinate to men”.⁴⁴ Hamdan makes an important observation here regarding women in Saudi society: that they are subordinate to men. This fact can be observed across all sectors of employment, and all aspects of life. This is particularly evident in the education system, where women must refer to a man in almost all decisions, as she is considered subordinate to the man. Securing a job at any level requires being qualified for that position, whether that person is a man or woman.

In terms of scholarship, Saudi policy does not give women equal opportunities to men in higher education.⁴⁵ Most of those who travelled abroad for postgraduate study were men. In contrast, today, the King Abdullah Scholarship Programme provides opportunities for both men and women to study abroad. However, numerous conditions apply to women who travel abroad, but not to men. A *Mahram* must be with them when travelling. Hence, Saudi women have less access to these scholarships than men, due to the restrictions that are placed on them, which equate to unequal treatment and discrimination against women.⁴⁶

4.2.3 Inadequate Protection of Women’s Education under Saudi Arabian Domestic Law

The right to education in Saudi Arabia is one of the fundamental rights that the State claims to provide to all citizens, with no gender-based discrimination.⁴⁷ Again, is Saudi Arabia ensuring the right to education by making it available, accessible, acceptable and adaptable to all?⁴⁸ To examine women’s right to education in Saudi Arabia in light of domestic law, each of these requirements must be examined. The right to education is referred to in Saudi Basic law, Article 30:

⁴⁴ Ibid, 48.

⁴⁵ Hanan Al-Ahmadi, *Challenges Facing Women Leaders in Saudi Arabia* (2011) 14 Human Resource Development International 149.

⁴⁶ E/C.12/1999/10 (n 41) para, 6 and 31.

⁴⁷ Saudi Basic Law, Arts 13, 26 and 30.

⁴⁸ Ibid, para 6.

“The State shall provide public education and commit itself to the eradication of illiteracy.”⁴⁹

Saudi Basic Law asserts that the right to education is one of the State’s obligations towards its citizens. This right is available to and accessible by everyone. Also, it should be noted that the State has committed itself to the eradication of illiteracy. Thus, the State’s obligation is to not only provide public education, but also to eradicate illiteracy in society.⁵⁰ This right to education is not only afforded to one gender, group, or level of Saudi individual; in this sense, men and women are clearly considered equal, and have the same access to education under Saudi law, specifically under Article 30 of Saudi Basic Governance Law.

One important thing to note is that education in Saudi Arabia is not compulsory.⁵¹ The fact that elementary education is not compulsory may affect access to higher education. In 1957, when the first university opened in Riyadh, there were 22 students across seven faculties.⁵² However, today there are over a quarter of a million students, who are attending an ever-increasing number of private and government-funded universities in Saudi Arabia.⁵³ However, the parents are not legally responsible to ensure that their child is educated; this does not comply with Saudi Basic Law of Governance, and the State’s obligation to ensure the right to education. It also contradicts international standards and obligations that the Kingdom of Saudi Arabia has ratified.⁵⁴ In addition, Prophet Mohammed said that, “Seeking knowledge is

⁴⁹ The Basic Law of Governance, art. 30.

⁵⁰ Almunajjed (n 26) 2-22.

⁵¹ Alrawaf and Simmons (n 1) 287.

⁵² Bubshait (n 7).

⁵³ Profanter (n 1) 208.

⁵⁴ The Kingdom of Saudi Arabia ratified the Convention against Discrimination in Education, adopted on 14 December 1960 and entered into force on 22 May 1962. By this convention, Saudi Arabia is under obligation to Article 1(A) and (B) and Article 2; International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19, Article 5(V); Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1), Article 10; Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49, Article 28, 29 and 30.

mandatory for every Muslim”.⁵⁵ However, the State should legislate within the field of Sharia by retaining Islamic principles in seeking knowledge. Thus, the right to education is a matter that is quite closely related to Sharia; as such, the State should protect this right in its law, which is claimed to be derived from Sharia.

The State is obliged to provide ‘public education’ to all individuals. It is true that there are many issues regarding education rights between genders; however, this does not mean that the law does not guarantee these rights equally. Saudi women are indeed suffering from less access to higher education. This is a controversial feature of the Saudi system in many ways. In terms of this study, the issue of Saudi women’s right to education in Saudi Arabia is important, as it represents one of the obstacles to women’s right to work. There are approximately 300 female-only colleges and higher education institutes in Saudi Arabia, and females represent 56.6% of Saudi university students.⁵⁶ While they are more than men, this does not by implication infer equal access to all disciplines; 20% participated in King Abdullah’s Foreign Scholarship Programme.⁵⁷ However, as stated above, because of these obstacles in Saudi Arabia, women will continue to face difficulties and significant challenges.

A girl’s or woman’s right to education at all levels in Saudi Arabia is guaranteed by law.⁵⁸ However, females still lack equal access to higher education, as they are prevented from studying some disciplines, a limitation that does not apply to men. Also, there are fewer and more limited higher education opportunities open to females. However, it is not access to higher education for females in Saudi Arabia today that is the main issue; rather it is the obstacles that women face, which represent barriers to enjoying that access. There are a number of obstacles that prevent women from enacting their right to education, such as cultural, social and religious ideas and

⁵⁵ *Al-Kutub Al-Sittah*, (Dar Al-Salam Li Al-Nashar Wa Al-Twzia 1419 AH) Ibn Majah, Vol.22, Book. 1, Hadith 224.

⁵⁶ Women in Higher Education (Saudi Initiative & Achievements, Ministry of Higher Education, General Department for Planning & Statistics 2010)
<<https://he.moe.gov.sa/en/docs/Doc1/VDMPI030.pdf>> accessed 05 Nov 2017.

⁵⁷ Ibid.

⁵⁸ Almunajjed (n 26) 2.

expectations of women in Saudi society. However, the State has an obligation to modify or abolish existing customs that amount to or cause discrimination against women.⁵⁹

At present, a female in higher education in Saudi Arabia is not treated equally to a male. This limitation on women's right to higher education has led to Saudi women missing out on opportunities in the labour market that are available to men.⁶⁰ In addition, in light of the Saudi development strategy, this may create problems. The examples and statistics given above show that higher education institutes in Saudi Arabia are predominantly occupied by males.⁶¹

In light of developments in Saudi Arabia, the Ministry of Education⁶² is seeking to encourage and support Saudi women to pursue and complete higher education in order that they can be employed and engaged in the labour market. One of the improvements to the Saudi higher education system has been the establishment of the Princess Nourah Bint Abdulrahman University, which is the largest female-only university in the world.⁶³ One of the government policies put in place to help with this is allocated places for females, which increases their numbers and opportunities in higher education. Female-only universities are thus another way to promote equal access in higher education.

In addition, cultural and religious obstacles in Saudi Arabia make it difficult to provide equal access to higher education. For instance, studying music or dancing is prohibited, as most Saudi scholars forbid this.⁶⁴

⁵⁹ CEDAW (n 54) art, 2(F).

⁶⁰ Baki (n 18)

⁶¹ Ibid.

⁶² In 2015, the Ministry of Higher Education merged with the Ministry of Education which became the Ministry of Education.

⁶³ Princess Nourah Bint Abdulrahman University

<<http://www.pnu.edu.sa/en/University/Pages/Intro.aspx>> accessed 05 Nov 2017.

⁶⁴ Ibn Baz, The Rule of Singing and Singing Tools < <http://www.binbaz.org.sa/node/18184>> accessed 10 Nov 2017.

Opening up certain areas that women currently have limited or no access to might create more opportunities for women in the labour market. For example, women are still unable to study engineering in Saudi Arabia, for unknown reasons. It is true that the factors already discussed in this thesis likely play a major role. However, there are no laws or stipulations relating to these matters – for instance whether they are prohibited or even limited. Therefore, the issue appears to be that women in Saudi Arabia do not seem to attain as many university places as men. For instance, the Islamic University of Madinah (IUM) only allocates places to male students. Moreover, the IUM was established in 25/03/1381 A.H, and since that time has only educated males.⁶⁵ The reason for this is conservative attitudes towards the education of women, which is not the result of the influence of Islam *per se*,⁶⁶ but rather of the traditions that have grown up around it.⁶⁷

Women's right to education in Saudi Arabia should be clarified via legislation. General provisions, such as Saudi Basic Law are not sufficient to guarantee women's right to education. In addition, further action should be taken in terms of applying the Convention against Discrimination in Education (CADE). Saudi Arabia, indeed, is not accepted by CADE provisions in the light of domestic law.⁶⁸ Meanwhile, women do not have the right of education particularly in higher education to the same extent that men do in all disciplines. Thus, laws and legislation must be issued that clarify women's rights, rather than merely stating that "The State shall provide public education". Clearly, the State guarantees that right, although that right for women is not actively protected. As such, Saudi women face numerous obstacles, including cultural values and patriarchal views, with no law prohibiting these.⁶⁹ Thus these obstacles have come to be more prominent than law and Sharia.

⁶⁵ Islamic University of Madinah (n 19).

⁶⁶ Alrawaf & Simmons (n 1) 294.

⁶⁷ Ibid.

⁶⁸ See Articles the CADE (n 54) Arts 1-5.

⁶⁹ Philippe Fargues, 'Women in Araba Countries: Challenging the Patriarchal System?' (2003) 13 Reproductive Health Matters 43.

Concluding this sub-section, Saudi domestic law which relates to the protection of the right of Saudi women to education does not yet fully ensure that it is available, accessible, acceptable and adaptable to women, which was stated earlier as their right. By this standard, women do not have an equal right to education in Saudi Arabia, as functioning educational institutions and programmes are not available in sufficient quantities.⁷⁰ In addition, by law, education in Saudi Arabia is not accessible to women, due to discrimination.⁷¹ Hence, Saudi Arabia is not obliged to respect, protect and fulfil women's right to education.⁷² Saudi women's education under Saudi domestic law is not yet respected, protected and fulfilled. The obligation to *respect* requires that the State avoids or prohibits practices that prevent the enjoyment of the right to education.⁷³ However, the obligation to *protect* requires that the State takes measures to prevent third parties from interfering with the right to education.⁷⁴ Finally, the obligation to *fulfil* facilitates and takes positive measures to enable and assist both individuals and the community to enjoy the right to education.⁷⁵

4.3 Limited Access to Higher Education as an Obstacle to Women's Right to Work in Saudi Arabia

4.3.1 Limitations on the Opportunities for Women to Study Some Disciplines

The limitation on Saudi women's opportunities to study certain disciplines in higher education is another obstacle to Saudi women's right to work. This of course affects Saudi women, but also the labour market. As long as Saudi females are prevented from studying some disciplines, they cannot be said to have equal work and career opportunities to those of males.

⁷⁰ E/C.12/1999/10 (n 41) para, 6 (a).

⁷¹ Ibid, 6(b).

⁷² Ibid, 46.

⁷³ Ibid, 47.

⁷⁴ Ibid.

⁷⁵ Ibid.

There is no legal code that restricts Saudi women from studying these subjects. The issue arises from customs, restrictions, culture, society, a patriarchal system, and a lack of legislation that protects women.⁷⁶ By contrast, some subjects are available only to women, and men are not allowed to study them. These topics are said to suit women by nature, such as neutrino (*Iktsad Mansali*).⁷⁷ In fact, determination of Saudi women to study these disciplines is the result of a number of reasons. The primary reason is that the weakness or absence of provisions that provide and protect the right to education. In addition, there are some factors that deprive women of the right to play a primary role in the light of the absence of law or weakness.

In essence, Saudi women today are not still allowed to study some disciplines, as a result of society's attitudes toward women, not because of domestic or Sharia law. The State provides the right to education to all; however, it is not guaranteed to Saudi women. In other words, nothing in Saudi law or regulations prohibits Saudi women from studying in certain fields; however, the reality is that Saudi women are limited in or restricted from studying certain subjects, such as engineering.⁷⁸ The government has begun to instigate a series of initiatives for enhancing access to higher education.⁷⁹ Currently, more than 300 higher education colleges exist for women, alongside universities.⁸⁰ However, Saudi women are still not equal to men in terms of their ability to study all disciplines. In addition, the Saudi Government has invested large amounts of money in the public education system, which has been spent on infrastructure changes, building schools, hiring a large number of teachers, and issuing a loaded curriculum.⁸¹

The issue of Saudi women not having equal access to higher education in Saudi Arabia has several facets and involves numerous factors. Sex-segregation, which was

⁷⁶ Bubshait (n 7) 21, 24.

⁷⁷ These disciplines provide education in cooking, sewing and fashion. Thus, in Saudi Arabia education teaches women how to be a housekeeper rather than to qualify for the labour market. See Almunajjed (n 26) 8-112.

⁷⁸ Alrawaf and Simmons (n 1) 289.

⁷⁹ Ministry of Higher Education, General Department for Planning & Statistics (no 26).

⁸⁰ *Ibid.*

⁸¹ Almunajjed (n 26) 1.

discussed in chapter three, is one of these factors, and plays a major role in hindering women's involvement in higher education in Saudi Arabia.⁸² Consequently, most facilities of the universities in the Kingdom are intended for males,⁸³ thus limiting access for Saudi women.

Two of the keys that prevent Saudi women from studying certain disciplines are religion and cultural pretexts.⁸⁴ Some Saudi women can access some fields in higher education under the supervision of her family who are willing to support her in achieving this. In contrast, some might simply say 'No'. However, this is all determined by custom, rather than domestic law or Sharia. Thus, Saudi women are considered to be bound by rules that are stipulated by custom. As such, it appears that the initial barriers to Saudi women are the limitations imposed on their opportunities to study certain disciplines. The patriarchal system also restricts Saudi women from entering higher education. However, even before these factors come into play, the requirement of family supervision is another significant factor. A Saudi woman is not allowed to pursue higher education without referring to her guardian, who must approve both her request to study, and the field she has chosen.⁸⁵ However, a guardian should not abuse this right; when such a role exists without any regulation, this causes some women to suffer, if this right is not limited, leaving it open to abuse.⁸⁶

Additional factors relating to the issue of limited access to higher education are *Ikhtilat* and *Khalwa*.⁸⁷ Education in Saudi Arabia for women is restricted by these factors, as women are not allowed to study in mixed-gender places where men may be, due to rules arising from religious interpretations that prohibit *Ikhtilat* or

⁸² Almunajjed (n 26) 5-7; Profanter (n 1) 211,214.

⁸³ Yahya Alhareth, Ibtisam Al Dighrir and Yasra Al Alhareth, 'Review of Women's Higher Education in Saudi Arabia' (2015) *American Journal of Educational Research* 10, 13.

⁸⁴ Eleanor Abdella Doumato, 'Saudi Arabia' in Sanja Kelly and Julia Breslin, (eds), *Women's Rights in the Middle East and North Africa* (Freedom House, Rowman & Littlefield, 2010).

⁸⁵ 'Boxed in Women and Saudi Arabia's Male Guardianship System' (Human Rights Watch 2016) <http://Boxed In Women and Saudi Arabia's Male Guardianship System> accessed 7 Nov 2017.

⁸⁶ Bubshait (n 7) 23-24.

⁸⁷ This aspect has been examined in chapter three as, religion obstacle to women's right to work.

Khalwa.⁸⁸ Thus, this is one factor that Saudi Arabia must take into account in regard to all public sectors, and make sure there is no *Khalwa* or *Ikhtilat*. This could be one barrier faced by Saudi women in acquiring an equal right to education; men have more opportunities with regards to fields of study, as the State has effectively reserved these fields for men.⁸⁹

Saudi society, as a traditionally tribal community, does not see the need to educate women at a higher level.⁹⁰ As stated previously, this is based on a belief that a woman's place is at home. In fact, there needs women to be a doctor, engineer or any professional while she is able to look after her family at home. Recently, the Saudi Health Ministry has allowed women to work in pharmacies. One Saudi scholar is still saying that women should not be allowed to work in hospitals and other similar environments.⁹¹ Shaik AlAbdul Kareem considers the environment of work includes any act forbidden or led to forbidden, thus women are not allowed to do this kind of work.⁹²

Currently, the only way that Saudi women can study prohibited disciplines is abroad. Saudi Arabia has established a scholarship programme for Saudi nationals,⁹³ however, some of the same local obstacles, such as a *Mahram*'s rejection, can prevent women from studying abroad. This confirms that local customs continue to follow Saudi

⁸⁸ See: Riyāḍ ibn Muḥammad al-Musaymīrī, n Muḥammad ibn ‘Abd Allāh al-Habdān, *Al-Ikhtilāṭ bayna al-jinsayn : aḥkāmuhu wa-āthāruḥ* (1st edn, Dar Ibn Al-Jwazih 2010)14; Abdulaziz Bin Baz, *Finery: And the risk of the participation of women to men in the field of work*, (Arabic); several fatwas have been issued on intermingling by the Kingdom of Saudi Arabia Portal of the General Presidency of Scholarly Research and Ifta < <http://www.alifta.net/> > accessed 15 Nov 2017.

⁸⁹ Al Dighrir and Al Alhareth (n 83) 12.

⁹⁰ Ahmed Ali Alhazmi, ‘what it Looks Like to be in a Mixed Gender Society: The Essence of Transitioning Experience from Gender Segregated Environment to Mixed Gender Environment’ (2015) 3 *Journal of Foreign Languages, Cultures and Civilizations* 49, 51.

⁹¹ Khalejia Channel, ‘Allowing women to work between supporters and opponents’ (06 Nov 2016) < https://www.youtube.com/watch?v=ZQW1xY_nwGc> accessed 07 Nov 2017.

⁹² *Ibid*.

⁹³ Liz Reisberg, *Saudi Arabia's Extravagant Investment in Higher Education: Is Money Enough?* (The WorldView, 10 May 2011)

<https://www.insidehighered.com/blogs/the_world_view/saudi_arabia_s_extravagant_investment_in_higher_education_is_money_enough> accessed 14 Nov 2017.

women, even if they go abroad. They are expected to follow Sharia law and Saudi customs even if they travel abroad.⁹⁴

Saudi laws and regulations relating to Saudi women's access to higher education, in all fields, are not very clear. On one hand, they guarantee and provide education at all levels to Saudi men and women, free of charge,⁹⁵ and the Saudi Government is pursuing major development in the field of education for girls. Also, they are addressing the issues that hamper the development and labour market opportunities for girls through education.⁹⁶ However, on the other hand, Saudi women still cannot study some disciplines in higher education. Taken from the Ministry of Education Statistics, the table below shows that Saudi women cannot study certain disciplines, or there are only a certain amount allowed to study those disciplines.

Table 1

Total of Higher Education Institutions in Saudi Arabia (2014-2013)⁹⁷

Field of Study	Gender	Total
Islamic Studies	Male	7491
	Female	9426
Teacher Training	Male	3216
	Female	5509
Educational Sciences	Male	6097
	Female	3754
Arts	Male	127
	Female	641
Humanities	Male	4290

⁹⁴ Abdullah Bin Mahfoth, *Women's Rights and Issues on the Contemporary World* (Arabic, Legal Consulting Firm series 1417 AH) 229-260.

⁹⁵ Khutani (n 31) 28.

⁹⁶ Almunajjed (n 26).

⁹⁷ The Higher Education in Saudi Arabia: Local Indicator and International Comparison <<http://www.moe.gov.sa>> accessed 10 Nov 2017.

	Female	14277
Social and Behavioural Sciences	Male	2536
	Female	6448
Press and Media	Male	1686
	Female	1080
Commercial and Administrative Business	Male	17592
	Female	9220
Law	Male	1244
	Female	678
Life Sciences	Male	854
	Female	2675
Physical Sciences	Male	1609
	Female	3980
Mathematics and Statistics	Male	1109
	Female	2978
Informatics	Male	7711
	Female	5347
Engineering and Engineering Industries	Male	10937
	Female	86
Productivity and Manufacturing Industries	Male	41
	Female	172
Architecture and Construction	Male	2190
	Female	281
Agriculture, Forestry and Fishing	Male	248
	Female	140
Veterinary Medicine	Male	76
	Female	0
Health	Male	4787
	Female	4702
Social Services	Male	247
	Female	546
Personal Services	Male	496
	Female	1803
Transport Services	Male	23
	Female	0
Environmental Protection	Male	489
	Female	2
Other	Male	0
	Female	0

The above table shows how many Saudi women are studying each discipline in higher education in Saudi Arabia. The table also shows the numbers of males and females in Saudi Arabia in all levels of education – diploma, Bachelor's, Master's and PhDs – in either the private or public sectors.

According to the above figures, Saudi women appear to be either absent or present in very limited numbers in some fields of study, compared to men. Saudi women mostly study in the fields of Islamic Studies, Arts, Humanities, Social and Behavioural Science, Physical Sciences, Mathematics and Statistics, Health, Social Services and Personal Services. These disciplines are chosen by Saudi women mostly because ultimately they will be able to find a job that complies with religious or cultural requirements. In Saudi Arabia, the fields that women most commonly work in, in the public sector, are teaching, lecturing, healthcare, or administration.⁹⁸ Most of these jobs are considered to be suitable for women, because there is no mixing between genders in the workplace. Women thus have to study in these fields, because if, for instance, they studied in the field of transport services, the government would not support them, and they would not be able to find a job. Hence, the Saudi women are restricted to these fields. In addition, regarding the factors discussed previously that represent obstacles to Saudi women's right to education, the above table confirms that these factors play a major role in determining the fields of study that Saudi women choose to pursue. Culture and religion thus both play a major role in Saudi women's access to higher education, and the discipline she chooses to study.⁹⁹

The disparity in the figures in the above table between males and females shows that women in education in Saudi Arabia do not have equal access to higher education or the labour market, as they are restricted to careers that are considered suitable. Unfortunately, the Saudi labour market has opportunities for careers in transport services, engineering, and engineering industries, but Saudi universities make it difficult for women to study these disciplines. These restrictions on Saudi women

⁹⁸ Eleanor Abdella Doumato, 'Women and Work in Saudi Arabia: How Flexible Are Islamic Margins?' (1999) 53 Middle East Journal 568, 569-570.

⁹⁹ Profanter (n 1) 14-17.

result in fewer opportunities for higher education within the State. In addition, the factors mentioned earlier also play a major role, alongside weak support by the Saudi Government, reflected in non-existent or weak laws and regulations. Furthermore, the State is obliged by international human rights treaties to implement it without any distinction in domestic law.¹⁰⁰

The Ministry of Education in Saudi Arabia does not include military colleges in its statistics. In Saudi Arabia, there are many military colleges for those who wish to find employment in the Saudi army, such as the King Fahad Security College.¹⁰¹ It is worth noting that military universities and military sectors are not included in the statistics, as Saudi women are not allowed to serve in the military in any capacity.

In terms of sport in Saudi Arabia, the State does not support females either studying or even engaging in sport, at all levels of education.¹⁰² In contrast, Saudi males have the right to access this field in higher education. In addition, they also have compulsory sports sessions at all levels of education.¹⁰³ Thus, the Ministry of Education also does not include this field in its statistics. Practice or study of this field in Saudi Arabia is subject to individual religious interpretation.¹⁰⁴ Whilst sport is important for both men and women in terms of their health and fitness, Saudi Arabia

¹⁰⁰ See CEDAW, Art 2; ICEFRD, Arts 1 and 2(C); CADE, Art 1.

¹⁰¹ King Fahad Security College is one specialising in military security, concerned with the preparation and qualification of security officers, according to the needs of the security sectors. It was established on 29/09/1354 under the name 'Police School (*Madrast Al-shartah*). Later issuing a Royal Decree on 1403 AH to change its name to King Fahad Security College. See the official page online < <http://www.kfsc.edu.sa/Pages/default.aspx> > accessed 15 Nov 2017.

¹⁰² Human Rights Watch, "Steps of the Devil" Denial of Women's and Girls' Rights to Sport in Saudi Arabia <<https://www.hrw.org/report/2012/02/15/steps-devil/denial-womens-and-girls-rights-sport-saudi-arabia>> accessed 10 Nov 2017; Rebecca T Alpert, *Religion and Sports: An Introduction and Case Study* (Columbia University Press 2015) 135-138.

¹⁰³ Saudi School Sport < <http://sports.tatweer.edu.sa/en/>> accessed 15 Nov 2017.

¹⁰⁴ There is a study about the inclusion of material sport in girl's schools. That study has clarified the Islamic provision by Islamic sources. The study concludes that the inclusion of material sport in girl's schools, results in many consequences and should be prohibited. The recommended prohibition is based on the countries neighbouring Saudi Arabia, which infers that sport results in the moral decay of women and is not obligated in Islamic law. See: Mohammed Abdullah Al-Hadban, Input of Material Sport to Girl's School (1424 AH) Arabic <<http://www.saaaid.net/manahej/13.htm>> accessed 15 Nov 2017.

does not permit women to practice it unless under limitations set by Saudi Muslim scholars.¹⁰⁵

The State has gradually changed its policy on this matter through discussing this issue at the Consultative ‘*Shura*’ Council, and has issued a recommendation to “add programmes for fitness and health for girls in line with legitimate controls and their nature”.¹⁰⁶ Thus, it should be noted that the Saudi Government have acknowledged the importance of physical education for girls, and are trying to support it via the *Shura* Council; however many factors are hindering this process.¹⁰⁷ Finally, Whitson argues that discriminatory practices toward women in Saudi Arabia should be eradicated by allowing them to play sport in government schools. This represents a good starting point that could have a long-term impact.¹⁰⁸

4.3.2 Unequal Access to Higher Education

The word ‘unequal’ in terms of access to higher education in Saudi Arabia means that Saudi women have limited access, face obstacles, are very restricted, and are grossly under-represented in Saudi universities and colleges in most, if not all disciplines. This sub-section examines unequal access to higher education for Saudi women in Saudi universities and colleges.

Saudi Arabia is under international obligations to guarantee human rights, including the right to education, without any kind of discrimination.¹⁰⁹ Saudi men enjoy full

¹⁰⁵ Abdulsalm Mohammed Al-Bloyi ‘Shura Calls Education to Examine Post Fitness Programs for Girls and Program for the Adoption of Meal Nutrition’ (AL Riyadh 09 April 2014) Arabic < <http://www.alriyadh.com/925386>> accessed 15 Nov 2017; Almunajjed (n 26) 12.

¹⁰⁶ Staff Writers ‘Physical Education for Saudi Girls Stir Debate’ (Al-Arabiya News 15 April 2014) <http://english.alarabiya.net/en/perspective/features/2014/04/15/Physical-education-for-girls-stirs-debate-in-Saudi-Arabia.html> > accessed 15 Nov 2017.

¹⁰⁷ Almunajjed (n 26) 12

¹⁰⁸ Saudi Arabia: Accelerate Reforms for Girl’s Sport in State School, (Beirut, Human Rights Watch 11 April 2014).

¹⁰⁹ Such as, Convention Against Discrimination in Education (n 54); International Convention on the Elimination of All Forms of Racial Discrimination (n 54); Convention on the Elimination of All Forms

educational opportunities, unlike Saudi women. The Saudi Governance Law guarantees the right to education to all, without any kind of discrimination, and under Sharia:

“The State shall protect human rights in accordance with Sharia.”¹¹⁰

One issue related to the right to work is unequal access to higher education. The right to higher education is very important to women as, without qualifications, it will be very difficult for women to engage in the Saudi labour market. Naturally, there will be less career opportunities for less qualified women. Because of this, it is important that they have access to higher education. Saudi females in the Kingdom are suffering from a lack of full access to higher education, and this inequality in higher education is why Saudi women are not found, or are limited, in certain fields.

Al-Aloola raises a number of key points: first, that there are significant, instinctive differences between males and females;¹¹¹ second that the type of education that boys and girls receive should be based on the role that each will perform in society;¹¹² and third, that education should reflect the instinctive differences between the two sexes.¹¹³ Hence, Saudi Arabia is a unique experiment in women’s education, in which the two sexes are totally separated at schools and universities.¹¹⁴ Al-Aloola’s view is that this is an advantage. However, this leads to many issues within Saudi society, in that determining prescribed roles for males and females has led to unequal access to higher education. As a consequence, the State provides males with more opportunities, facilities and fields of study in higher education compared to females.¹¹⁵ It is not necessary, when Saudi Arabia is conducting a unique experiment

of Discrimination against Women (n 54); Convention on the Rights of the Child (n 54); Furthermore, chapter five in this thesis examines the Saudi international obligations regarding women’s right to work, with the relative right such as right of education.

¹¹⁰ Ibid, Art 26.

¹¹¹ Ruqaya Al-Aloola, *Single-Sex Education in Saudi Arabia* (1st edn, Ghainna Publications 2008) 30.

¹¹² Ibid, 30.

¹¹³ Ibid, 30.

¹¹⁴ Ibid, 30.

¹¹⁵ Boxed in Women and Saudi Arabia’s Male Guardianship System (n 85).

in women's education by establishing separate schools and universities that have led to unequal access to higher education. If the education system in the Kingdom of Saudi Arabia is based on such a method, as a result of religious interpretations and social norms, this should not prevent women from having an equal right to higher education.

One of the reasons for unequal access to higher education for Saudi women is customary practices that represent barriers; refusing women access to certain fields of study is one such obstacle, and traditions and customs have played a major role in creating this situation.¹¹⁶ On this point, Almunajjed states that,

“A mixture of local norms and traditions, social beliefs, and principles emanating from the patriarchal system stand in the way, exerting a considerable influence on women's lives and limiting their opportunity to acquire or complete their education. They are linked to gender discrepancies, i.e., the traditional roles of men and women in society, which often favor boys over girls”¹¹⁷.

The concept of male guardianship plays a major role here, because while higher education is in principle available, customary practices allow a *Mahram* to refuse a woman her right to study in a particular field. The Human Rights Watch Report stated that, “Female university students told Human Rights Watch that they cannot pursue a course of study or apply for an academic internship without permission from their guardian”.¹¹⁸ The reason behind this is the social culture in Saudi Arabia and its mentality toward to Saudi women, whereby it is believed that a woman's education should not – and will not – interfere with her ‘natural’ job, which is in the home.¹¹⁹

The Human Rights Watch Report included many issues which reflected unequal access to higher education in Saudi Arabia. There are no public university programmes for women to study engineering, architecture, or political science, and

¹¹⁶ Al Dighrir and Al Alhareth (n 83) 12-14; Annemarie (n 1) 14-16.

¹¹⁷ Almunajjed (n 26) 9.

¹¹⁸ Human Rights Watch, (2008), Report on Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia April 19, 2008, Human Rights Watch the United States of America.

¹¹⁹ Ibid.

women are prohibited from studying these disciplines in the male colleges.¹²⁰ An example of this can be found at King Saud University, where fourteen languages are taught in the male department, but only two are taught in the female department.¹²¹

To conclude this point, unequal access to higher education might be the result of a number of factors, which play a major role in this matter. These factors include male guardianship, cultural definitions of women, customary practices, the law, and Saudi policy towards women. As long as these factors are in play, Saudi women will not have equal access to higher education, even in light of Sharia, which guarantees human rights for all individuals.

4.3.3 Inequality in the Use of Available Facilities in Educational Institutions

In Saudi Arabia, Saudi females have more limited access to higher education than males, particularly in terms of certain disciplines. In addition, they do not have equal rights to use the available facilities in educational institutions, both universities and colleges, such as libraries, laboratories and sports centres.¹²² As a consequence, it is difficult for women to study at university. This inequality is discriminatory, and is a violation of both international human rights standards and Saudi domestic law.¹²³ For instance, the Convention against Discrimination in Education (CADE) states that it is important “to promote equality of opportunity and treatment for all in education”.¹²⁴

In most Saudi universities women have fewer opportunities to communicate with their lecturers, because that communication cannot be face-to-face if their lecturer is

¹²⁰ *ibid*, 15-16.

¹²¹ *ibid*, 16.

¹²² Purva Desphande, ‘The Role of Women in Two Islamic Fundamentalist Countries: Afghanistan and Saudi Arabia’ (2001) 22 *Women’s Rights L. Rep.* 193, 198; Sifa Mtango, ‘A State of Oppression? Women’s Rights in Saudi Arabia’ (2004) 1 *Asia-Pacific Journal on Human Rights and Law* 49, 55.

¹²³ CEDAW (n 54) Art 10(B); Convention Against Discrimination in Education (n 54) Art,1; UDHR, Art 21(2); regarding law at a national level, the Kingdom of Saudi Arabia States it will provide the right, in accordance with justice and equality, enshrined in Article 8 with Article 30; the State obligation to provide public education. See The Basic Law of Governance, Arts 8 and 30.

¹²⁴ Convention against Discrimination in Education (n 54).

male.¹²⁵ Usually, lectures are delivered to female students by male instructors via closed-circuit television.¹²⁶ This kind of educational method, with only one party being able to communicate with the other, has less benefit.¹²⁷ The female student cannot see the male instructor's face; they can only hear him via closed-circuit television. Hence, this conflicts with the concept of 'accessibility', whereby educational institutions and programmes must be accessible to everyone.¹²⁸ In addition, the female students cannot meet male lecturers in an office, whereas male students can speak to their lecturers if they have any questions during the class, after class, or in the next class. The reason that females cannot talk directly with or physically attend a class with a male lecturer is that religious norms prohibit women from being in a room with a man in Saudi Arabia.¹²⁹

Sex-segregation is another reason for unequal access to higher education, and undermines women's right to equality in education.¹³⁰ Saudi universities have allocated specific times and days for female students to have access to the main library on their campus, as the universities in Saudi Arabia have only one library for each university, which is located on the male student campus.¹³¹ Hence, women are not allowed to access the library unless it is empty, or if there are no male students present. This means that men and women cannot access the library together at one time; however, men are given priority use of the library, while women are allowed to use it only at specific times or on specific days.¹³² In this way, female Saudi students face inequality in use of the facilities at Saudi universities. While the budget of the Ministry of Education is high, most of this is used to fund the education of male students; this inequality must also be rectified.

¹²⁵ Abdullah Mohammed Alaugab, 'Benefits, Barriers, and Attitudes of Saudi Female Faculty and Students toward Online Learning in Higher Education' (PhD Thesis, Lawrence: University of Kansas 2007).

¹²⁶ Ibid.

¹²⁷ Alaugab (n 125).

¹²⁸ E/C.12/1999/10 (n 41) para, 6 (b).

¹²⁹ See Chapter Three in this thesis particularly religions as a Barrier to Women's Right to Work in Saudi Arabia.

¹³⁰ Boxed in Women and Saudi Arabia's Male Guardianship System (n 85) 15.

¹³¹ Hamdan (n 10) 53.

¹³² Ibid, 54.

The poor condition of constructing uses for teaching women also contributes to the sensation of discrimination against female students, as men are offered excellent and supplementary educational services and facilities that are not given to females.¹³³ Providing unequal facilities and services to women will clearly influence their educational outcomes, in addition to creating a feeling of distance and insufficient access, which might affect their studies. The result of this is that women may achieve lower grade points and be less successful in their studies, which in turn will make it harder to apply for a professional job. For instance, to be a lecturer at Saudi universities requires much knowledge, and a high grade point.

Another example of the inequality of facilities is the location of the universities and colleges. Female students are more likely to study in a small town, which has fewer advantages than a larger city. While all Saudi universities and colleges are governed by one Ministry in Saudi Arabia, there are still differences between them.

Inferior lecture hall environments, services and facilities for women in Saudi Arabia violate the State's obligation to facilitate equality in learning.¹³⁴ Women are taught in poorer conditions than men, which infringes upon their human right to education, since they are deprived of equal treatment that could put them on an equal level to men.¹³⁵ Females, who are only allowed to use the university facilities, such as the library, once a week, are deprived of equal access to their male colleagues, thus also violating the Convention.¹³⁶ Saudi Arabia has an obligation to guarantee that both females and males have an equal right of entry to education in all fields, without disadvantaging any individual or group.¹³⁷ It is clear that, at present, Saudi Arabia is failing to provide equal educational benefits to women by making educational institutions and programmes accessible to all.

¹³³ Mohsen Al Mohsen, 'An Exploratory Study on The Views of Modernization of Educated Saudi Women' (PhD thesis, University of Pittsburgh 2000) 22-23.

¹³⁴ Convention against Discrimination in Education (n 54) Art, 1.

¹³⁵ Ibid, Art. 10.

¹³⁶ Ibid.

¹³⁷ Ibid.

4.4 Conclusion

Access to higher education for women is an important issue, as the labour market is naturally linked to education. As such, it was necessary to discuss the legal protection of women's education in this chapter. The labour market is dependent on what is produced by educational institutes; this link is very important. However, Saudi Arabia refuses to, or cannot, provide education for women in some fields, and as a consequence they are not qualified for certain roles.¹³⁸

The Ministry of Education, in agreement with the Ministry of Labour, is planning a practical application programme to align the outputs of education and training with the requirements and needs of the private sector.¹³⁹ This is intended to secure the present and future needs of the appropriate national workforce. However, this contribution must be codified in order for it to have future benefit, and to secure women's rights. One suggestion might be to focus on opening the door to females to study fields such as engineering, which they are currently excluded from. At present, the highest number of female students is in the field of humanities.¹⁴⁰

To conclude the chapter, after reviewing multiple examples of limited access to higher education, it is evident that limited access to higher education plays a major role in preventing Saudi women from having the same right to work as men. Women in Saudi Arabia are suffering from limited access to higher education as a result of a number of factors discussed in this chapter: namely, education policy for Saudi women; limited access to higher education; limitations on women's opportunities to study certain disciplines; unequal access to higher education; and inequality in the use of available facilities in educational institutions.

¹³⁸ Baki (n 18).

¹³⁹ Director of the presence of 28 Saudi universities along with the leaders of the two ministries and the "technical training" and "goals" by the Ministries of Education and Labor Launch Program # Education _work<<https://www.moe.gov.sa/Arabic/MediaCenter/MinistryNews/Pages/NewsDetails.aspx?qsId=6691&qsType=Ministry> < accessed 05 Nov 2017.

¹⁴⁰ Al-Hariri (n 14).

The progress of education in Saudi Arabia at all levels can be seen in the history of women's education. However, there are still some areas of education that have not improved. Until now, women's education in Saudi society has been viewed as not important or necessary; or even prohibited. However, Saudi women have managed to enter the education system, though they do not receive the same quality or quantity of education as their male counterparts. In contrast, the Saudi Arabian Government education policy for Saudi women is meant to remove these obstacles. Generally speaking, women's right to education is not fully protected, respected or fulfilled. In addition, Saudi Arabia has not put measures in place to make higher education available, accessible, acceptable and adaptable. The Saudi domestic law states that the right to education for both females and males is considered a fundamental right, with no discrimination based on gender. However, Saudi women do not have equal access to higher education, because of limitations relating to some disciplines, as seen in the Saudi Ministry of Education Statistics. The fields that Saudi women have less opportunity to study in than men are engineering and engineering industries, architecture and construction, veterinary medicine and medicine, transport services, and environmental protection.

The other issue facing Saudi women is their experience within the universities and colleges in the KSA themselves, in which they are not treated equally to men, due to limited space in Saudi universities, Saudi society's attitude towards women's education, lack of legalisation to protect women's rights, and wrongly applied Islamic law.

The chapter has identified and examined inequality in the use of the available facilities in educational institutions, whereby Saudi women have limited time to use the library and other resources, and must attend the classes via closed-circuit televisions in the university. This has significantly impacted upon Saudi women's right to education, as they receive less knowledge than men, which subsequently affects their career opportunities and prospects. Furthermore, Saudi women affected by such practices will feel discriminated against, which contradicts international human rights treaties and Conventions, which Saudi Arabia has ratified.

This chapter concludes by listing suggestions for how Saudi Arabia could take women's education more seriously, and enhance their access to higher education. Equal access to higher education is a very significant factor that will help Saudi women to enjoy their right to work, by providing them with greater access to the Saudi labour market.

Even though Saudi women have an equal right to work, according to the Saudi Arabian Government's obligations, and Saudi Islamic scholars, the State should make it easier for women to enjoy this right by removing obstacles within Saudi society, issuing necessary legalisation, and amending domestic law with regard to the right to education. In addition, more funding should be provided for higher education for women. All of the above suggestions will help to remove the barriers preventing women from accessing higher education. In addition, Saudi Muslim scholars have a role to play in better interpreting Islamic law, in order to overcome and remove misunderstandings and misconceptions in society.

5 Chapter Five: Saudi Arabia's Obligation to Protect Women's Right to Work under International Human Rights Law

5.1 Introduction

Saudi Arabia should ensure that human rights are applied universally to both men and women, according to Sharia, which serves as State law.¹ In addition, it is possible to make the case that international standards should also be adhered to. However, in practice, such rights are not protected by Saudi Arabia in accordance with international standards. The Saudi Ministry of Foreign Affairs, while addressing specialised international agencies, stated that international Conventions do not carry moral obligations and, therefore, they have no power on the international level.² At this point it is important to note that international human rights are grouped into two categories: declarations and Conventions. Declarations are texts adopted by bodies such as the United Nations General Assembly, and while these declarations may not be legally binding, they can be in political terms.³ On the other hand, Conventions are legally binding instruments established by international law.⁴ However, the Saudi courts may fail to implement these international Conventions if they have established reservations about them.⁵

The present chapter focuses on Saudi Arabia's obligation to protect women's right to work under international human rights law. In particular, this chapter examines the respective provisions of the Convention on Elimination of All Forms of

¹ Donna E. Arzt, 'The Application of International Human Rights Law in Islamic States' (1990) 12 *Human Rights Quarterly* 202,223-230.

² Abdulaziz S. Al-Rodiman, 'The Application of Shari'ah and International Human Rights Law in Saudi Arabia' (PhD thesis, Brunel University 2013) 39-40.

³ James Crawford and Ian Brownlie, *Brownlie's Principles of Public International Law* (Oxford University Press 2012) 636.

⁴ *Ibid*, 638.

⁵ Yakin Ertürk, Report of the Special Rapporteur on violence against women, its causes and consequences, UN General Assembly, Human Rights Council, A/HRC/11/6/Add.3, 14 April 2009, 10.

Discrimination against Women (CEDAW)⁶, the International Labour Organisation (ILO), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷.

The chapter is divided into six sections. Section one discusses Saudi Arabia's international treaty obligation to protect women's right to work. Section two focuses on CEDAW, specifically how to protect, respect and fulfil women's right to work, and considers particular reservations and obstacles in the context of Saudi Arabia. In addition, the incompatibility between CEDAW and Saudi Domestic Law is discussed. Section three examines the ILO Convention with respect to working women and domestic applications in Saudi Arabia. Section four examines barriers to the ratification of ICESCR in Saudi Arabia, and section five investigates the manner in which women's right to work is treated under customary international law. The final section concludes this chapter.

5.2 Saudi Arabia's International Treaty Obligations to Protect Women's Right to Work

Saudi Arabia is a State party to many international human rights treaties that protect Saudi women's right to work. In addition, the Kingdom is also party to several major United Nations Conventions that are concerned with human rights issues.⁸ Such Conventions have been of utmost importance for the purpose of protecting women against all kinds of discrimination, and include the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination.⁹ However,

⁶ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46.

⁷ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 3 January 1976.

⁸ The Ratification Status for Saudi Arabia Conventions, see; United Nation Treaty Collection < <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>> accessed 25 Nov 2017.

⁹ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195.

only two out of seven such Conventions specifically deal with women's rights.¹⁰ This section focuses on Saudi Arabia's international human rights treaty obligations in terms of protecting Saudi women's right to work.

The State is subject to requirements to protect women's right to work. These requirements include the realisation of full employment, and availability and accessibility of decent work.¹¹ Chapter two explained the status of Saudi women under the Saudi Civil Service System and Labour Law. Under Saudi Domestic Law, Saudi women's right to work is not yet characterised by the realisation of full employment and availability and accessibility of decent work. In order to properly implement women's right to work, the State must take measures to achieve the realisation of full employment and availability and accessibility of decent work.¹² This might be realised by ensuring equal access to paid employment, or efforts to combat gender discrimination and ensure equal opportunities and treatment between men and women in relation to their right to work.¹³

As Saudi Arabia is party to CEDAW it has certain obligations; specifically, Article 11 requires States to protect women against discriminatory exclusion from the labour market.¹⁴ Article 11 involves two separate concepts, the first (1) is with respect to the elimination of discrimination against women, by ensuring women have the same employment rights, on the grounds of the equality of men and women; and the second (2) requires the prevention of discrimination against women on the basis of marriage or maternity. As a result of this article, Saudi Arabia has a number of obligations regarding women's right to work, including the following: employment opportunities;

¹⁰ The other international human rights conventions to which Saudi Arabia is a State party, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1); The Convention on the Rights of the Child (1996), adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

¹¹ UN Committee on Economic, Social and Culture Rights, 'General Comment 18' (2005) UN Doc E/c 12GC//18 paras 3 and 12.

¹² Marsha A Freeman, Christine Chinkin and Beate Rudolf, *the UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 286-288.

¹³ CESCR, 'General Comment 18' (2005) UN Doc E/c 12GC//18 para. 13.

¹⁴ Mathias Risse, 'A Right to Work? A Right to Leisure? Labour Rights as Human Rights' (2009) 3 Law and Ethics of Human Rights 1, 3.

selection of employment; freedom of profession and employment; and equal treatment in employment conditions.¹⁵ However, to what extent is Saudi Arabia committed to these obligations at a domestic level? In reality, while Saudi Arabia acknowledges its international treaty obligations, it still does not practically apply them on a domestic level.¹⁶ Saudi Arabia's obligation before the international community is to protect Saudi women's right to work; however there are many examples of Saudi Arabia violating this obligation. Indeed, in Saudi Arabia, human rights that protect women generally, and with particular regard to the right to work, are few in number.¹⁷ Nevertheless, Saudi Arabia has ratified important treaties such as CEDAW, which it should be implemented at the domestic level.¹⁸

Returning to Article 11 (1) (b) 'the right to the same employment opportunities', this should be read as being inclusive of the right to education, enabling a woman to become qualified.¹⁹ For example, Saudi women in Saudi Arabia have limited access to higher education, which has consequences for their employment opportunities.²⁰ The purpose of this Article can be achieved by ensuring the right to education and training necessary for women to have the same employment opportunities as men, as required by CEDAW.²¹ In addition, Article 11(1) (c) claims to the State the free choice of profession and employment, while Saudi women are barred from certain professions. For example, Saudi Labour Law prohibits women from working in certain occupations, such as in mining.²² In addition, a prohibition on working at night

¹⁵ See: Freeman and other (n 12) 285-302.

¹⁶ See: CEDAW, C/SAU/Q/2, 40 and 41 Session (2007) para 4; CEDAW, C/SAU/CO/2, 40 Session (2008) para 8,11and13; World Report 2013: Saudi Arabia, (Human Rights Watch, 2013) <<https://www.hrw.org/world-report/2013/country-chapters/saudi-arabia>> accessed 17 Dec 2016.

¹⁷Sifa Mtango, 'A State of Oppression? Women's Rights in Saudi Arabia' (2004) 1 Asia-Pacific Journal on Human Rights and Law 49, 50.

¹⁸ Ibid.

¹⁹ Freeman and other (n 12) 288.

²⁰ Haya Saad Al Rawaf and Cyril Simmons, 'The Education of Women in Saudi Arabia' (1991) 27 Comparative of Education 287, 288-289; Yahya Alhareth, Ibtisam Al Dighrir and Yasra Al Alhareth, 'Review of Women's Higher Education in Saudi Arabia' (2015) 1 American Journal of Educational Research 10, 13.

²¹ New Zealand, A/58/38, 29th Session (2003) para 412. Slovenia, A/58/38, 29th Session (2003) paras 212-13.

²² Saudi Labour Minister's Decision No. (2834/1), 2002 has determined three types of business women are not allowed to work in unless specifically permitted to by their employer: 1- Mines, quarries and other works related to the extraction of materials from the earth; 2- Industries in which they are

continues to restrict women's employment choices through Saudi Labour Law.²³ Saudi Labour Law is historically grounded in the early International Labour Organisation Conventions²⁴, which gave certain justifications on the basis of protecting women.²⁵ However, this is considered to conflict with the object of Article 11 (1) (b). Also, the framework does not allow women to work during some periods (e.g., at night), which is discriminatory and paternalistic, and stereotypes women.²⁶ Furthermore, Saudi women are not found in some sectors of employment, such as in transport services, engineering, law, or in various positions of leadership.²⁷ Thus, there is a disparity between the overt claims of the KSA and its actual practice.

Saudi women's right to work should be stipulated very clearly in Saudi Domestic Law with respect to the extent of their right. The State has clarified to the CEDAW Committee, by proxy of Mr Al Hussein, that it has

*“agreed that stereotypes, particularly those relating to the status of women, portrayed a negative image of Islamic societies; however, attitudes did not change overnight... the Government has taken a number of measures”.*²⁸

What Al Hussein states seek to direct the issue to above points rather than clarify the State has done and will do for this issue. In fact, this is not an acceptable reason. The State must implement serious actions to resolve the issue by imposing new regulations or laws to overcome this dilemma.

converting materials for power generation, conversion and transport; and 3- Work in sanitation or combinations and gas distribution and petroleum derivatives.

²³ Saudi Labor Law, Royal Decree No. M/51, 23 Sha'ban 1426/27 September 2005, Art 15.

²⁴ See: ILO Convention (No 89) concerning the Night Work of Women Employed in Industry (Revised 1948), opened for signature 9 July 1948, 81 UNTS 147 (entered into force 27 February 1951); ILO Convention (No 45) concerning the Employment of Women on Underground Work in Mines of All Kinds, opened for signature 21 June 1935, 40 UNTS 63 (entered into force 30 May 1937).

²⁵ Natalie Kaufman Hevener, 'an analysis of gender-based treaty law: Contemporary developments in historical perspective' (1986) 8 Human Rights Quarterly 70, 71-74; Azizah Yahia Al-Hibri 'Muslim Women's Rights in The Global Village: Challenges and Opportunities' (2000-2001) 15 Journal of Law and Religion 37, 40-44.

²⁶ Fareda Banda, Project on a Mechanism to Address Laws that Discriminate against Women (UN Office of the High Commissioner for Human Rights Report, 6 March 2008) 110.

²⁷ Eleanor Abdella Doumato, 'Women and Work in Saudi Arabia: How Flexible Are Islamic Margins?' (1999) 53 the Middle East Journal 571, 586.

²⁸ UN, CEDAW/C/SR.815, 15 February 2008, 7-8.

A consequence of sexual harassment on women's right to work is serious harms when women are the victims of gender-specific violence.²⁹ This is an issue in Saudi Domestic Law; neither the Saudi Civil Service System nor Labour Law addresses the issue of sexual harassment in law. Generally speaking, the phenomenon of sexual harassment in Saudi Arabia can be observed in all public places, along with a lack of legislation to combat this dilemma.³⁰ Undoubtedly, the effect of sexual harassment on women is the occurrence of serious incidents at work and gender discrimination in employment.³¹ The CEDAW Committee treats sexual harassment in the workplace as a form of violence against women, not only as an example of discrimination at work, but of sexual violence against women.³² For example, the complaint by *Belousova v Kazakhstan* to the CEDAW Committee with respect to harassment faced by her employer,³³ the Committee explained that

*'the State party has taken all appropriate measures to ensure the effective protection of the author's right not to be discriminated against by any person, organization or enterprise and has taken prompt and appropriate action to address and put an end to the claimed discriminatory treatment in the form of sexual harassment.'*³⁴

The Committee has confirmed to the State party that it must take all appropriate measures to protect women from discrimination. Also, the Committee considers harassment to be a form of discrimination.³⁵ This kind of violence against women in the workplace affects women's right to work, and thus the realisation of the principle of equality between the genders. Hence, this is a clear breach by Saudi Arabia of its international human rights law obligations, such as those of CEDAW.

²⁹ CEDAW General Recommendation 19, 11 Session (1992) para 17.

³⁰ Claire M Renzetti, Jeffrey L Edleson and Raquel Kennedy Bergen, *Sourcebook on Violence against Women* (1st edn, SAGE Publications 2011) 77-78; Nadia Al-Fawaz, 'Appeal for a deterrent anti-harassment law' *Arab News* (Saudi Arabia, 30 Nov 2015).

³¹ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale university 1979) 25.

³² General Recommendation 19 (n 29) para 17.

³³ Committee on the Elimination of Discrimination against Women, Communication No. 45/2012, CEDAW/C/61/D/45/2012 (25 Aug 2015).

³⁴ *Ibid*, para 10/3.

³⁵ *Ibid*, para 10/4.

Conversely, Saudi Domestic Law enhances and protects women's right to work in accordance with Article 11(1) (d).³⁶ The State is obliged under its domestic laws to protect women's right to work, according to Article 11 (1) (d, e and f). Thus, under Saudi law, women are treated equally to men in relation to their basic or minimum wage or salary, remuneration, holiday bonuses or retirement benefits.³⁷ As such, Saudi law in this regard has a positive influence on women's right to work, helping it to meet international human rights treaty obligations such as the CEDAW General Recommendation 13.³⁸ In addition, Saudi Labour Law allocates a special chapter to women, which stipulates the need for safe and healthy working conditions; elimination of discrimination against women on grounds of marriage or maternity; prohibits unfair dismissal; protects the right to leave; and awards special protection to women during pregnancy.³⁹

Saudi Arabia's international treaty obligations to protect women's right to work still require both formal and substantive equality under domestic law in the field of employment. As described above, Saudi Domestic Law fails to meet some of its international treaty obligations to protect women's right to work.⁴⁰

³⁶ Aiob Al-Jarboa and Khald Al-Mohisan, *Women Legal Status in the Kingdom of Saudi Arabia*, (*Al-wada Al-Kanoni ll-mara fi Al-Mamlak Al-Arabiya Al-Saudi*, Arabic, King Fahd National library 2010) 138-161.

³⁷ See; The Civil Service System, issued by Royal Decrees No. (M/49) on 10/07/1397 AH, entered into force on 01/08/1397 AH, chapters 2,4 and 5; Regulation of Rights and Financial Benefits, Royal Decree No. A/28 in 20/30/1432 A.H; Saudi Labor Law (n 23) Vol.5, Chapter.4 and Vol.6, Chapter.1and 2.

³⁸ CEDAW General Recommendation 13, 08 Session (1989).

³⁹ See CEDAW, Art 11 (1) (f) and Art 11(2) (a, b, c and d).

⁴⁰ CEDAW, C/SAU/CO/2, 40 Session (2008) para 25.

5.3 Saudi Arabia's Obligations to Respect, Protect and Fulfil Women's Right to Work Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Before examining Saudi Arabia's obligations to respect, protect and fulfil women's right to work under CEDAW, a brief overview of CEDAW is needed. Like other international Conventions, CEDAW provides more information regarding the norms, as well as the values, of the Universal Declaration of Human Rights (UDHR).⁴¹ The introduction of CEDAW shows that Saudi Arabia recognises the importance of women to the welfare of the family, as well as the development of society. CEDAW refers to an international human rights treaty that focuses on protecting the human rights of women and the prevention of discrimination against them.⁴² The Convention also indicates that the role of women in the process of procreation should not be grounds for discrimination.⁴³ It continues further to indicate historical changes in the traditional role of men and women, for the purpose of ensuring that equality is achieved in society.⁴⁴

This section examines a model of multi-layered State obligations that aim to respect, protect and fulfil women's right to work under CEDAW. These standards are required of all State parties, as a legal obligation, by General Recommendation no.25 paragraph 1:

*"State parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of de jure as well as de facto equality with men."*⁴⁵

⁴¹ The Universal Declaration of Human Rights (UDHR) G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

⁴² Meena Shivdas and Sarah Coleman, *Without Prejudice: CEDAW and the Determination of Women's Rights in a Legal and Cultural Context* (Commonwealth Secretariat 2010) 5-6.

⁴³ Jo Lynn Southard, 'Protection of Women's Human Rights under the Convention on the Elimination of All Forms of Discrimination against Women' (1996) 8 *International Law Review*, 25-31.

⁴⁴ Simone Cusack and Lisa Pusey, 'CEDAW and the Right to Non-Discrimination and Equality' (2013) 14 *Melbourne Journal of International Law* 54, 63-64.

⁴⁵ General recommendation No. 25 On article 4, paragraph 1, on temporary special measures reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004).

Although CEDAW provides a general guide for a government's responsibility to its female citizens, it is unclear whether Saudi Arabia is bound to respect these rights generally and particularly in the right to work. The State must protect women's right, due to a legal obligation to respect and protect women's rights, and to ensure non-discrimination towards women, as General Recommendation 25 states. Hence, Saudi Arabia must implement this recommendation at a domestic level through the laws that enhance women's right to work. The State's legal obligation to respect this right is a negative obligation; in other words, to refrain from adopting such laws and policies that interfere directly or indirectly with women's equal enjoyment of their rights, and particularly their right to work. In contrast, the State has a positive obligation to protect women from discrimination and take steps directly aimed at eliminating customary and all other practices that might constitute discrimination.⁴⁶ In addition, the State's obligation to fulfil women's right to work requires it to take positive steps to adopt short-, medium- and long-term public policies and programmes to overcome discrimination against women.⁴⁷

To what extent is Saudi Arabia bound by these legal obligations from CEDAW in Saudi law? In order to satisfy its legal obligation to respect, protect and fulfil women's rights, this is embodied by a joint reading of CEDAW Articles 2, 4, 10 and 11. Article 2 of CEDAW is considered to be the heart of CEDAW.⁴⁸ The nature and scope of Saudi Arabia's obligations to condemn discrimination against women in all its forms must address all aspects of its legal obligations under the Convention.⁴⁹ The first obligation, to *respect*, requires that the State refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that deny women equal enjoyment of their rights.⁵⁰ The second obligation, to *protect* women from discrimination by private actors, requires the State to take steps aimed at eliminating customary and other practices that foster prejudice between the sexes and

⁴⁶ General recommendation No. 28 On the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/GC/28 (2010), para 9.

⁴⁷ Freeman and other (n 12) 20.

⁴⁸ General Recommendation no. 28, para 41 and 6.

⁴⁹ Ibid, para 8 and 9.

⁵⁰ Ibid, para 9.

enforce stereotypical roles for men and women.⁵¹ The final obligation, to *fulfil*, requires the State to take a wide variety of steps to ensure that women and men enjoy equal rights, both *de jure* and *de facto*.⁵²

In chapters two, three and four, a number of factors that influence Saudi women's right to work in Saudi Arabia were highlighted. These are factors that the State has not committed to from CEDAW at the domestic level in terms of laws, regulations and awareness regarding women's participation in the Saudi labour market. The State is not making enough effort to protect women's rights by adopting laws and policies that directly or indirectly affect women's equal enjoyment of their rights. While Saudi Arabia has succeeded, to some extent, in applying CEDAW provisions in local laws, it has failed in its Article 2 obligations in domestic laws. According to the Committee of CEDAW, Saudi Arabia has listed issues such as "the general principle of equality and non-discrimination is incorporated into the Basic Law of Governance and regulatory provisions".⁵³ In fact, Saudi Basic Law, as stated in different articles, generally protects human rights in accordance with Sharia.⁵⁴ However, this is considered vague by the CEDAW Committee, which requires the State "to enact a comprehensive gender equality law".⁵⁵ Saudi Arabia thus needs to be very clear in terms of how it enacts laws that protect women from the patriarchal system in Saudi Arabia.⁵⁶ Hence, the importance of protecting women's right to work should be enacted in a comprehensive gender equality law. In addition, Saudi Arabia has a further obligation to take positive actions against discrimination against women, by providing legal protection and abolishing or amending discriminatory laws.⁵⁷ One example might be appointing a judge under judiciary law and Board of Grievances

⁵¹ Ibid.

⁵² Ibid.

⁵³ CEDAW, C/SAU/Q/2, 40-41 Session (2007) para 5.

⁵⁴ See Basic Law of Governance, Royal Order No. (A/91), 27 Sha'ban 1412 A.H-1 March 1992, art. 26 and 28.

⁵⁵ CEDAW, C/SAU/CO/2, 40 Session (2008) para 12.

⁵⁶ Samar El-Masri, 'Challenge facing CEDAW in the Middle East and North Africa' (2012) 7 The International Journal of Human Rights 931, 933-937.

⁵⁷ General Recommendation no. 28, para 31.

law, where it is not clear whether women can or cannot be judges.⁵⁸ Saudi women have limited access to public sectors, as explained in chapter two; this contradicts the above recommendation of CEDAW. Hence, Saudi law and/or regulations must be *de jure* equality assets, where women and men should be treated the same.⁵⁹ While Saudi Arabia has made improvements in local law, customary and individuals' practices continue to affect Saudi women's right in light of law.⁶⁰

In order to implement the Convention at a domestic level, Saudi Arabia must take appropriate measures to respect, protect and fulfil women's right.⁶¹ The reasons that Saudi Arabia has given in response to the CEDAW Committee include that the State has made significant progress for women, but women's rights are yet to be fully achieved as a result of individual conduct, circumstances, traditions or customs.⁶² Furthermore, religious and cultural factors also affect women's right to work in Saudi Arabia.⁶³ Hence, Saudi Arabia is obliged to adopt new policy immediately, without delay.⁶⁴ The State cannot justify delay on the basis of culture or religion.⁶⁵

Article 10 of the Convention is important, as it considers economic, social and cultural rights.⁶⁶ The key point of this Article lies in the enjoyment of other rights.⁶⁷ Thus, the focus of this Article is to impose on the State an obligation to respect, protect and fulfil women's right to education at a domestic level, in order to meet the educational

⁵⁸ The New Law of Judiciary, Royal Decree No. (M/78), 19/09/1428 AH, Art 13; see also chapter two under section The Saudi Civil Service System.

⁵⁹ Cusack and Pusey (n 44) 63.

⁶⁰ CEDAW, C/SR.815, 40 Session (2008) para 4.

⁶¹ Ann Elizabeth Mayer, 'Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience' in Julie Peters and Andrea Wolper (eds), *Women's Rights, Human Rights* (1st edn, Routledge 1995); Sameena Nazir, 'Challenging Inequality: Obstacles and Opportunities Towards Women's Rights in the Middle East and North Africa' (2005) 5 *Journal of The Institute of Justice and International Studies* 31, 33-39.

⁶² *Ibid.*

⁶³ Dina Mansour, 'Women's Rights in Islamic Shari'a: Between Interpretations, Culture and Policies' (2014) 11 *Muslim World Journal Human Rights* 1. 3-14; Rikki Holtmaat and Jonneke Naber, *Women's Human Rights and Culture from Deadlock and Dialogue* (Intersentia Publishers 2011) 7-11; Azizah Yahia Al-Hibri, 'Muslim Women's Rights in the Global Village: Challenges and Opportunities' (2001) 15 *Journal of Law and Religion* 37, 40.

⁶⁴ General Recommendation no. 28, para 29.

⁶⁵ *Ibid.*; Freeman and other (n 12) 76.

⁶⁶ Noreen Burrows, 'The 1979 Convention on the Elimination of All Forms of Discrimination against Women' (1985) 32 *Netherlands International Law Review* 419, 435.

⁶⁷ *Ibid.*

needs of women.⁶⁸ Saudi women have limited access to higher education, as shown in chapter four. As stipulated in Article 10, Saudi Arabia must not discriminate between women and men in regards to education. For example, it must ensure that human and material resources are of equal equality and quantity, and facilitate equal opportunities to access and benefit from scholarship.⁶⁹

Nevertheless, in Saudi Arabia, Saudi women are finding it difficult, or impossible, to study some disciplines, or use some university facilities.⁷⁰ Article 10 (a), (b), (d) and (g) focuses on the negative effect of discrimination on the realisation of the right to education. As described in chapter four, the four essential requirements of the State are that education be available, accessible, acceptable and adaptable. Hence, the State has a legal obligation to respect, protect and fulfil these four essential requirements in order to facilitate the realisation of equal access to higher education in Saudi Arabia. Once these requirements are met, Saudi women will have an equal place to men in the labour market.

Article 10 (c) stresses the elimination of any stereotypical concept of the roles of men and women in education. This is one of the key issues singled out by the authors of CEDAW, along with other issues, such as equality in marriage, as requiring the attention of State Parties.⁷¹ It is an issue that continues to be singled out today as a “significant challenge to the practical realisation of women’s human rights.”⁷² Indeed, Saudi Arabia is influenced by this phenomenon, and it plays a major role in women’s rights.⁷³ The gender stereotypes in Saudi Arabia characterise Saudi women by determining that women cannot be visible in some life aspects. For instance, Saudi culture has a common phrase ‘a woman is a woman’, which implies that there is a

⁶⁸ General Recommendation no. 28, para 21.

⁶⁹ Freeman and other (n 12) 254-255.

⁷⁰ Haya Saad Al Rawaf and Cyril Simmons, ‘The Education of Women in Saudi Arabia’ (1991) 27 *Comparative of Education* 287, 288-289; Yahya Alhareth, Ibtisam Al Dighrir and Yasra Al Alhareth, ‘Review of Women's Higher Education in Saudi Arabia’ (2015) *American Journal of Educational Research* 10, 13.

⁷¹ Simone Cusack, ‘The CEDAW as a legal framework for transnational discourses on gender stereotyping’ in Anne Hellum and Henriette Sinding Aasen (eds), *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press 2013).

⁷² *Ibid*, 126.

⁷³ Al-Hibri (n 63)40.

different degree, level or privilege available to a man than there is to a woman.⁷⁴ In addition, Saudi culture classifies a woman's place as being at home, which constitutes a gender stereotype created by culture.⁷⁵ Article 5 (a) of CEDAW requires the State Parties to enact a positive obligation to modify social and cultural practices in the case of a clash of social and cultural factors with rights.⁷⁶ For instance, in the decision made by the CEDAW Committee in *Rahime Kayhan v. Turkey* regarding the dismissal of a female Turkish teacher from her job on the grounds of wearing a headscarf in work,⁷⁷ the Committee did not consider the case in merits and did not consider the practice of wearing the headscarf to constitute discrimination based on sex. However, prohibiting a teacher from wearing a headscarf, if it is required by her religious beliefs, is.⁷⁸ A teacher's failure to exhaust domestic remedies and that she claimed to protect her under CEDAW from discrimination.⁷⁹

Finally, as has been examined before, Article 11 of the CEDAW intends to enhance equality in the field of employment.⁸⁰ All measures should be taken to ensure women have an effective right to work without being prejudiced by their status.⁸¹ In addition to this obligation, State Parties are also obliged under Article 2 to condemn discrimination against women in all its forms. Thus, a woman's right to work should be protected and enhanced by prohibiting any kind of discrimination against women, as per Article 2 of the CEDAW.

Saudi Arabia has made progress in applying its legal obligations to respect, protect and fulfil the Convention at a domestic level. However, Saudi Arabia should take into

⁷⁴ El-Masri (n 56) 933-934-937.

⁷⁵ Ibid.

⁷⁶ Frances Raday, 'Culture Religion and CEDAW's Article 5(a)' in Hanna Schöpp-Schilling, Cees Flinterman (eds), *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women* (The Feminist Press 2007) 74.

⁷⁷ *Rahime Kayhan v. CEDAW* Communication no 8/2005 (2006) UN document CEDAW/C/34/D/8/2005.

⁷⁸ UDHR, Art 2; General Recommendation no.28; Human Rights Committee, General Comment No. 28: Equality of rights between men and women (Article 3), 29 March 2000, CCPR/C/21/Rev.1/Add.10; 8 IHRR 303 (2001); Alison Stuart, 'Freedom of Religion and Gender Equality: Inclusive or Exclusive?' (2010) 10 Human Rights Law Review 429, 429-432.

⁷⁹ Ibid, 11.

⁸⁰ Freeman and other (n 12) 286-288.

⁸¹ Malcolm Langford, *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2008) 559-563.

account several aspects which have reviewed above; these are the general recommendations, list of issues, concluding observations, and summary reports. Also, the State must seriously consider the recommendations made by the CEDAW Committee and take appropriate measures in order for women to enjoy their rights, and their right to work in particular.

5.3.1 Saudi Arabia's Reservations on CEDAW

Before examining Saudi Arabia's reservations on CEDAW, it is necessary to demonstrate the definition and nature of such reservations. Reservations occur when States agree to the feasibility of several of the rights and obligations within the treaty, but also proclaim that there are a number of provisions in the treaty that they cannot agree with.⁸² Reservations might have the consequence of removing completely the legal effect of a specific part, or changing or determining the scope of the provision.⁸³ The Vienna Convention on the Law of Treaties (VCLT)⁸⁴ explains the terms of reservation, and states:

*“‘Reservation’ means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”.*⁸⁵

The VCLT is codified practice and provides legal guidance on the meaning of reservations.⁸⁶ In most cases, a State might attempt to modify the way a treaty will be applied through “interpretative declarations or reservations”.⁸⁷ The aim of creating a reservation is usually “to set up a meaning of the treaty that is like the domestic law of

⁸² John King Gamble, Jr, 'Reservations to Multilateral Treaties: A Macroscopic View of State Practice' (1980) 74 the American Journal of International Law 372, 373-376.

⁸³ Malgosia Fitzmaurice, 'The Practical Working of the Law of Treaties' in Malcolm D. Evans (ed.), *International Law* (2nd edition, Oxford University Press, 2006) 73.

⁸⁴ Vienna Convention on the Law of Treaties (VCLT), 1155 U.N.T.S. 331, 8 I.L.M. 679, entered into force 27 Jan. 1980.

⁸⁵ Ibid, art. 2(d).

⁸⁶ Marsha A. Freeman, 'Reservations to CEDAW: An Analysis for UNICEF' (2009) Division of Policy and Practice 1, 2; Gamble (n 82) 373-374.

⁸⁷ Anthony Aust, *Modern Treaty Law and Practice* (2nd edition, Cambridge University Press 2007)126.

the State concerned”.⁸⁸ Any time a State formulates a general reservation, just as Saudi Arabia did with regards to the CEDAW, for instance, it commonly attempts to subject a human rights treaty to the national law of the reserving State – for instance in this case to Sharia.⁸⁹

According to the Guide to Practice on Reservations to Treaties, a reservation is only prohibited if it contains a provision (a) prohibiting all reservations, (b) prohibiting reservations to specified provisions to which the reservation in question relates, and (c) prohibiting certain categories of reservations, including the reservation in question.⁹⁰ In addition, the VCLT indicates that a reservation “incompatible with the object and purpose of the treaty is not permissible”.⁹¹

As the VCLT acknowledges that “non- reserving states may object to a reservation”,⁹² such a capability can be of small impact, according to human rights Conventions.⁹³ The VCLT suggests that an objection to a reservation is not likely to avoid the entry into force of a treaty, except if the objecting State expressly claims its wish for such a consequence.⁹⁴ Objections frequently involve objecting States proclaiming that the reservation is not compatible; that it is inadmissible and without impact; or their objection ought not to be viewed as an objection to the entrance into force of the Convention in general.⁹⁵ The VCLT identifies the liberty of State parties to object to reservations *inter alia* using the power of a State to create such reservations.⁹⁶ An objection shows the concept of the rejection of a reservation by a State that is clearly a party to the treaty.

⁸⁸ Ibid, 127.

⁸⁹ Ibid, 149.

⁹⁰ Guide to Practice on Reservations to Treaties, 2011, adopted by the International Law Commission at its sixty-third session and submitted to the General Assembly as a part of the Commission’s report covering the work of that session, A/66/10, para. 75.

⁹¹ See the VCLT, art. 19(c).

⁹² Ibid, Art 20(4) (b).

⁹³ Michel Debolt, ‘Islamic States and the UN Human Rights Treaty System: The Role of Shari’ah based Reservations’ (April 22, 2004) 5.

⁹⁴ The VCLT, art. 21.3

⁹⁵ Debolt (n 93) 5-6.

⁹⁶ Aust (n 87) 125-161.

The aim of the reservation is, mainly, to remove or to change the legal effect of a number of provisions of the treaty that the reservation is applicable to, and not the provisions themselves.⁹⁷ Despite the fact that many States display reservations to particular articles of human rights treaties, the law applicable to these reservations is somewhat dissimilar to general treaty law, since human rights treaties mostly do not require mutual rights and obligations among States.⁹⁸

This Convention allows reservation(s) in terms of which bring to mind the appropriate provisions of the Vienna Convention on the Law of Treaties.⁹⁹ Even though some might debate that the majority of reservations to authentic provisions of such treaties may not be appropriate for their object and purpose, “the reality that reservations are particularly permitted in provisions of the instruments shows that their drafters couldn't the slightest bit attempt to remove the potential of reservations”.¹⁰⁰

As the law in Saudi Arabia, which is the context of this study, is derived from Sharia, it is clear that Sharia “plays a main function in formal ideologies” in Saudi Arabia.¹⁰¹ Commonly, Muslim states will invoke Sharia to create reservations to international human rights treaties,¹⁰² and Saudi Arabia has made reservations to treaties and also to those provisions that it considered to be contrary to the rules of Sharia, on which the laws and traditions of the State are based. As Ann Mayer argues, “Islamic law dictates

⁹⁷ Fourth Report of the Special Rapporteur, Mr. Alain Pellet (51st Session of the ILC (1999) < http://untreaty.un.org/ilc/documentation/english/A_54_10.pdf > access 15 Nov 2017.

⁹⁸ Robert McCorquodale and Martin Dixon, *Cases and Materials on International Law* (4th edition, Oxford University Press 2003) 210.

⁹⁹ The VCLT, art. 19-23.

¹⁰⁰ William A. Schabas, ‘Reservations to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child’ (1997) 3 *William and Mary Journal of Women and the Law* 79.

¹⁰¹ Ann Elizabeth Mayer, ‘Islamic Reservations to Human Rights Conventions, A Critical Assessment’ (1998) 15 *RIMO. Recht van de Islam: Human Rights and Islam* 43.

¹⁰² Meeting of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, 14 Session (23 June 2006) UN Doc CEDAW/SP/2006/2, see, Muslim Countries their reservation based on Sharia such as Bahrain, Bangladesh, Egypt, Iraq, Kuwait, Libyan Arab Jamahiriya and Maldives; Ann Elizabeth Mayer, ‘Religious Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women: What Do They Mean?’ in Courtney W. Howland (ed) *Religious Fundamentalisms and the Human Rights of Women* (1st edn, St Martin's Press 1999).

the stances of Muslim countries on whether or not to commit themselves to abide by human rights Conventions or to enter reservations”.¹⁰³

The general reservation, as formulated by Saudi Arabia, to CEDAW states:

*“In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention”.*¹⁰⁴

According to the general reservation of Saudi Arabia, the State implements the provisions of the CEDAW treaty provided that the provisions of the treaty conform to the provisions of Sharia.¹⁰⁵ Although the CEDAW Committee has noted that the general reservation, which is based on religious and national law, has no specific reservations in its provisions, it acts as a precautionary measure that does not prevent the country from implementing the provisions of the Convention. However, it further notes that the general reservation is used by the government and other officials as a scapegoat for not fully implementing the treaty.¹⁰⁶ The Committee of CEDAW claims that such a reservation “is contrary to the object and purpose of the Convention”, and thereby desires the State party to “consider the withdrawal of its general reservation to the Convention, specifically in terms of the reality that the delegation is certain that there will be no contradiction in element among the Convention and Sharia”.¹⁰⁷

On the other hand, when officials were asked to state the specifics of the general reservation in relation to the norms of Sharia, and to also describe the repercussions of the reservation on the achievement of equality between men and women as required in Article 2(a), it was argued that the reservations were formulated this way because it was believed that the provisions of Sharia *are* compatible with the obligations contained in the treaty—although they differ in the means of implementing the

¹⁰³ Mayer (n 101) 43.

¹⁰⁴ CEDAW, (23 June 2006), CEDAW/SP/2006/2, para, 26.

¹⁰⁵ Donna E. Arzt, ‘The Application of International Human Rights Law in Islamic States’ (1990) 12 Human Rights Quarterly 202.

¹⁰⁶ Mayer (n 61)176.

¹⁰⁷ Ibid.

provisions.¹⁰⁸ The reservation made by Saudi Arabia affects all of the provisions of the Convention, including those in Article 2(f), the main object and purpose of which are to inform every obligation set out in the Convention.¹⁰⁹ Article 2(f) of the Convention provides general provisions that ask all the signatory States to condemn all forms of discrimination against women.¹¹⁰ However, for the State signatories to the Convention to achieve this goal, they must adopt new traditions, laws and customs, regardless of their religious beliefs.¹¹¹ Furthermore, the Convention also indicates that the signatories must change the social, as well as cultural, patterns of how men and women conduct themselves.¹¹² Saudi women's right to work is affected by religious interpretations of Sharia, which may contradict provisions of Article 2. Chapter three showed how such factors can seriously affect women's right to work. Hence, the general reservation has an indirect effect on Article 2 and women's right to work, and thus the State should reconsider it.

Overall, the State does not consider that the terminology of its reservation contradicts its obligations as stipulated within the Convention. It is clear from Saudi Arabia's document that Sharia and legal terms regarding women are taken into consideration. This demonstrates that both Sharia and the Convention might be considered to safeguard women's rights.¹¹³ In the meeting of the 40 session of the CEDAW Committee, the first concern regarding Articles 1 and 2 was the locating of the State's general reservation to the Convention. Committee member Flinterman inquired about the need for the so-called "precautionary measure", wondering whether any of the 25 General Comments adopted by the Committee over the past 25 years had contradicted

¹⁰⁸ Committee on the Elimination of Discrimination against Women, Pre-session working group, Fortieth session, 14 January-1 February 2008, Responses to the list of issues and questions contained in document number, CEDAW/C/SAU/Q/2, (2007) para 2.

¹⁰⁹ Cusack and Pusey (n 44) 57; Freeman (n 12) 90-93.

¹¹⁰ See Committee of CEDAW, Fortieth session, CEDAW/C/SAU/Q/2, p. 2.

¹¹¹ See; General Recommendation No 21, 13th Session (1992) on Equality in Marriage and Family Relations, para 50; General Recommendation No 27, 47 Session (1992) CEDAW/C/GC/27, para 16 and 36; General Recommendation No 28, para 22.

¹¹² Committee CEDAW/C/SAU/Q/2, p. 2.

¹¹³ Ibid.

any of the State's laws. Committee Chairperson Imonović joined Flinterman in expecting that the State could consider withdrawing the reservation.¹¹⁴

In their reply to the CEDAW Committee's concern about the general reservation to the CEDAW,¹¹⁵ Saudi Arabia attributed it to two factors: (1) that the country has a belief that Sharia is appropriate for the general main ideas of the CEDAW Convention; and (2) being a precautionary measure towards all sudden understanding of the Convention actually opposes Sharia.¹¹⁶ In reality, the summary dynamics of human rights treaties encourage States to recommend obscure reservations so that they can resolve the ambiguity of human rights treaties. Yet another significant reason behind suggesting the general reservation, which was not pointed out in Saudi Arabia's report, would provide the CEDAW with the legality to become implemented in national regulation, and ahead of legal courts. This reason may be more significant than the two mentioned earlier, since it applies directly to the effective use of the Convention, because it is regarded as an element of local regulation.¹¹⁷ In addition, women's right to work in Saudi Arabia has been influenced by Sharia through religious interpretation, while the State has highlighted above that Sharia is consistent with the Convention. However, interpretations of Sharia remain a key issue with regard to women's rights in Saudi Arabia.¹¹⁸

The question that arises here is with respect to Saudi women's right to work in light of the general reservation on CEDAW. Indeed, Saudi Arabia's reservation on CEDAW may be extended to such problems as the prohibited mixing of genders in the workplace. For example, the new Saudi Labour Law update has demarcated new boundaries within which a woman should wear the hijab in the workplace, or else face

¹¹⁴ Treaty Body Monitor International Service for Human Rights, Human Rights Monitor Series, 3-4<http://olddoc.ishr.ch/hrm/tmb/treaty/cedaw/reports/cedaw%2040/cedaw_40_saudi.pdf> access 3 Nov 2017.

¹¹⁵ Saudi Arabia, Responses to the list of issues and questions, CEDAW/C/SAU/Q/2 (2007).

¹¹⁶ Ibid, 2.

¹¹⁷ Ibid, 4.

¹¹⁸ Elin Andersson and Linn Togelius, 'Women Oppressed in the Name of Culture and Religion, Saudi Arabia and the Convention on the Elimination of All Forms of Discrimination against Women' (Thesis, Malmö University 2011) 16-30.

a fine of 1000 Saudi Riyal.¹¹⁹ This shows that such a resolution does not comply with the measures of CEDAW's objectives and purpose. Furthermore, it breaches the Convention provisions. In short, the religious factor, which was examined earlier, as one obstacle to women's right to work in Saudi Arabia, includes the general reservation. Thus, the relevance of the general reservation on CEDAW to women's right to work is the religious factor. When Saudi women are the subject of certain religious interpretations, as mentioned in chapter three, Saudi Arabia invokes Sharia as a pretext. In so doing, Saudi Arabia breaches certain provisions of the Convention through its general reservation, which clashes with many provisions of the Convention.¹²⁰ Hence, the general reservation might be one of the pretexts to women's right to work. Simply put, any religious obstacles to women's right to work might include Saudi Arabia's general reservation of CEDAW.

The State's responsibility in the light of general human rights obligation is to respect, protect and fulfil human rights as stated before.¹²¹ It might, however, be debated that because this reservation is observed to be in contradiction of any and every Article of the treaty, the State has set up reservations to all Articles in the treaty.¹²² Saudi Arabia's general reservation on CEDAW is not complying with these general human rights obligations in several aspects. The general reservation has made Saudi Arabia incompatible with the concept of human rights obligation to respect all equally, as it is an unclear reservation which impacts women's right to work.

The overly-broad reservation which Saudi Arabia has invoked under Sharia shows the State's violation of Saudi women's right to work; for example, the State's responsibility to respect women's rights by adopting laws and policies which ensure Saudi women's enjoyment of these rights. Furthermore, State responsibility must be to protect a woman from human rights violations.¹²³ Finally, the obligation is on

¹¹⁹ Sabq, 'New Regulations and Punishment on Saudi Labour Law', Sabq (Saudi Arabia 18/10/2015) <<http://sabq.org/w8Jgde>> accessed 30 Nov 2017.

¹²⁰ See in for example CEDAW, Arts 1, 2, 3 and 8.

¹²¹ Daniel Moeckli and others, *International Human Rights Law* (Oxford University Press 2010) 130-132; see previous section 5.3

¹²² Eric Neumayer, 'Qualified Ratification: Explaining Reservations to International Human Rights Treaties' (2007) 36 *The Journal of Legal Studies* 398,408.

¹²³ Moeckli and others (n 121) 131-132.

Saudi Arabia to adopt and fulfil appropriate laws which implement their international undertaking.¹²⁴ None of these irregularities are in harmony with general human rights obligation to respect, protect and fulfil; instead, they use their general reservation to evade international compliance.

Saudi Arabia retains certain provisions of the Convention that do not conflict with the precepts of Sharia.¹²⁵ As per general human rights obligations to respect, protect and fulfil human rights, the State's general reservation means that these obligations can be invoked at any time. For example, in its report the State asserts that "the Convention has become part of Saudi Arabia's law".¹²⁶ This is not strictly true because the Sharia and Convention provisions are different in their concepts of equality that they apply at the domestic level. So Saudi Arabia will respect, protect and fulfil women's rights under Saudi law and is obligated to apply the Convention at its domestic level, as they stated.¹²⁷ In addition, Saudi Arabia does not consider male guardianship and other systems to be derogative of women's rights. In contrast, the abuse of these principles remains within the framework of individuals' wrong practices.¹²⁸ All of these are Sharia provisions which Saudi Arabia applies in its law; but at the same time it states they do implement the Convention. These assumptions, however, are contradictory to respecting, protecting and fulfilling CEDAW at the domestic level due to the general reservations against it. Thus, Saudi Arabia either should withdraw the general reservation or make a specific reservation to CEDAW. This general reservation not only conflicts with human rights obligations, but also does not uphold the *propos* and objectives of the Convention.¹²⁹

Examining Saudi Arabia's general reservation on the State's human rights obligation to respect, protect and fulfil led to an invalidated reservation; as a consequence, the

¹²⁴ Ibid, 132.

¹²⁵ Saudi Arabia, List of issues and questions in relation to the combined third and fourth periodic reports of Saudi Arabia, CEDAW/C/SAU/Q/3-4 (2017),4.

¹²⁶ Saudi Arabia, Consideration of reports submitted by States parties under article 18 of the Convention, Combined third and fourth periodic reports of States parties, CEDAW/C/SAU/3-4 (2017),67.

¹²⁷ Ibid, 69.

¹²⁸ Ibid, 69.

¹²⁹ Neumayer (n 122) 408,409.

general reservation on the Convention was invalidated. Saudi Arabia invoked the general reservation when women's rights were not respected, protected or fulfilled, which converted the reservation status from permissible to impermissible since it was incompatible with the objectives and purpose of the treaty.¹³⁰

Saudi Arabia's report clarifies the position of women under Sharia provisions through the male guardianship system and other effects from the individuals.¹³¹ Saudi Arabia invoked Sharia to play a role of 'negative obligation' by refraining from adopting laws and policies that interfere with a woman's equal enjoyment of her rights.¹³² Moreover, State responsibility lies in improving the woman's position to one of *de jure* as well as *de facto* equality with that of the man.¹³³ It thus shows where the conflict between general human rights obligation and Saudi reservation led to impermissible general reservation.

Saudi Arabia also has a specific reservation to Article 9(a) of the CEDAW, which considers the nationality rights of women. This does not necessarily concern Saudi women's right to work, by law; however, it might affect women who wish to obtain Saudi nationality, but cannot obtain it on the grounds of the Saudi Nationality Act. It agreed with Cook in terms of national consequence as it states that

“women's legal inability to bestow their nationality on their children born of foreign husbands often leaves legitimate children stateless or unable to benefit from attributes of citizenship such as education, health care, and employment”.¹³⁴

In Saudi Arabia, most of the jobs that are offered by the government are within the Civil Service System.¹³⁵ This sector is obliged to provide jobs only to those who hold Saudi nationality. Article 4(A) states that, “Whoever is appointed in jobs must be a Saudi”.¹³⁶ In this case, here, an individual who has a Saudi mother and a non-Saudi

¹³⁰ Manisuli Ssenyonjo, *Economic, Social And Cultural Rights* (2nd edn, Hart 2016) 328,329.

¹³¹ CEDAW/C/SAU/3-4 (2017),69.

¹³² Freeman and other (n 12) 20.

¹³³ General Recommendation No.25, para 4.

¹³⁴ Rebecca J. Cook, 'Women's International Human Rights Law: The Way Forward' (1993) 15 Human Rights Quarterly 230, 244.

¹³⁵ Civil Service Act, Royal Decree (no. 49/M) 10/7/1397 AH, Saudi Council Resolution (No. 951 by 27/06/1397 AH).

¹³⁶ Civil Service Act, Article 4(A).

father cannot apply.¹³⁷ According to the Nationality Law, a Saudi national is a person with a Saudi father or a Saudi mother, or a father without a state, or father without a nationality. It seems that there is no discrimination against women when it comes to these laws; as a result, the law focuses on avoiding dual nationality, rather than being discriminatory.¹³⁸

In this reservation, the KSA states that it is not bound by paragraph 2 of Article 9 of the CEDAW, as well as paragraph 1 of Article 29 of the CEDAW. The submission by the KSA regarding the provision of the Article 9(2) is that its nationality law does not allow women to transmit nationality to their children, and thus affect children's future right to work. For instance, this affects Saudi women who marry a non-Saudi, as her daughter cannot then obtain Saudi nationality, and cannot thus be appointed at any job in the public sector, in accordance with the Civil Service Act. Secondly, the reservation of Article 9 cannot be regarded to be strictly based on Sharia, because the question of nationality does not in any way relate to issues of religion. However, it can fall under Sharia jurisdiction, especially when the issue of nationality is associated with the domiciliary status of husband and wife.¹³⁹

However, the positive aspect of the Saudi Nationality Act is that a Saudi Arabian woman who marries a foreigner, or a Saudi Arabian man who later changes his nationality, can retain their nationality. In this case, the Saudi Arabian delegation submitted reports for consideration by the United Nations under Article 18 of the Treaty, indicating that, since the domestic law does not offer an opportunity for dual citizenship, the Saudi Arabian woman will have no choice but to give up her nationality.¹⁴⁰ However, this reservation was made to ensure that Saudi Arabian children do not gain dual citizenship, which can result in social problems such as

¹³⁷ The Shadow Report for CEDAW Prepared by 'Saudi Women for Reform' Saudi Arabia, The Executive Summary December 2007, 28 <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/INT_CEDAW_NGO_SAU_40_10011_E.pdf> accessed 22 Nov 2017.

¹³⁸ Civil Service Act, Article 4(A).

¹³⁹ Niaz A. Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan* (Martinus Neijhoff Publishers 2006) 160.

¹⁴⁰ Committee on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Discrimination against Women, fortieth session, Summary record of the 816th meeting held at the Palais des Nations, Geneva, on Thursday, 17 January 2008, CEDAW/C/SR.816, p. 3.

divorce.¹⁴¹ On the other hand, the child of the Saudi Arabian woman who decides to give up her nationality can decide to apply for a Saudi Arabian nationality later in life.¹⁴² The reservation effective to a Saudi woman to transfer her nationality to her daughter to enjoy the right to work in public sectors, as stated earlier.

5.3.2 The Incompatibility Between CEDAW and Saudi Domestic Law: KSA Duties to Eliminate Discrimination against Women

Tensions continue to exist between the CEDAW and Saudi Domestic Law. The CEDAW Committee continues to argue that much can be realised if the States can change their social and cultural patterns of how men and women conduct themselves.¹⁴³ The reason Saudi Arabia does not comply with the obligations set by the Convention is because the interpretation of women's equality in Sharia is different from how it is defined in the CEDAW. As a result, the general reservation applies.

The issue of incompatibility between CEDAW and Saudi domestic law continues to be a key reason why Saudi Arabia argues that a few interpretations of the idea of 'equality' in Sharia differ slightly from the provisions of Article 2 of the CEDAW. Therefore, the general reservation was created by Saudi Arabia. Sharia clearly identifies the legal position of women and men as being equal in front of God without distinction in any respect regarding language, race, religion or gender.¹⁴⁴ This approach to equality, nevertheless, does not mean the consistency of each factor between everyone.¹⁴⁵ The rights and duties contained within each of these various entities are competent in their particular functions, and thereby they will not become the equivalent.¹⁴⁶ This kind of 'role differentiation' can also be used in relation to rights and duties in regard to gender dissimilarities among the sexes.¹⁴⁷

¹⁴¹ Andersson and Togelius (n 118) 9.

¹⁴² Ibid.

¹⁴³ CEDAW/C/SAU/Q/2, (2007); CEDAW, article 5(f).

¹⁴⁴ Muhammad Hashim Kamali, *Freedom, Equality and Justice in Islam* (Ilmiah Publishers 1999) 86.

¹⁴⁵ Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2003) 60.

¹⁴⁶ Ibid.

¹⁴⁷ Ahmed Ali Sawad, 'Reservations to Human Rights Treaties and the Diversity Paradigm: Examining Islamic Reservations' (PhD Thesis, University of Otago 2008) 48.

Sharia recognises all human beings as being equal before God, with no difference in terms of language, religion, or gender.¹⁴⁸ However, this understanding of equality does not mean that men and women are equal in every aspect of life. For example, Sharia recognises equality between men and women, but does not advocate absolute equality in terms of their roles; according to Baderin, this means that men and women are equal, but not equivalent.¹⁴⁹ This is because men and women under Sharia have different rights and duties, which arise from their gender differences.¹⁵⁰ Furthermore, the concept of equality has been challenged by some State Parties such as Muslim States which do not show consistent application of the human rights treaties. Consequently, the debates about equality and conflict in international human rights law and Sharia continue, particularly amongst Muslim States, of which Saudi Arabia is one. These are the challenges facing CEDAW in Saudi Arabia as a result of the incompatibility between Convention provisions and Saudi Domestic Law.¹⁵¹

The influence of the above factors on women's right to work is subject to CEDAW provision, which sometimes might not comply with the Sharia standard of equality. One of the issues in Saudi Arabia is Sharia, which the State Domestic Law is based on, and international treaty obligations, to set its obligations. Hence, Saudi women sometimes experience an unequal enjoyment of their right to work, due to religious interpretations in the State. In chapter one, it is recommended that the State codifies Sharia so that its provisions more closely align with international obligations. The vagueness of Sharia leads to women missing out on certain rights – the right to work in particular.

¹⁴⁸ Weiss Bernard, *The Spirit of Islamic Law* (University of Georgia Press 1998) 18; Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (1st edn, Cambridge University Press 2001) 27.

¹⁴⁹ Baderin (n 145) 60.

¹⁵⁰ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law* (Kluwer Law International 2000)11-16.

¹⁵¹ El-Masri (n 56) 933-937.

5.4 Saudi Arabia's Obligations Under International Labour Organization Conventions

The International Labour Organization (ILO) was initiated with the purpose of promoting peace and social justice.¹⁵² In 1946, the ILO body became independent under the United Nations, and it has received recognition by many governments all over the world.¹⁵³ The Member States of this body are required to implement all of the international provisions articulated by the body, by adopting recommendations and Conventions put forward by the ILO.¹⁵⁴

There are four key Conventions that are relevant to the case of women at work. These are: the Equal Remuneration Convention (No. 100)¹⁵⁵; the Discrimination (Employment and Occupation) Convention (No. 111)¹⁵⁶; the Workers with Family Responsibilities Convention (No. 156)¹⁵⁷; and the Maternity Protection Convention (No. 183).¹⁵⁸ Saudi Arabia has ratified the Equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention.¹⁵⁹ It is worthwhile devoting some attention to the specific measures articulated by each of these Conventions with respect to the specific issue of gender and, in particular—either explicitly or by way of implication—women's workplace rights. It has been observed

¹⁵² Doris Weichselbaumer and Rudolf Winter-Ebmer, 'The Effects of Competition and Equal Treatment Laws on Gender Wage Differentials' (2007) 22 *Economic Policy* 235, 245.

¹⁵³ H. W Robert, *International Covenant on Economic, Social, and Cultural Rights*, 2011, GL 546; John Wood, 'International Labour Organisation Conventions-Labour Code or Treaties' ICL (1991) 649.

¹⁵⁴ Roger Blanpain and other, *the Global Workplace: International and Comparative Employment Law Cases and Materials* (Cambridge University Press 2007) 19.

¹⁵⁵ The Equal Remuneration Convention (No. 100), entry into force: 23 May 1953. Adoption: Geneva, 34th ILC session (29 Jun 1951) - Status: Up-to-date instrument (Fundamental Convention).

¹⁵⁶ Convention concerning Discrimination in Respect of Employment and Occupation (No. 111), Entry into force: 15 Jun 1960, Adoption: Geneva, 42nd ILC session (25 Jun 1958) - Status: Up-to-date instrument (Fundamental Convention).

¹⁵⁷ Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (Entry into force: 11 Aug 1983) Adoption: Geneva, 67th ILC session (23 Jun 1981) - Status: Up-to-date instrument (Technical Convention).

¹⁵⁸ Convention concerning the revision of the Maternity Protection Convention, 1952 (Entry into force: 07 Feb 2002) Adoption: Geneva, 88th ILC session (15 Jun 2000) - Status: Up-to-date instrument (Technical Convention).

¹⁵⁹ So far Saudi Arabia out of 16 conventions, has ratified; Fundamental Conventions, 6 of 8, Governance Conventions (Priority), 1 of 4 and Technical Conventions, 9 of 177. See Saudi Arabia profile page on International Labour Organization <http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103208> access 06 of Nov 2017.

that most of the issues with Saudi women's right to work in Saudi Arabia arise from the factors mentioned previously – namely religion and culture.

As Saudi Arabia has ratified the Discrimination (Employment and Occupation) Convention (No. 111), it is obliged to apply it at a domestic level. C111 is designed to promote the elimination of discrimination in the field of employment and occupation, to ensure that everyone, no matter their race, creed or sex, have the right to practice equally their substance well-being and their moral development in conditions of freedom and dignity, of economic security and equal chance.¹⁶⁰ Further, the Convention also aims to facilitate equality and prevent any and all forms of discrimination in the workplace.¹⁶¹ According to the Convention's definition of discrimination, Saudi Arabia has breached women's right to work; the Convention clarifies the meaning of discrimination as follows:

1. For the purpose of this Convention, the term 'discrimination' includes

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

¹⁶⁰ Leah F Vosko, 'Gender, Precarious Work, and the International Labour Code: The Ghost in the ILO Closet' in Judy Fudge and Rosemary Owens (eds), *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (Oxford and Portland Oregon 2006) 55.

¹⁶¹ Discrimination (employment and occupation) convention, 1958 (No. 111), Saudi Arabia (Ratification: 1978), Individual Case (CAS) - Discussion: 2013, publication: 102nd OLC session (2013) 1; Director-General, 'Time for Equality at Work: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 91st session 1 (B)' (International Labour Office, 2003) 81.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.¹⁶²

The Saudi Arabian Government has frequently reaffirmed that official policy is in conformity with Article 1 of the Convention, and also that “there is no discrimination in employment and occupation, and gives as evidence of this the lack of complaints concerning this matter”.¹⁶³ However, Saudi Arabia has received a number of observations regarding national equality policy from the worker members, which is critical to the lack of national equality policy in the country.¹⁶⁴ The State’s response was to issue a Royal Decree in 2008 that created women’s units in the courts and justice department.¹⁶⁵ However, it is not clear what the units’ roles are in enhancing national equality policy. The positive point is that Saudi Arabia has followed up the conclusions of the Committee. The State has continued to initiate several development measures to increase the participation of women in the labour market, with the emphasis on a society based on equal rights and duties without discrimination.¹⁶⁶ However, the Committee requires further immediate steps to develop and implement equal rights, including those designed to promote equality of opportunity and treatment in employment and occupation.¹⁶⁷ The Convention asserts an immediate obligation to apply equal treatment in employment and occupation, whereby the State is not permitted to remain indifferent towards inequality of opportunity and treatment.¹⁶⁸

In reality, regarding the status of Saudi women’s right to work and Saudi Arabia’s responses to the Committee, Saudi women are still suffering from discrimination based on stereotypes, prejudice, limited access to higher education, religious

¹⁶² Convention Discrimination (Employment and Occupation) (n 156), Art 1.

¹⁶³ Saudi Arabia 102nd OLC session (2013) (n 161) 3 and 9.

¹⁶⁴ Ibid, 3.

¹⁶⁵ Ibid.

¹⁶⁶ Observation (CEACR) - adopted 2014, published 104th ILC session (2015) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Saudi Arabia (Ratification: 1978) 1-2.

¹⁶⁷ Ibid,2.

¹⁶⁸ Henrik Karl Nielsen, 'The Concept of Discrimination in ILO Convention No.111' (1994) 43 International and Comparative Law Quarterly 827, 829.

interpretation and other forms that undoubtedly do not comply with the purpose and objects of the Convention. Hence, the Committee has noticed no improvements in women's employment in the Saudi Arabia in several areas such as strengthening its efforts to increase the participation of women in a wider range of occupations.¹⁶⁹ While the State is developing in this regard, it is not yet fulfilling its obligations regarding the provisions of the Convention, particularly Article 1 regarding discrimination. In addition, the State requires further work with respect to Articles 2 and 3, which require it to declare and pursue a national policy that promotes equality of opportunity and treatment in respect of employment and occupation.¹⁷⁰ For instance, the Saudi Labour Law references the "specific nature of women's work," which excludes women from certain jobs.¹⁷¹

Protecting women's right to work requires the KSA to enact legalisation on sexual harassment, as a key issue in Saudi Arabia. This issue has been discussed in light of CEDAW above. Saudi Arabia still needs to take the necessary measures to protect women, by law, from sexual harassment in the workplace.¹⁷² Thus far, the State has not enacted any such legislation.¹⁷³ As a result, sexual harassment issue was not finding before in the State.¹⁷⁴ Again, one of the State's obligations with regard to protecting the right to work is to prohibit and enact legislation against sexual harassment. Hence, what response Saudi Arabia tried to use to justify this phenomenon was not found and thus there is no need for law.

The Equal Remuneration Convention of 1951 centres, as its name might suggest, upon the question of remuneration. Like the aforementioned remarks regarding the core normative claims of the ILO, there is an assumption here that work is a desirable phenomenon, and that remuneration for equal forms of work must be consistent

¹⁶⁹ Observation (CEACR) Saudi Arabia, 2.

¹⁷⁰ Convention Discrimination (Employment and Occupation), art. 2 and 3.

¹⁷¹ Saudi Labour Law, Section 149.

¹⁷² Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Saudi Arabia (Ratification: 1978).

¹⁷³ Saudi Arabia 102nd OLC session (2013) 5.

¹⁷⁴ Ibid.

across both genders.¹⁷⁵ This is premised on the presumption of the principle of equality.¹⁷⁶ The Convention outlines in Article 1 the definition that “equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex”.¹⁷⁷ What is interesting about this claim is that there is no differentiation made between sex and gender, insofar as it is presupposed that there exists some hard distinction between the sex categories, men and women, and where, in accordance with a position that centres upon the social construction of the body, gender is something acquired by way of cultural discourse.¹⁷⁸ What is interesting about this is that it opens up a space for a collision between respective forms of social construction when it comes to matters of gender, which is informed by complex cultural processes and conversations, as indeed is the case with the distinctive set of norms and values surrounding gender in Saudi Arabia.¹⁷⁹ This technical problem aside, it is articulated in Article 2 that

*“each Member shall, by means appropriate to the methods in operation for determining rates of remuneration promote, and in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value”.*¹⁸⁰

An obvious question arises, of course, in such a case, regarding any such impediments that might occur with respect to the grounds for such ‘ensuring’—particularly where there might occur domestic incongruences with respect to the issue of genders, as is the case with Sharia. In fact, both Saudi Labour Law and Sharia apply equal remuneration for both men and women; Saudi Arabia does not make any differentiation between genders in its local laws in terms of remuneration.¹⁸¹

¹⁷⁵ Richard K. Brown, ‘What is Work for? The Right to Work and the Right to be Idle’ in Richard K. Brown (ed) *the Changing Shape of Work* (Macmillan Press LTD 1997) 54-55.

¹⁷⁶ Matthew, C. R. Craven, *the International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Clarendon Press 1995) 195.

¹⁷⁷ International Labour Organisation, ‘Equal Remuneration Convention, 1951—No. 100’ (*ILO*, 2016) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100> accessed 14 Nov 2017.

¹⁷⁸ See Michael Kimmel, *the Gendered Society* (Oxford University Press 2012); Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 2006).

¹⁷⁹ See Peter L. Berger & Thomas Luckmann, *the Social Construction of Reality* (Anchor 1967).

¹⁸⁰ International Labour Organisation, ‘Equal Remuneration Convention, 1951—No. 100’ (note 71)

¹⁸¹ See Saudi Labor Law, Royal Decree No. M/51, 23 Sha’ban 1426/27 September 2005, Part VI Working conditions (wages, working hours, rest periods, leaves); The Civil Service System, issued by

However, in practice, the average monthly wage of Saudi women is less than that of Saudi men, as a result of the concept of ‘works of equal value’.¹⁸² The terms of works of equal value, according to the Committee, are such that “the same or similar work requires some method of measuring and comparing the relative value of different jobs”.¹⁸³ Saudi Arabia issues in the private sectors as such are based on merit and not on sex. Thus, the State should take this matter into account when evaluating the situation, to ensure that there is not a difference between the wages of males and females.¹⁸⁴ It must also take into account the unequal access of men and women to several allowances and benefits.¹⁸⁵

5.5 Should Saudi Arabia Ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The value of this Convention lies in its conferring economic, social and cultural rights (ESCR) with legal value in the world. The ICESCR includes a variety of rights, *inter alia*, which endeavour to enhance ESCR for humankind. While Saudi Arabia has not yet ratified this Convention, which contains important rights for individuals, it remains under consideration.¹⁸⁶

There is currently a tension between whether ECSR can be counted as first- or second-generation rights.¹⁸⁷ For instance, Carven has identified freedom of expression as being less important to the starving and homeless.¹⁸⁸ As such, ECSR are often

Royal Decrees No. (M/49) on 10/07/1397 H, it entered into force on 01/08/1397 H, chapters 2, 4 and 5; Regulation of Rights and Financial Benefits.

¹⁸² Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015), Equal Remuneration Convention, 1951 (No. 100) - Saudi Arabia (Ratification: 1978), 1.

¹⁸³ Ibid, 2.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council Resolution 5/1 * Saudi Arabia, A/HRC/WG.6/4/SAU/1, para 18.

¹⁸⁷ Nicolae Dura, ‘International Covenant on Economic, Social and Cultural Rights’ (the 8th Edition of the International Conference European Integration Realities and Perspectives, Galati, 2013).

¹⁸⁸ Carven (n 176) 13.

classified as ‘second-generation rights.’¹⁸⁹ Nevertheless, there is ongoing debate about what exactly is termed and classified as first-generation rights, which can include substantive economic, social and cultural rights, such as the right to work, education, and indeed health rights.¹⁹⁰

The importance of ICESCR, including the right to work in the case of this thesis, is that Saudi Arabia has not ratified it. Should the State reconsider ratifying ICESCR in order to protect women’s right to work? The section that follows considers whether Saudi law contradicts the provisions of ICESCR, with particular regard to Articles 6, 7 and 8.

The significance of this Convention, as stated above, is that it is time for Saudi Arabia to ratify this Convention; however, it might be that the State will express reservations regarding some Articles, alongside a general reservation, as they have before.¹⁹¹ Saudi Arabia commonly bases such reservations on Sharia.

Why should Saudi Arabia ratify ICESCR? In short, the right to work is classified as one of the rights protected under ICESCR. To protect the right to work through ICESCR, Saudi Arabia, first, should ratify the Convention. Indeed, it is not enough for the State to be party to treaties or Conventions such as CEDAW or the ILO, the reason being that Saudi Arabia is under an international obligation to protect, respect and fulfil women’s right to work in light of ICESCR. The State must also be encouraged to legislate or develop current law under ICESCR to protect, respect and fulfil women’s right to work. Alongside CEDAW, Saudi Arabia is in need of such a Convention concerning the right to work, and other human rights.

In fact, the Convention might contradict in some parts of its provisions with Saudi Domestic Law. If the State considers joining the Covenant, it will be required to amend its Domestic Law before ratifying it. Thus, the next section examines the

¹⁸⁹ Carven (n 176) 8-9.

¹⁹⁰ Ibid, 194.

¹⁹¹ See CEDAW, (23 June 2006), CEDAW/SP/2006/2, para, 26; Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990, United Nations Treaty Collection, Chapter IV, Human Rights Convention on the Rights of the Child <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en. > accessed 13 Nov 2017.

compatibilities and differences between the Covenant and Saudi law. Saudi Arabia must consider these issues first, and thus this might be why until the present time, the State has not ratified the Covenant.

5.5.1 The Need to Ratify the International Covenant on Economic, Social and Cultural Rights in Light of Domestic Saudi Law

The Saudi Basic Law highlights numerous economic, social and cultural rights.¹⁹² In addition, the Basic Law recognises other individual rights. The purpose of the Basic Law is to outline the duties of the State toward the individual. In addition, in the form of Saudi Basic Law, Sharia is the origin of the Saudi constitution. Sharia establishes the concept of a human right, but does not illustrate in detail what these rights and duties are.¹⁹³ Rights and duties are articulated in the authentic *Sunnah* of the Prophet Mohammed.¹⁹⁴ Where Saudi Basic Law establishes its provisions, this is in line with legal courts and the Supreme Judicial Council.¹⁹⁵

The concern that Saudi Arabia is still not applying ESCR leads to a dilemma, where they must be applied by municipal law. Ssenyonjo writes that,

*“There are other methods of protecting human rights at a domestic level; the primary method of protecting human rights at a domestic level is through constitutional provisions, particularly the entrenchment of a chapter on human rights in the constitution.”*¹⁹⁶

Regarding the above, Saudi Basic Law does not entrench human rights in a separate chapter. By contrast, the Basic Law generally covers human rights under its constitution either in some provisions, or more widely. This lack of clear entrenchment of human rights protection in a single chapter has led to the violation of

¹⁹² Saudi Basic Law, Arts 17, 22,27and 28.

¹⁹³ See, C.G. Weeramantry, ‘Islam and Human Rights’ in C.G. Weeramantry (ed), *Islamic Jurisprudence: An International Perspective* (Palgrave Macmillan 1988) 114; Isma’il R. Al Faruqi, ‘Islam and Human Rights’ (1983) 27 *Islamic Quarterly* 12, 12-14.

¹⁹⁴ The theory of rights in Islamic law, between Islamic laws is a system of duties only or duties and rights. See Mashood A. Baderin, *Modern Muslim States between Islamic Law and International Human Rights Law* (PhD thesis, University of Nottingham 2001) 41-57; Mohammed Kamali, ‘Fundamental Rights of the Individual’: An Analysis of Haqq (Rights) in Islam’ (1993) 10 *American Journal of Islamic Social Sciences* 340, 366.

¹⁹⁵ This is the way where, in Saudi Arabia they refer to them as legal courts and the state refer to them because who is appointed there is a specialist and qualified in Sharia.

¹⁹⁶ Ssenyonjo (n 130) 151.

women's rights, and particularly the right to work. Saudi Arabia claims that there is no need to ratify the ICESCR as long as Saudi Arabia promotes these rights and has already ratified similar Conventions, which it claims cover the same rights.¹⁹⁷ While its reinforcement of ESCR still does not meet this standard at the local level, Saudi Arabia still considers itself to be party to this Convention.

Many women have been refused the same enjoyment of their human rights as men have, specifically due to the lower position they hold in society due to traditions and customs (broadly, culture), or as a consequence of obvious or hidden discrimination.¹⁹⁸ Several women experience distinctive types of discrimination as a result of the combination of their sex and other factors such as race, colour, language, religion, political and other opinions, national or social origin, property, birth, or any other position, including age, ethnicity, disability, marital, refugee or migrant status, leading to worsening negative consequences for women. Saudi Arabia has not yet ratified the ICESCR under a number of different pretexts; it is time now to reconsider the Convention to protect Saudi women's rights generally and the right to work, which is the topic of this thesis.

The connection between culture and awareness of women's ESCR needs to be addressed, with regard to Saudi women, to whom culture and religion are still key barriers to the awareness of women's human rights generally, and to ESCR specifically. As a result of the restrictions currently in place, the purpose at this point is not to discuss all cultural concerns, but to bear in mind a few cultural barriers and hazards that have caused significant problems. While Saudi Arabia has ratified several human rights instruments protecting women's human rights, generally the serious political, economic and social issues currently existing in Saudi Arabia have had a negative effect on efforts to respect, protect and fulfil women's ESCR. The frequency of prejudicial traditional strategies and customs that legitimise women's inequality, especially common in non-urban regions of most Arabic states, limits the effective

¹⁹⁷ National Society for Human Rights, *Conformity of the Saudi Rules and Regulations with the Convention on Basic Human Rights* (Saudi Arabia, National Society for Human Rights 2008) 196-198.

¹⁹⁸ Ssenyonjo (n 130) 151.

execution of human rights typically, and of susceptible types of women particularly. Despite the fact that barriers impact both the awareness of women's civil and political rights, along with economic, social and cultural rights, traditional practices and customs disproportionately impact ESCR because, traditionally, this class of rights has often been marginalised instead of prioritised.¹⁹⁹ In turn, this marginalisation disproportionately affects women, since women's lives are lived out largely in the private sphere, and women experience excessive amounts of lower income and source inequality.²⁰⁰

Saudi Arabia thus needs to ratify this Convention, due to the above-mentioned reasons. It cannot continue to argue that Saudi Basic Law protects ESCR rights. The ICESCR covers many rights that the State could apply at a local level by ratifying the treaty.

5.5.2 The Incompatibility and Differences between ICESCR and Saudi Law

Although the KSA should, and needs to, ratify the ICESCR, as discussed earlier, there are certain incompatibilities and differences between ICESCR and Saudi law that might make ratification difficult. It has been discussed that one obstacle is Sharia, which Saudi Arabia has based its previous reservations on. Saudi Arabia commonly uses observation of Sharia on some international human rights provisions.²⁰¹ According to Halliday, the difference between Sharia and international human rights norms means that Sharia is incompatible with international human rights.²⁰²

Gender inequalities continue to exist in Saudi Arabia. While Saudi Arabia endeavours to guarantee the right to work for women in many ways, there are still legal obstacles to enforcing such rights. Such factors include religion, cultural and economic matters.

¹⁹⁹Sigruni I. Skogly S, 'Crimes against Humanity-Revisited: Is There a Role for Economic and Social Rights' (2001) 5 *International Journal of Human Rights* 58.

²⁰⁰ Banda, Fareda B, 'Understanding Women's Economic and Social Human Rights' (2007) 12 *East African Journal of Peace and Human Rights* 232.

²⁰¹ Ruud Peters, 'Islamic Law and Human Rights: a contribution to an Ongoing Debate' (1999) 10 *Islam and Christian Relations* 1, 4-5; Fred Halliday, 'Relativism and Universalism in Human Rights: The Case of the Islamic Middle East' (1995) 43 *Political Studies* 152,154-156; Mayer (n 102) 105-109.

²⁰² Halliday (n 201) 154.

Nevertheless, it has been noted that women's rights in the KSA have developed.²⁰³ As a consequence, this might be one of the reasons that Saudi Arabia has yet to enjoy to the fruits of such a Convention.

Saudi Arabia believes that there is no need for it to ratify the ICESCR for many reasons. In other words, they approach the Convention as a whole with the overall objectives of the internal legal system. As the State is constituted by Sharia, it guarantees all human rights according to Sharia.²⁰⁴ Women's right to work under Sharia, as was clarified in chapter one, is not an absolute right, but one that is subject to the dogmas of Sharia. Thus, here lies the conflict between the internal legal systems of the KSA and the provisions of ICESCR.²⁰⁵ Some of the provisions of ICESCR do not comply with Sharia, such as Article 3, which states that "States Party to the present Covenant undertakes to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant"²⁰⁶ This provision offsets the same provision of CEDAW that the State bears a responsibility to mitigate any kind of discrimination against women. The State has already made general observations on CEDAW, and on any attendant conflicts between Sharia and its Conventions.²⁰⁷ The ICESCR requires equality between men and women in all social and economic rights, whereas the Qur'an states that, "for the male, what is equal to the share of two females".²⁰⁸ Thus, there is a clear disparity here.

The right to work is considered under Article 6 in ICESCR. Now, it is not fair to look at only one Article in order to make a judgement on this Convention. However, this thesis endeavours to determine whether Sharia contradicts specific provisions of the Article in question. The essence of Article 6(1) recognises the right to work, and indeed the right of everyone to have the opportunity to gain a living through work. To

²⁰³ See; A/HRC/WG.6/4/SAU/1, para 46.

²⁰⁴ Ibid, para 9 and 12.

²⁰⁵ Nisrine Abiad, *Sharai Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (British Institute of International and Comparative Law 2008) 62.

²⁰⁶ ICESCR, art3.

²⁰⁷ CEDAW, (23 June 2006), CEDAW/SP/2006/2, para, 26.

²⁰⁸ Qur'an 4:11

that extent, nothing is incongruent with Sharia and Saudi law generally. Saudi Basic Law has provided for this right in Article 28, and appeals to the Qur'an on the dignity of labour work.²⁰⁹

Article 7 states the situations and the rules regarding the right to work, expressing: "The States who are Parties to the present Convention, acknowledge the right of everyone to the fair working conditions to satisfy the following:

A) Minimum pay for all workers:

(1) Equal pay for equal work without discrimination, provided that women shall be guaranteed employment opportunities on equal basis with men, and shall draw a remuneration equal to that of men".²¹⁰

The idea of equal occupations with equal pay does align with the Saudi Labour Law that decides on pay according to the common deal between the organisation and the employee. However, there is also a situation of conflict with Article (95) of the Labour Law, which states that the pay must be equal to that of an equivalent circumstance.²¹¹ This part of this Article is still being breached at a number of establishments, where there is prevalent discrimination evident in the salaries of residents and their immigrant counterparts, regardless of the similarity in the character and amount of work involved. Furthermore, the legislation of many organisations and government departments separates international employees according to nationality, as mentioned in Article 9 of the work agreement of visitors who are doing work for Saudi educational institutions, which usually differentiate between nationalities, for instance by offering European and US citizens salaries up to 50% or 100% higher than the wages of the other nationalities.²¹² This creates a breach of the rule of equivalent pay for the same work, as stipulated in the above-discussed Article.

²⁰⁹ See e.g. Mohammed Al-Ghazali, *Huquq al-nsan Bayn Talim al-Islam Wa Ilan al-Umam al-Mutahidah*, (Arabic, Dar Al-Dawa Press 1993) 177-203; Hailh Al-Twijrih, *Women's Work in Islamic Jurisprudence* (Research Center for Women's Studies 2010) 85-97.

²¹⁰ ICESCR, Art 7.

²¹¹ Labor Law, Royal Decree No. M/51, 23 Sha'ban 1426/27 September 2005, Part 'VI' art, 95.

²¹² Regulation employment of non-Saudi in universities, Higher Education Council Resolution No. 7/B/16785 on 4/11/1417 AH, Art 9.

Probably the right thing to do would be to dedicate a part of the Civil Service Act to resolving this issue, and to reduce the incongruences in public organisation regulations.

Additionally, there is a violation of a paragraph of Article 7, which states the need “To guarantee working conditions for women on equal basis as men”.²¹³ Equal rights are not restricted to pay; they also include overall working conditions. This thesis has already reviewed the right of women to work and the scope of discrimination among males and females in this respect, although within the context of the provisions of the CEDAW. Depriving females who are employed in specific careers and requiring them to seek authorisation from their guardians or partners to obtain work is a breach of the Convention.²¹⁴ This inequality may arise from simple public practices or methods of non-public organisations, or might be required through instructions, circulars, or rules. The procedures essential to Article 2 of the Convention to protect against this kind of practice, circulars, legislation, or resolutions are legal methods, which require the introduction of related regulations into the Civil Service Act.

The point appears with respect to Article 149 of the Labour Law, as follows:

*“Considering the provision of Article 4 of this Law, women can work in all professions consistent with their nature, excluding hazardous jobs or harmful activities. In this respect the Minister should determine the jobs harmful to health, or which expose women to specific dangers so as to bar women from assuming such jobs through instituting relevant specific conditions”.*²¹⁵

This suggests the presence of discrimination between men and women in relation to working situations, since it provides males with the liberty to undertake roles in many areas, whilst it limits the careers available to females. This finding contributes to the consideration that this violates Article 7 of the Convention, and in addition also contravenes the CEDAW. In fact, the term “consistent with her nature” might open the door to intense debate; consequently, it needs to be translated in light of the

²¹³ ICESCR.

²¹⁴ World Report 2013: Saudi Arabia, (Human Rights Watch, 2013) <<https://www.hrw.org/world-report/2013/country-chapters/saudi-arabia>> accessed 21 Nov 2017.

²¹⁵ Labour Law, part ‘IX’ Employment Women, Arts 149 and 150.

provisions of Article (149), which seek to protect women from taking physically strenuous jobs, or becoming associated with a harmful workplace environment. It is out of the question that this Article might be interpreted to indicate that females must be prohibited from accepting engineering or legal employment opportunities, as these types of areas do not pose any physical risk. The highlighted provision also does not prohibit females from being employed in any sector that does not involve excessive hard physical labour. The regulations and provisions of Article 149, by this broader logic, do not constitute a conflict with Article 7 of the Convention, especially due to the fact that increasing employment opportunities for females tend to require a social and cultural atmosphere.

Article 8 of the Convention states that, “The States who are Parties to the present Convention undertake to ensure:

- (A) The right of everyone to form Trade Unions in association with others and to join the Trade Union of their choice, without restriction, except as required under the rules of the concerned Organization, to promote and protect social and economic reconciliation. The right to practice this activity shall not be subject to any limitations other than those prescribed by law, which are necessary in a democratic society for the maintenance of national security, public order, and the protection of the rights and freedoms of others.
- (B) The right of trade unions or associations to establish national confederations and the right of unions to set up International Trade Union Organizations
- (C) The right to strike provided that the exercise of this right conform with the laws of the country concerned”.²¹⁶

The expression “Trade Union” is uncommon in Saudi Arabia, and generally similar to the use of the terms “committee” or “organisation”. Saudi Labourers’ Committees are alternatives to trade unions in other states. These Labourers’ Committees are restricted to businesses with more than 100 employees, provided the number of the members of these committees will not surpass the maximum allowed number of nine

²¹⁶ ICESCR, art. 8.

participants.²¹⁷ The breach of Article 8 of the Convention would occur if the limitations on Labourers' Committees may differ from the limitations stipulated within this Article. These limits are not essential for the protection of national security or public rule, or for the defence of the rights and liberties of people.²¹⁸

Paragraph (C) of this Article outlines the right to strike. This section demands the legitimate right to strike and to arrange this activity. The lack of a law or a provision (such as in the Labour Law) to facilitate the right to strike is actually in itself an abuse. This right must be instantly evident and effective when a State ratifies the Convention; however, the exercise of this right in the KSA is questionable, due to the lack of any provision organising this type of process.

As has already been shown, there exist some tensions between the Convention and Sharia. This might raise questions regarding the compliance of Sharia with human rights generally. There is a theoretical incongruence between international human rights instruments and Sharia. In addition, internal legal systems through the rights under Sharia are not clear, resulting in numerous calls for the codification of Sharia, in order to devise a basic codex to determine all rights and duties.²¹⁹ Thus, the Kingdom should take a step towards aligning itself with international standards. The right to work is considered to be one of the major rights under ICESCR, which Saudi Arabia has not yet ratified.

5.6 Protection of Women's Right to Work under Customary International Law

This section assesses the potential role of customary international law in the protection of women's right to work. To this end, customary international law is explained, key arguments for and against the role of customary international law are presented, and then a critical analysis is undertaken regarding what this form of international law can do to enhance women's right to work in Saudi Arabia.

²¹⁷ National Society for Human Rights (n 197) 202.

²¹⁸ Ibid.

²¹⁹ See Chapter (1) 75.

Customary international law is traditionally an important source of International law that is derived from the harmonious rules of State practice and *opinio juris*.²²⁰ The idea is that if States act in a particular compatible manner, other States might be encouraged to reciprocate such actions, to the point that they have a sense of legal obligation – i.e *opinio juris*.²²¹ Whenever sufficient numbers of States act in this compatible manner, from of a sense of legal obligation, for a sufficiently long-term period of time, a modern rule of international law is generated.²²² This section discusses the phenomenon of customary international law, insofar as any such law is derived from the rule of custom. The Universal Declaration of Human Rights (UDHR), which is considered to be an incarnation of customary international law, contains basic convictions that follow from their definition, and from which particular precepts are regarded to be true on the grounds of their axiomatic nature. Historically and contemporarily, there have been arguments regarding what constitutes customary international law; it is difficult to effectively define this concept.²²³ A number of scholars have debated the character, effect and role of customary international law.²²⁴ For example, McGinnis argues that what makes the domestic application of some customary international norms particularly controversial is that the legislature has not deliberately chosen to give them domestic effect.²²⁵ This also applies in Saudi Arabia, as the legislature has not yet directly affirmed the provisions of most international customary law.

Nevertheless, customary international law is still regarded as a source of international law, just like treaties.²²⁶ International law, as a concept, includes two categories of

²²⁰ Roozbeh (Rudy) B. Baker, 'Customary International Law: A Reconceptualization' (2016) 41 Brooklyn Journal of International Law 440, 444

²²¹ Roozbeh Rudy B Baker, 'Customary International Law in the 21st Century: Old Challenges and New Debates' (2010) 21 European Journal of International Law 173, 176.

²²² Rebecca M.M Wallace and Olga Martin-Ortega, *International Law* (Sixth edition, Sweet and Maxwell 2009) 10.

²²³ Amanda Saussine, *The Nature of Customary law, legal, Historical and philological perspectives* (Cambridge University Press 2007) 228.

²²⁴ Ibid, 278; Baker (n 220) 443-446.

²²⁵ John O. McGINNIS, 'The Comparative Disadvantage of Customary International Law' (2006) 30 Harvard Journal of Law and Public Policy 7, 10.

²²⁶ Ian Brownlie, *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations* (Martinus Neijhoff Publishers 1998)18.

law, the law of treaties and customary international law.²²⁷ Hence customary international law is an element of international law.²²⁸

Customary international law has developed from the practice of States.²²⁹ It can arise from State practice through national legislation, the practice of international organisations, the Repertory of Practice of UN organs, and ratifying international treaties that might be as represent behaviour of State practice.²³⁰ By the previous elements, surely it is clear that discrimination against women is prohibited in all aspects of their lives. Clearly, therefore, several international and national documents prohibit discrimination of various kinds against women.²³¹ Examples have been given in previous footnotes which show that the constitutions of these national laws prohibit discrimination in all its forms. In addition, this is confirmation on the grounds of to what extent the States Parties are complying with international Conventions. Therefore, ratification of Conventions by a State and adhering to applying it in its national law is considered as State practice.²³² Such agreement among States in their national laws clearly shows that distinction on the grounds of sex is prohibited.

Hence, customary international law enhances the equality of rights in general, and prohibits discrimination towards women. Articles 1(3) and 13 (b) of the United

²²⁷ Grigory Tunkin, 'Is General International Law Customary Law Only?' (1993) 13 *European Journal of International Law* 534, 534-536.

²²⁸ Jose A Cabranes, 'Customary International law: What it is and what it is' (2011-2012) 22 *Duke Journal of Comparative and International Law* 143, 147.

²²⁹ Martin Dixon, *Textbook on International Law* (7th edn, Oxford University Press 2013) 32.

²³⁰ Martin Dixon, Robert McCorquodale and Sarah Williams, *Cases and Materials on International Law* (Oxford University Press 2016) 25.

²³¹ For example, not limited to, see: UK Equality Act 2010, chapter 2; France Constitution, Adopted 28 Sep 1958, Art. 1(1); Germany Constitution, Adopted 23 May 1949, Art. 3 (1), (2) and (3); Oman Constitution, Adopted by Royal Decree No. 101/96, issued on 6 Nov 1996, Act. 17; Brazil Constitution, Adopted 05 Oct 1988, Art. 5(0); Permanent Constitution of the State of Qatar, Approved by public referendum on: 29 April 2003, art. 18. Article 6, states "The State shall respect the international charters and conventions, and strive to implement all international agreements, charters, and conventions it is party thereof"; Constitution the Arab Republic of Egypt, Adopted on 18 January 2014, art. 9 and 53; Kuwait's Constitution of 1962, Reinstated in 1992, art.29.

²³² Brian D. Leppard, *Customary International Law: A New Theory with Practical Applications* (Cambridge University Press 2010) 122-126; Dixon (n 229) 32-35.

Nations Charter prohibit discrimination on the basis of sex.²³³ Also, they stress equality between men and women, which is among the most fundamental guarantees of human rights.²³⁴ As Special Rapporteur Ertürk states in a report on violence against women, “Gender equality in income and employment has been shown to have a stronger impact on women’s status”.²³⁵ The report also emphasises that woman’s right to work is equal to that of a man. This not only enhances gender equality in the right to work, but also empowers women to more effectively fight patriarchal control and practices.²³⁶ Thus, clearly, anti-discrimination practices and equality between men and women are protected through customary international law, based on the above provisions and documents.²³⁷ Whether customary international law can be useful or play any role in improving the rights of women to work in Saudi Arabia is still unclear. It can be effective, but has not yet been adopted by the legislature, so it is unclear how this can be truly effective when ratified treaty obligations are not being enforced. In addition, the customary international law documents, as stated above, agree on the equality of rights and prohibit discrimination against women. To make customary international law more impactful in this regard, the Saudi legislature must take into account customary international law principles to prohibit discrimination and treat men and women equally. It can be argued that in Saudi Arabia, the key issue is not the form or type of international law, but the actual enforcement of the rules that

²³³ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force Oct. 24, 1945; see further: International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. res. 36/55, 36 U.N. GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/684 (1981); Beijing Declaration and Platform for Action Fourth World Conference on Women 15 September 1995. A/CONF. 177/20 (1995) and A/CONF. 177/20/Add. 1 (1995).

²³⁴ United Nations, General Assembly art.1 (2) and 13 (b).

²³⁵ Yakin Ertürk, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, (A/HRC/11/6) 18 May 2009, para 64.

²³⁶ Ibid.

²³⁷ National Society for Human Rights (n 197).

are already in place in a manner that furthers the opportunities and equality of women in the workplace.

As Morsink explains,

*“the Universal Declaration of Human Rights (UDHR) state[s] that ‘[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, sex, language, religion, political or other opinion, property status, or national or social origin’”.*²³⁸

What is interesting about this grand and universal claim is the way in which it firstly conflicts at a foundational level with selected precepts of its Islamic counterpart, *qua* the Cairo Declaration on Human Rights in Islam (CDHRI), and indeed with the various Conventions of the ILO, where some degree of differentiation is set in motion on the grounds of sex. That is, there is an overt declaration of the principle of non-discrimination *qua* equality, but there occurs, at the same time, cover segregation on the grounds of difference: a provision, in other words, on the grounds of a difference between the sexes.²³⁹

Regarding regional Conventions or Charters, several regional documents are prohibited discrimination against women in all its forms. These regional documents being as State practice. European Convention on Human Rights at article 14 which the article informs to enjoy the rights in the Convention shall be secured without discrimination on any ground.²⁴⁰ African Charter on Human and Peoples’ Rights at article 2 states ‘enjoyment of the rights and freedom recognised and guaranteed in the present Charter without distinction of any kind’.²⁴¹ The American Convention on Human Rights states at Part one of the Convention the State Parties’ obligations and

²³⁸ Johannes Morsink, ‘Women’s Rights in the Universal Declaration’ (1991) 13 Human Rights Quarterly 229, 229.

²³⁹ Ibid, 231-232.

²⁴⁰ Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively, art. 14.

²⁴¹ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986, art.2.

rights protected by Articles 1 and 2.²⁴² The Arab Charter on Human Rights has informed in its Charter:

*“Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability”.*²⁴³

Previous provisions have recorded that discrimination is prohibited in all its forms. Furthermore, all States Parties to these conventions or Charters are obligated to protect human rights at the local level. On the other hand, they are adhered to ensure all ‘individuals’ enjoy the rights without distinction on grounds race, sex, colour and etc. Hence, for instance, it shows the European Court of Human Rights in *Abdulaziz, Cabales and Balkandali v UK* set out discrimination based on sex is a suspect category.²⁴⁴ It is also, as the Commission, in this case, stated: “the elimination of all forms of discrimination against women is an accepted general principle in the member of states of the council of Europe, confirmed in domestic legislation, regional and international treaties”.²⁴⁵ Thus discrimination must be prohibited by local, regional and international levels as the Commission confirmed.²⁴⁶ Such agreement among these international, regional and international provisions constitutes the general principle to eliminate all form of discrimination.

However, an additional problem is also raised if one gives recourse to the influence of customary international law as such, whether it be the presence of an influence of that which is directly opposed to the perceived patriarchal system of Sharia, or indeed where there is support of the gender norms of Sharia as articulated by the CDHRI. The issue at hand is the manner by which, and indeed the extent to which, the

²⁴² American Convention on Human Rights, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992)

²⁴³ League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) entered into force March 15, 2008, art.2.

²⁴⁴ *Abdulaziz, Cabales and Balkandali v. the United Kingdom*. Application nos. 9214/80; 9473/81; 9474/81.

²⁴⁵ David Harris, Michael O'Boyle and Colin Warbrick, Law of the European Convention on Human Rights (Second edition, Oxford University Press 2009) 592.

²⁴⁶ *Ibid*, 592.

domestic aligns itself with the imposing presence of ‘the international’. As has been discussed in some detail, even where the precepts of international consensus become *jus cogens*, they are still subject to the unfortunate conflicts with domestic law that have been discussed thus far.²⁴⁷

One of the aims of customary international law is to impose the justice and encourage justness;²⁴⁸ at this point, international law is clearly a result of customary international law. Although some might argue that various aspirational declarations, for example UDHR, are commonly not custom and so are not an element of customary international law,²⁴⁹ others might look to human rights supporters to defy the abuse of human rights throughout customary international law.²⁵⁰

This also applies to, and extends into the realms of, a consideration of the various international Conventions discussed earlier; insofar as where some set of consensually agreed upon precepts emerges in the sphere of human conversation, so they become akin to a system of *jus cogens*. However, this simple consensual verification by way of agreement within a particular temporal situation does not then necessarily entail that such precepts are true, or valuable, or correct, but rather that they are only so within that particular temporal situation. What can then be seen from this is a situation where, on the one hand there exist overt and implicit measures by ‘the international’—and we continue to appeal to this term tentatively, on the grounds of its being constrained by a particular normative point and consensus among actors—in the matter of the protection of women’s right to work, but there continues to be problematic tensions between this and the domestic. Without casting an undue value judgement on this for the moment, it is simply necessary to continue to note this tension and the problems that it raises.

²⁴⁷ Noora Arajärvi, *the Changing Nature of Customary International Law: Methods of Interpreting the Concept of Custom in International Criminal Tribunals* (Routledge 2014).

²⁴⁸ Tunkin (n 227) 534.

²⁴⁹ Emily Kadens and Ernest A. Young, ‘How customary is Customary International Law?’ (2012-2013) 54 *The William and Mary Law Review* 885, 919.

²⁵⁰ Beth Stephens, ‘Litigating Customary International Human Rights Norms’ (1995-1996) 25 *the Georgia Journal of International and Comparative Law* 191.

5.7 Conclusion

This chapter has provided a discussion and examination of the obligation of Saudi Arabia to protect women's right to work under international human rights obligations. In the first section of this chapter, it was made clear that Saudi Arabia has ratified many treaties with the aim of eliminating all forms of discrimination against women in the matter of work, as well as other forms of discrimination against women that may contravene their basic human rights. According to the first section, although Saudi Arabia has ratified many treaties with the aim of protecting women against discrimination, it has failed as a result of the conflict between the Convention treaties and national law – in other words, Sharia. For example, Saudi Arabia has established some reservations against certain provisions of the Convention, which it feels contravene national Sharia law.

This chapter has also considered the general reservations provision of the Conventions, including those of Article 2(f), which call upon all of the State signatories to condemn all forms discrimination. The two specific reservations affect Article 9(2), which focuses on the nationality right of women, and Article 18, which states that State laws do not allow for dual citizenship. Saudi Arabia has progressed in its application of legal obligation to respect, protect and fulfil the Convention at the domestic level. Indeed, Saudi Arabia has failed to fulfil its legal obligations, as stipulated by General Recommendation no.25, namely to protect, respect and fulfil Saudi women's right to work, at a domestic level. Furthermore, General Recommendation no. 25 also includes many recommendations to help the State enhance women's right to work at a domestic level.

With the ratification of the International Labour Organization treaty, the KSA is also moving forward to promote decent work terms and conditions. While the State is making progress with respect to protecting women's right to work under the ILO, this still requires further work. With regards to the ICESCR, Saudi Arabia has not yet ratified the provisions of the Convention, which has left Saudi women disadvantaged in having equal rights to men. One of the reasons the country has failed to ratify the Convention is because some of the provisions might contravene those of Sharia.

The history of customary international law has been shown to support the understanding of basic human rights through State practice and actions. The provisions of customary international law offer provisions that condemn discrimination against any person on the basis of any criterion. Generally speaking, customary international law enhances the equality of rights between men and women and prohibits discrimination on the basis of sex. On the other hand, while it stipulates that men and women are equal in terms of human dignity, it further declares that women have responsibilities and obligations to men. As has been shown, there are tensions between Saudi Arabian laws and foreign Conventions here, where the incongruences in the same must be treated with a critical eye and a delicate hand, noting the cultural relativist sensitivities that are at play.

Finally, this chapter has shown that Saudi Arabia is not committed to the international human rights treaties that it has ratified, in terms of protecting, respecting and fulfilling women's equal right to work. In addition, it has shown how the country can develop Saudi women's right to work by enforcing laws to eliminate the obstacles that have been highlighted in previous chapters.

6 Chapter Six: General Conclusion

6.1 Summary of Findings

Drawing on the human rights-based approach, chapter one set the framework of equality, non-discrimination and dignity which represents an applied system for the acknowledgment of women's rights which depends on human rights norms. When examining equality; non-discrimination and dignity are identified as legal norms to protect, respect and fulfill women's rights. Thus, the rights-based approach focuses on the implementation of the rights of the underprivileged and marginalised components of society; in this case, women in the KSA. It was found that the RBA protects women against discrimination on the basis of their sex. It can be inferred that Saudi Arabia is mainly responsible for the realising of women's rights without any kind of discrimination. Thus, equality and non-discrimination are norms set in international human provisions as duties on the State to promote its obligation to human rights by supporting human rights monitoring, progressing access to information and justice, and addressing dispute resolution mechanisms.

Dignity is the basis of the rights, so it should be protected as a human right. Inequality, discrimination and limitations against women are not consistent with the human dignity concept. Human rights are concerned with the dignity of that individual. In short, human dignity provides a foundation for human rights as long as it is respected and protected.

Women's economic empowerment can be promoted through the foundational principles applicable to women's human rights. Women's economic contribution and empowerment are essential to strengthening women's rights; thus allowing women to have dominance over their lives and have impact in society. Therefore, promoting sex equality involves eliminating legal and cultural obstacles that impede women's economic empowerment through full participation in the workplace. Thus, women's economic empowerment in society will not happen if such dignity, equality and non-discrimination are not promoted between the sexes. A recommendation to empower

women is to support women's business networks in both the formal and informal sectors.

Saudi women's right to work in Saudi Arabia is influenced by religious and legal aspects. Saudi domestic law reflects cultural prejudices and culturally conditioned 'Sharia', leading to harmful restrictions on Saudi women's right to work in Saudi Arabia. Government figures cite these as reasons for the failure to protect, respect and fulfil women's rights to work as enshrined in international human rights obligations.

The issue of Saudi women's rights, particularly the right to work, requires distinguishing between the law, policy and practice in this regard. The issues are not from the law or Sharia 'divine law'; rather they are from the existing policy and practice. The issue in the KSA relating to Saudi women's right to work requires differentiating between legal grounds, policy strategies and how these are implemented by the State in practice. The State intends to issue a Royal Decree to implement women's rights in general as stated in their CEDAW report. While the law provisions and State policy indeed show the need to implement women's rights in Saudi Arabia, there are still practices against women's rights which are often violated. This highlights the extent to which the State is not complying with practice within their law and policy. Consequently it is found that Saudi Arabia's law, policy and practice toward women in Saudi Arabia breach these foundational principles; therefore, a gap in between policy and practice continues to exist. So, it is vital to ensure that law, policy and practice are consistent with the foundational principles applicable to women's human rights that come under the supervision of external monitoring bodies.

Sharia, as interpreted in Saudi society, functions as an obstacle to Saudi women's rights due to the overriding influence of latent cultural attitudes toward women's paid work. It was found that, as an abstract legal system, Sharia is not intrinsically responsible for many of the restrictions placed upon women, but is used as a justification to entrench conservative social mores that inhibit women from working.

Chapter two highlighted that Sharia sources do little to prohibit women from working, but instead had the capacity to enhance women's possibilities and potential to engage in paid work. Both the Qur'an and *Sunnah* extol the virtues of work in general, for men and women. In contrast, classical *fiqh* by *Ijma* –Muslim jurists – are in almost unanimous agreement that it is not permissible for women to work as judges or to hold positions of leadership. However, a few such as Ibn Jarir and Hazam hold contrary opinions that women *should* be allowed to work as judges. Hence, the lack of codification in Sharia as implemented in Saudi Arabia prevents any serious legal reforms improving the position of women in work. The codification of Sharia is one of the most important early steps that can be taken in this regard.

Muslim scholars reject the claims of universality made by international organisations and espouse cultural relativism on the basis that it serves to prevent cultural disintegration in developing countries. However, it can also serve to impede genuine social progress and rationalise human rights violations. Women's right to work is classified by Islamic scholars under Sharia principles that, in some cases, do not comply with international standards assumed by the universality of human rights.

Chapter two also examined Saudi domestic law, focusing on how Saudi Civil Service Law and Saudi Labor Law enhance Saudi women's right to work. The domestic law generally confines itself to enhancing rights and obligations from the state. The Saudi Civil Service Law pertains only to work in the public sector, which is the preferred destination for all Saudi nationals, both male and female. However, this sector does not comprehensively enhance women's right to work, despite its subservience to the laws and regulations of the Saudi domestic law and to Sharia provisions. Similar issues relate to Saudi Labor Law, which derives its provisions from Saudi domestic law and is supposed to comply with Sharia. It should be noted that, subject to Sharia, the Labor Law prohibits free mixing between men and women and prevents Saudi women working without permission from their male guardians; however, subject to these essentially ceremonial etiquettes, Saudi women are free under the Saudi Labor Law to work equally with men in many areas. The private sector in the KSA is obliged to follow national rules and Sharia, which means they are free to appoint

Saudi women in many areas, but they generally choose not to do so because of inertia or fear of criticism. The Saudi Labor Law thus plays no active part in counteracting inequality and discrimination. Hence, international human treaty standards such as CEDAW require equality of rights and non-discrimination. These can be achieved by combining Saudi Labor Law with elements of Sharia to meet the required standards.

The Civil Service System fails to protect women's equal right to work in terms of appointment and/or nomination, although all sectors affirm the legal right of Saudi women to work in some kind of job. However, the Saudi Civil Service identifies that women cannot hold positions of political leadership, join the army, or be judges or engineers. Thus, most of the focus of women's employment is directed toward the traditional fields of female professionalism in education, health and administration. Their absence from any meaningful presence in the civil service is perplexing, as it is not mandated by Sharia, Saudi domestic law or the Saudi Constitution generally. Thus, it is recommended that the Council of Senior Scholars should issue verdicts on women's right to work and Sharia provisions and codifications should be devised to drive change. Existing inertia is doubtless partly related to sensitivity about women's employment and wishing to avoid anti-government propaganda.

The Saudi Arabia Vision 2030 and the National Transformation Program 2020 imply a positive way of facilitating change in Saudi women's status and in the Kingdom of Saudi Arabia generally. The Vision and its Program contain initial plans for change, but do not consider issues which affect Saudi women's right to work or suggest legal aspects for change. The obstacles identified in this research indicate the necessity for the issuing of Saudi national laws and regulations that enable women's right to work, promote equality, and prevent any such obstacles that Saudi women may face. To facilitate Saudi women's right to work their legal right to do so must be enacted alongside the Vision 2030.

Chapter three examined the key obstacles to women's right to work in Saudi Arabia. Without the express permission of the *Mahram*, or male guardian, a Saudi woman cannot have complete freedom to work, and her decision to work can be vetoed. However, the general ethos of Islamic jurisprudence is that people should be enabled

to do what they wish to in seeking a livelihood, as long as it does no harm to others. In terms of Sharia itself, no Islamic text categorically prohibits women from working per se, only stating that certain general principles that must be observed. In fact, the problem of women's right to work arises mainly from the key religious and cultural obstacles examined in chapter three. Undoubtedly, women's right to work has been circumscribed by religious interpretations, *Iktilat*, *Kalwah* and the impact of sex-segregation, rather than Sharia alone. Cultural barriers also play a significant role with respect to women's right to work in Saudi Arabia, by creating obstacles, and this has become 'custom and practice' due to the interpretation of Sharia and cultural concepts which relate to women.

Given the facilitation of women's paid work that is possible under Sharia and Saudi domestic law, the failure to achieve equality in paid work for Saudi women can be attributed to the prevailing dominant culture in the KSA. While the patriarchal paradigm of Arab society resonates with scriptural provisions (as in Judaism and Christianity), this has not prevented women from achieving equality in many areas in other Arab-Islamic countries. As such, it can be argued that it is the misuse and abuse of the male guardianship power in Saudi culture that is a key reason limiting women's right to work. The confused and intractable integration of Sharia and culture is the key factor in women being relegated to second-class citizens, subject to the rule of their male guardians.

Chapter four discussed the limited access to higher education in the Kingdom of Saudi Arabia as a factor that limits women's involvement in work in some fields. Saudi women are prohibited from studying in some disciplines such as engineering in Saudi universities; despite there being no legal restriction on women's education in Saudi domestic law (most schools and universities are state-run). The restrictions on women's study are *de jure* institutionalised by the government, but *de facto* not part of a coherent State policy. Conversely, Islam obligates all individuals to seek knowledge. However, when Saudi women wish to study in certain fields, they prefer to do so abroad in order to avoid the cultural and social disapprobation that they face in their homeland. Furthermore, there tend to be barriers to women's use of facilities

in educational institutions, and regional obstacles in the higher education institutions in Saudi Arabia. These factors can prevent Saudi women from being qualified for engagement in the labour market. Access to higher education must be available, accessible, acceptable and adaptable in order to achieve meaningful equality. Limited access to higher education for women in Saudi Arabia is a key obstacle which plays a major role in limiting Saudi women's right to work.

Chapter five examines international human rights treaties' obligation to protect women's right to work. Saudi Arabia has made progress in applying legal obligations to respect, protect and fulfil the Convention in domestic-level improvement, but has failed to respect, protect and fulfil women's right to work under international human right treaties' obligations. As such, the Saudi State should consider applying aspects such as general recommendations from CEDAW to protect women's right to work. The international human rights ratified by Saudi Arabia that pertain to women are often not applied in Saudi domestic law; or some reservations are made without clarification beyond vague claims of cultural and religious sensitivity. CEDAW is a particularly significant treaty proscribing any discrimination against women, which has been ratified but with reservations. Although not withdrawing from the treaty altogether, the reservations made by the Saudi State fundamentally diminish the core objectives of CEDAW. Rather than making astute use of the general reservation when it wishes to evade binding Conventions, Saudi Arabia should clarify Sharia positions and delineate how Conventions and treaties oppose Sharia. The general reservation implemented by Saudi Arabia has made the country incompatible with the concept of human rights obligations to respect; it is an unclear reservation which impacts on women's right to work. As per general human rights obligations to respect, protect and fulfil human rights, the State's general reservation means that these obligations can be invoked at any time. When it cannot meet its obligations to the treaty, Saudi Arabia invokes an overly-broad reservation on the basis of Sharia, which shows how the State violates the women's right to work in the KSA. In addition, it is the State's responsibility to uphold its obligations by adopting laws and policies which ensure Saudi women's enjoyment of their rights.

The right to work is considered to be one of the major rights under ICESCR, which has not yet been ratified by Saudi Arabia for a number of reasons. The State claims there is no need for additional Conventions as long as they are party to CEDAW, which has the same objectives. This paradox enables Saudi Arabia to evade accountability under international treaties, even though the right to work is considered to be one of the major rights under ICESCR.

Saudi Arabia also ratified the Discrimination (Employment and Occupation) Convention (No. 111). This Convention obligated the State to enhance women's right to work at a level equal with men. In addition, the Convention obliged Saudi Arabia to eliminate discrimination in the field of employment and occupation. However, Saudi Arabia has breached the purpose of this Convention as it does not uphold the equal rights that should be afforded to both men and women. For example, the Saudi Domestic Law does not have legalisation or law that protects women from sexual harassment in the workplace.

Customary International Law (CIL) prohibits discrimination against women by the State practice internationally. The State practice is ratified by these Conventions which prohibit discrimination and call for equal rights, which confirms that CIL protects women's right to work in this way.

6.2 Recommendations

Chapter two noted that Sharia necessitates that women be enabled to achieve their rights and contribute to society rather than being passively protected. More open-minded (i.e. less culturally determined) readings of the provisions of Sharia enable women to work with equality and justice. By integrating genuine social reform and the advancement of women's rights within the framework of Sharia, an approach that might otherwise be perceived as being part of a Universalist neo-colonial agenda (i.e. international human rights) can be perceived as a cultural reset, appealing to all sectors of Saudi society by advancing women's employment rights within a Sharia codified framework. This would provide more clear opportunities to protect women's

right to work in the light of existing law, rather than through the vague or scattered provisions of Sharia.

In the context of Saudi Arabia's 2030 vision and the globalised economy, Saudi Arabia remains dependent on oil revenues. The population tends to be dependent on lucrative and ineffectual state-sector employment for males, with native women forming a leisure class of conspicuous consumption. Increasing overpopulation and the urgent need for economic diversification demand that the right of women to work be protected by legislation, drawing on the heritage of Sharia to provide culturally sensitive but innovative solutions for the modern knowledge economies envisioned by Saudi Arabia. In order to achieve this vision, Saudi Arabia must involve Saudi women equally without distinction from their male counterparts.

In practical terms, Saudi women's right to work can be advanced by Saudi women being more involved in the labour market, utilising the narrow sphere of permissibility currently open to them, which would enable them to fully achieve their rights within Saudi domestic law and general professional life by legally protecting women's right to work. Many factors affect Saudi women's right to work, the most fundamental of which are Sharia, religious interpretations, access to higher education cultural attitudes. Increased awareness is required on women's right to work; the importance of women's labour market participation; and on regulations and laws in line with international human rights treaties, such as CEDAW, that enhance women's right to work and prohibit any kind of discrimination. In order to be successful, this should include the contribution of the Council of Senior Scholars, the General Presidency of Scholarly Research and *Ifta*; as retrograde attitudes toward women are generally veiled in religious justifications. It is imperative that the Saudi religious establishment takes the lead in educating the public that Sharia is not against women's participation in professional life. Indeed, a codification of the areas in which women can work under Sharia would enhance and protect women's employment rights and contribute to developing public attitudes.

Saudi Arabia must work seriously to overcome these key obstacles to protect Saudi women's right to work. It needs to establish regulations and law besides enacting a

'bill of rights' that enhances women's work; and attempts to stop women exercising their rights should be punished. The State must increase awareness of the importance of women participating in all aspects of life and prohibit discrimination against women. In addition, the State must let non-governmental organisations monitor, evaluate and ensure women's right to work is respected, protected and fulfilled.

Chapter four identified that limited access to higher education plays a major role in preventing Saudi women from having the same access to work as men. As such, Saudi Arabia must make education available, accessible, acceptable and adaptable to Saudi women, to enable women to study all disciplines. It must also ensure equality in the use of the available facilities in educational institutions. With reference to stereotypes relating to Saudi women's right to education, and particularly higher education, the State must issue necessary legalisation, and amend domestic law. Saudi Arabia must prohibit discrimination in and unequal access to higher education, using a legal framework to prohibit these practices.

Chapter five found that in relation to protecting Saudi women's right to work, the State should establish a monitoring body to ensure the application of, and compliance with, laws and regulations and should address or punish violations of women's rights. These rights should be in line with CEDAW, and the State should withdraw its general reservations about Sharia, and clarify what Sharia says about women's rights, particularly in relation to work. In addition, further action should be taken to reconsider the ICESCR in order to ratify it. The International Human Rights Committee recommendations should also be considered on the domestic level, and clear statistics should be provided to CEDAW and the ILO on women's right to work.

Saudi Arabia's CEDAW report clarifies the status of women under Sharia provisions through the male guardianship system and women's rights impact from individuals. Instead, Sharia is invoked again to play a role of 'negative obligation' by refraining from adopting laws and policies that interfere with a woman's equal enjoyment of her rights. Moreover, State responsibility lies in improving the woman position to one of *de jure* as well as *de facto* equality with the man. Saudi Arabia must consider general

human rights obligation to respect, protect and fulfil human rights and the accompanying law, policy and practice should be consistent with the foundational principles applicable to women's human rights under the supervision of external monitoring bodies.

Saudi women's right to work is one of the economic, social and cultural rights under the ICESCR that will be inoperable if the Saudi State sabotages it with reservations or abstentions. The ICESCR is a significant Convention with respect to women's economic, cultural and social (ESC) rights. When Saudi Arabia usually invokes Sharia or other Conventions which have the same objectives, it is thus Saudi Arabia's belief that there is no need to join other Conventions. Signing up to the ICESCR with reservation(s), rather than rejecting it outright, would protect, respect and fulfil women's right to work by its provisions under Articles 6, 7 and 8.

To ensure Saudi human rights and women's right to work at the national level, Saudi Arabia has implemented several processes; it has established the Public Investigation and Prosecution Department, the Human Rights Commission, and other public sector organisations. These government sectors could help to protect women's right to work and, and on the other hand, perform a monitoring role. Furthermore, a range of legislation, for instance the Basic Law of Governance, that identifies rights and obligations inside the State and could be deemed as the State's initial attempt to enact a 'bill of rights' in modern constitutional provisions. This would go some way to protecting Saudi women's right to work, and set out guidelines to govern processes and to promote human rights. These recommendations, if implemented, would go some way to protecting Saudi women's right to work under domestic law. These measures would act as monitoring tools for the application of international human rights treaties. Furthermore, the Saudi judiciary, attorneys and lawyers should play a major role in ensuring that these treaties are applied by the State at the domestic level, and help to develop and protect women's right to work.

Bibliography

- Abdullah Eben Saleh, M, 'The Impact of Islamic and Customary Laws on Urban Form Development in Southwestern Saudi Arabia' (1998) 22 *Habitat International* 537.
- Abdul-Rahman M, *Tafsir Ibn Kathir Juz' 20 (Part 20): An-Namel 56 to Al-Ankaboot 45*, (2nd edn, MSA Publication Limited 2009).
- Abdul-Rahman M, *Tafsir Ibn Kathir Juz' 4 (Part 4): Al-i-Imran 93 to An-Nisaa 23* (2nd, MSA Publication Limited, 2011).
- Abiad N, *Sharia, Muslim States and International Human Rights Treaty Obligations* (British Institute of International and Comparative Law 2008).
- Abo Alghal M, *Lesan Al-Arab* (Dar Sadr) (Arabic).
- Abou El Fadl K, *Rebellion and Violence in Islamic Law* (1st edn, Cambridge University Press 2001).
- Abū Zayd, N., Amirpur, K. and Setiawan, M, *Reformation of Islamic thought* (Amsterdam University Press 2006).
- Afshah H, 'Faith and Freedom: Women's Human Rights in the Muslim world' (1996) *Development in Practice* 272.
- Ahamed L, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press 1992).
- Ah-King M, 'Introduction' in *Challenging Popular Myths of Sex, Gender and Biology* (Springer 2009).
- Akstinienė, A, 'Reservations to Human Rights Treaties: Problematic Aspects Related to Gender Issues' (2013) 20 *Jurisprudence* 451.
- Al Rawaf H and Simmons C, 'The Education of Women in Saudi Arabia' (1991) 27 *Comparative of Education* 287.
- Al-Ahmadi H, 'Challenges facing women leader in Saudi Arabia' (2011) 14 *Human Resource Development International* 149.

- Al-Aloola R, *Single-Sex Education in Saudi Arabia* (1st edn, Ghainna Publications 2008).
- Alamri M, 'Higher Education in Saudi Arabia' (2011) 11 *Journal of Higher Education Theory and Practice* 88.
- Al-Asklani A, *Fatah Al-Bari Sharh Sahih al-Bukhârî*, (with Arabic text, Al-Ryaan Tradition Press 1986).
- Alaugab, A. 'Benefits, barriers, and attitudes of Saudi female faculty and students toward online learning in higher education' (PhD Thesis, Lawrence: University of Kansas 2007).
- Al-Bloyi A, 'Shura Calls Education to Examine Post Fitness Programs for Girls and Program for the Adoption of Meal Nutrition' (AL Riyadh 09 April 2014) Arabic < <http://www.alriyadh.com/925386>> accessed on 05 Nov 2016.
- Al-Dehailan S, 'The Participation of Women in Saudi Arabia's Economy' (PhD Thesis, Durham University 2007).
- Al-Dumashqi E, *Tafsir ibn Kather* (Dar Tibah 2002) (Arabic text).
- Al-dweri F & Alamrat R, 'Mental Knowledge in Holy Quran' (2013) 4 *Interdisciplinary Journal of Contemporary Research in Business* 9.
- Al-Eid N, *Hogga Al-Mra fi dw Al-Sunna Al-Nabwiah* (Dar Al-hdarh 2012).
- Al-Falah Foundation (trs), *The Lawful and the Prohibited in Islam: Sheikh Yusuf Al-Qaradawi* (Al-Falah Foundation for Translation, Publication and Distribution).
- Al-Fanjari A, *Al-Ikhtilat fi al-Din fi al-Tarikh fi 'Ilm al-Ijtima'* (al-Hayah al-Misriyah al-Ammah lil-Kitab 1987).
- Al-Fwzan M, *Women's Work in the Kingdom of Saudi Arabia*, (law and Economic Library 2012).
- Al-Ghazali M, *Huquq al-nsan Bayn Talim Al-Islam Wa Ilan Al-Umam Al-Mutahidah*, (1993) (Arabic).
- Al-Ghazzālī A, *the Ninety-Nine Beautiful Names of God* (David B Burrell and Nazih Daher tr, The Islamic Texts Society 1992).
- Al-Ghtani S, 'Mixing between Man and Woman: Definition, Types, Provisions and Damaging under *Quran* and *Sunna*' (unpublished 2012) (Arabic).
- Al-Habdān R, *Al-Ikhtilāt Bayna Al-jinsayn: Ahkāmuhu Wa-āthāruh* (1st edn, Dar Ibn Al-Jwazih 2010).

- Al-Hadban M, Input of Material Sport to Girl's School (1424 AH) Arabic < <http://www.saaaid.net/manahej/13.htm>> accessed on 05 Nov 2016.
- Al-Hanbli A, *Al-ensaf Fi Marft Al-rajah Min l-klaf*, (2edn, Dar Ehia Al-Trath Al-arabi).
- Al-Hanfi Z, *Al-Bahr Al-Raaq Sharh Kanz Al-dakak*, (1st, Dar Al-ketab Al-elmiah, 1997).
- Alhareth Y, Al Dighrir I and Al Alhareth Y, 'Review of Women's Higher Education in Saudi Arabia' (2015) 1 American journal of Educational Research 10.
- Al-Hariri R, 'Islam's Point of View on Women's Education in Saudi Arabia' (1987) 23 Comparative Education 51.
- Alhdiani M, *The education in the Kingdom of Saudi Arabia: Systems and Regulations Dealing with Important aspects of Education* (Educational Document Library 1419AH) (Arabic).
- Al-Hibri A, 'Muslim Women's Rights in the Global Village: Challenges and Opportunities' (2001) 15 Journal of Law and Religion 40.
- Al-Hilâlî M and Khân M, *Translation of the Meaning of Noble Qur'ân in the English Language* (King Fahad Complex 1427 AH).
- Ali A, The Holy Quran (Koran): English Translation of the Meaning, Surah 4:34 < <http://www.streathammosque.org/uploads/quran/english-quran-yusuf-ali.pdf>> accessed 05 Nov 2016.
- Al-jarboa A and Al-Mohisan K, *Women Legal Status in the Kingdom of Saudi Arabia*, (King Fahd National library 2010) (Arabic).
- Al-Jawhara Bubshait, *Saudi Women's Education: History, Reality and Challenges* (1st edn, Ghainaa Publication 2008).
- Al-Jeraisy H, 'Saudi Women and Labor Market' in Al-Jawhara Bubshait (ed), *Women in Saudi Arabia: Cross-Cultural Views* (1st edn, Ghainaa Publications 2008).
- Allan Rock, Stuck in Saudi Arabia (The Huffington Post 2010) < <http://www.hrw.org/news/2010/04/08/stuck-saudi-arabia> > accessed to 05 Nov 2016.
- AL-magrabi S, *Mwahb Al-Jalia fi sharh muktsar al-kalil*, (Dar Alfakr 3edn 1992).
- Al-makdasih M, *Kitab Alfroa* (4th edn, Al-Alam Al-Kotab 1985).
- Al-mannai S, 'The Misinterpretation of Women's Status in the Muslim World' (2010) 9 Digest of Middle East Studies 82.

- Almunajjed M, *Women 's employment in Saudi Arabia a major challenge* (Booz& Company 2009).
- Al-Rodiman A, 'The Application of Shari'ah and International Human Rights Law in Saudi Arabia' (PhD thesis, Brunel University 2013).
- Al-Sharkay A, *Women's Right in Sunna* (1st edn, Dar Al-Sumaia 2009).
- Al-Shatry A, *Codification of Sharia between analysis and prohibition*, (Dar Alfadilh, 2006); *Islamic Law in Saudi Arabia, Saudi Arabia gets ready to put order in its courts* > <http://cnpublications.net/2011/02/25/islamic-law-in-saudi-arabia/> > accessed 05 Nov 2016.
- Al-Shyakh S (ed), *Al-Kutub Al-Sittah*,(Dar Al-Salam Li Al-Nashar Wa Al-Twzia 1419 AH).
- Al-Siba' M, *Women between Doctrine and Law* (Dar Al-Wraq Press 1999).
- Al-Twijrih H, *Women's Work in Islamic Jurisprudence* (Researcher Center for Women's Studies 2010).
- Al-Wazzan A, *Encyclopedia of human rights in Islam and its attributes in Saudi Arabia* (Vol, 5, Al-Risallah Institution 2005).
- Andersson E and Togelius L, 'Women Oppressed in the Name of Culture and Religion: Saudi Arabia and the Convention on the Elimination of All Forms of Discrimination Against Women' (Malmö University 2011).
- An-Na'im A, 'Human Rights in the Arab World: A Regional Perspective' (2001) 23 *Human Rights Quarterly* 701.
- Anon, 'Saudi Courts - Women's Rights - General Court of Qatif Sentences Gang-Rape to Prison and Lashings for Violating "Illegal Mingling" Law' (2008) 121 *Harvard Law Review* 2254.
- Arajarvi N, *The Changing Nature of Customary International Law: Methods of Interpreting the Concept of Custom in International Criminal Tribunals* (Routledge 2014).
- Arkoun M. *Rethinking Islam: Common Questions Uncommon Answers* (Westview Press, Oxford 1994).

- Arzt D, 'The Application of International Human Rights Law in Islamic States' (1990) 12 Human Rights Quarterly 202.
- Ashawkani I, *Nail al-Awtar min Asrar Muntaqa al-Akhbar* (Dar Al-Kitab Al-Arabi 2004).
- Aust A, *Modern Treaty Law and Practice* (2nd edition, Cambridge University Press 2007).
- Azzaz S, 'Ijtihad, an Effective Mechanism of Upholding International Human Rights with Islamic Law' (2008) 4 journal of Islamic States Practice in International Law 21.
- Baderin M, 'A Macroscopic Analysis of the Practice of Muslim State Parties to International Human Rights Treaties: Conflict or Congruence?' (2001) 1 Human Rights Law Review 267.
- Baderin M, *International Human Rights and Islamic Law* (Oxford University Press 2005).
- Baderin M, *Modern Muslim States between Islamic Law and International Human Rights Law* (PhD thesis, University of Nottingham 2001).
- Baker R, 'Customary International Law in the 21st Century: Old Challenges and New Debates' (2010) 21 European Journal of International Law 173.
- Baker R, 'Customary International Law: A Reconceptualization' (2016) 41 Brooklyn Journal of International Law 440.
- Bantekas and Oette, *International Human Rights Law and Practice* (Second edition, Cambridge University Press 2016).
- Beckwith F & Koukl G, *Relativism: Feet Firmly Planted in Mid-Air* (Grand Rapids 1998).
- Bennett J, *History Matters: Patriarchy and the Challenge of Feminism* (University of Pennsylvania Press 2007).
- Bennoune K, 'Secularism and Human Rights: A Contextual Analysis of Headscarves, Religious Expression, and Women's Equality under International Law' (2007) 45 Columbia Journal of Transnational Law 367.
- Berger P & Luckmann T, *the Social Construction of Reality* (Anchor 1967).
- Bernard W, *The Spirit of Islamic Law* (University of Georgia Press 1998).
- Between M, 'International Bills of Human Rights: An Islamic Critique' (2003) 7 International Journal of Human Rights 129.

Bonob B, 'Justice in Islamic Spirituality: Implication of Individual Flourishing and Social Harmony' in Martin Dowson and Stuart Devenish (eds), *Religion and Spirituality* (Information and Age Publishing 2010).

Bourdieu P & Johnson R, *the Field of Cultural Production* (Columbia University Press 1993).

Brems E, 'Reconciling Universality and Diversity in International Human Rights: A Theoretical and Methodological Framework and Application in the Context of Islam' (2004) 5 *Human Rights Review* 5.

Brown R, 'What is Work for? The Right to Work and the Right to be Idle' in Richard K. Brown (ed) *the Changing Shape of Work* (Macmillan Press LTD 1997).

Brownlie I, *The rule of law in international affairs: International Law at the Fiftieth Anniversary of the United Nations* (Martinus Neijhoff Publishers 1998).

Butler J, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 2006).

Cabranes J, 'Customary International law: What it is and what it is' (2011-2012) 22 *Duke Journal of Comparative and International Law* 143.

Cairo Declaration on Human Rights in Islam 1990 (Organisation of the Islamic Cooperation (OIC)).

Cipriani L, 'Gender And Persecution: Protecting Women Under International Refugee Law' (1993) 7 *Georgetown Immigration Law Journal* 511.

Committee on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Discrimination against Women, fortieth session, Summary record of the 816th meeting held at the Palais des Nations, Geneva, on Thursday, 17 January 2008, CEDAW/C/SR.816.

Cook R, 'Reservations to the Convention on the Elimination of All Forms of Discrimination against Women' (1989-1990) 30 *Virginia Journal of International Law* 643.

Craven M, *the International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Clarendon Press 1995).

Cusack S and Pusey L, 'CEDAW and the Rights to Non-Discrimination and equality' (2013) 14 Melbourne Journal of International Law 54.

D Welsh, Memili E, Kaciak and Al Sadoon A, 'Saudi women entrepreneurs: A growing economic segment' (2014) 67 Journal of Business Research 758.

David K, 'Islamic Law in Saudi Arabia: what foreign attorneys should note' (1991-1992) 25 George Washington Journal of International and Economic 135.

Debolt M, 'Islamic States and the UN Human Rights Treaty System: The Role of Shari'ah based Reservations' (April 22, 2004).

Declarations, Reservations and Objections to CEDAW' <
<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 05
Nov 2016.

Desphande P, 'The Role of Women in Two Islamic Fundamentalist Countries: Afghanistan and Saudi Arabia' (2001) 22 Women's Rights Law Reporter 193.

Director of the presence of 28 Saudi university along with the leaders of the two ministries and the "technical training" and "goal" by the Ministries of Education and Labor Launch Program # Education _work<
<https://www.moe.gov.sa/Arabic/MediaCenter/MinistryNews/Pages/NewsDetails.aspx?qId=6691&qstype=Ministry> < accessed 05 Nov 2016.

Dixon M, *Textbook on International Law* (7th edn, Oxford University Press 2013).

Donnelly J, 'Human Rights as Natural Rights (1982) 4 Human Rights Quarterly 391.

Donnelly J, *International Human Rights* (4th edn, Dilemmas in World Politics 2012).

Doumato E, 'Women and Work in Saudi Arabia: How flexible are Islamic Margins?' (1999) 53 The Middle East Journal 568.

Dura N, 'International Covenant on Economic, Social and Cultural Rights' (the 8th Edition of the International Conference European Integration Realities and Perspectives, Galati, 2013).

Dura N, 'International Covenant on Economic, Social and Cultural Rights' (the 8th Edition of the International Conference European Integration Realities and Perspectives, Galati, 2013).

- Echagüe A and Burke E, ‘“Strong Foundations”? The Imperative for Reform in Saudi Arabia’ (2009) 84 FRIDE Working Paper 13.
- Elizabeth E, ‘Finding a Voice for Women's Rights: The Early Days of CEDAW’ (2002) 34 the George Washington International Law Review 515.
- Elson D and Gideon J, ‘Organising for Women's Economic and Social Rights: How useful is the International Covenant on Economic, Social and Cultural Rights?’ (2004) 8 Journal of Interdisciplinary Gender Studies 133.
- Engineer A, *Rights of Women in Islam* (3th edn, Sterling Publisher Private Limited 2004).
- Ertürk Y, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, (A/HRC/11/6) 18 May 2009.
- Esmaili H ‘On a Slow Boat towards the Rule of Law: The Nature of Law in the Saudi Arabian Legal System’ (2009) 26 Arizona Journal of International & Comparative Law 16.
- Esposito J and Delong-Bas N, *Women in Muslim Family Law* (2nd edn, Syracuse University Press 2001).
- Etim E. Okon, E, ‘The Status of Woman in Islam’ (2013) 10 Journal of Humanities and Social Science 21.
- Evidence prohibiting the mixing of men and women, fatwa no. 1200 < <http://islamqa.info/en/1200> > accessed on 05 Nov 2016.
- Fareeda B, ‘Understanding Women’s Economic and Social Human Rights’ (2007) 12 East African Journal of Peace & Human Rights 232.
- Fargues P, ‘Women in Arab Countries: Challenging the Patriarchal System?’ (2003) 13 Reproductive Health Matters 43.
- Fatwas (8370) on 28-01-2002, (187074) on 21-09-2012, (82399) on 26-10-2000 and (83607) on 8-1-2002, Islamweb English, Women’s Work <<http://fatwa.islamweb.net/emainpage/index.php?page=fatwa&tab=1&vPart=825>> accessed 05 Nov 2016.

Fatwas of Ibn baz, Part no. 1; Page no. 119 and Part no. 1; Page no. 120 < <http://www.alifta.com/Fatawa/fatawaDetails.aspx?language=en&BookID=14&View=Page&PageNo=1&PageID=25> > accessed on 05 Nov 2016.

Fitzmaurice M, 'The Practical Working of the Law of Treaties' in Malcolm D. Evans (ed.), *International Law* (2nd edition, Oxford University Press, 2006).

Fourth Report of the Special Rapporteur, Mr. Alain Pellet (51st Session of the ILC (1999) < http://untreaty.un.org/ilc/documentation/english/A_54_10.pdf > access on 30 Nov 2016.

Freeman M, 'Reservations to CEDAW: An Analysis for UNICEF' (2009) Division of Policy and Practice 1.

Freeman M, Chinkin C and Rudolf B, *the UN Convention on the Elimination of All Forms of Discrimination against Women* (Oxford University Press 2012).

Gallagher, E. and Maureen Searle, C, 'Health services and the political culture of Saudi Arabia' (1985) 21 *Social Science & Medicine* 251.

Glenn P, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford University Press 2014).

H. W Robert, *International Covenant on Economic, Social, and Cultural Rights*, 2011, GL 546.

H. W Robert, *International Covenant on Economic, Social, and Cultural Rights*, 2011, GL 546.

Hafiz is national program established by the government to help the unemployed to find work. See Hafiz official website > <https://www.hafiz.gov.sa/HRDFWeb/About.html> < accessed 05 Nov 2016.

Hallaq W, *an Introduction to Islamic Law* (Cambridge University Press 2009).

Hallaq W, *the Formation of Islamic Law* (Ashgate 2004).

Halliday F, 'Relativism and Universalism in Human Rights: The Case of the Islamic Middle East' (1995) 43 *Political Studies* 152.

Hamdan A, 'Women and education in Saudi Arabia: Challenges and achievements' (2005) 6 *International Education Journal* 42.

- Hannum H, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995) 25 Georgia Journal of International and Comparative Law 289.
- Harris, O'Boyle and Warbrick, *Law of the European Convention on Human Rights* (Second edition, Oxford Press University 2009).
- Hasan A, *the Rights and Duties of Women in Islam* (Darussalam 2004).
- Hassan H, *an Introduction to the Study of Islamic Law* (Adam Publishers and Distributors 2010).
- Hellum A and Aasen H, *Women's Human Rights: CEDAW in International, Regional, and National Law* (2013).
- Herskovits M, *Cultural Relativism: Perspectives in Cultural Pluralism* (Vintage 1972).
- Hilsdon A and Rozario S, 'Special issue on Islam, gender and human rights' (2006) 29 Women's Studies International Forum 331.
- Human Rights Watch, (2008), Report on Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia April 19, 2008, Human Rights Watch the United State of America.
- Human Rights Watch, 'Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia' (2008).
- Human Rights Watch, 'World Report 2013: Saudi Arabia', (*Human Rights Watch*, 2013) <<https://www.hrw.org/world-report/2013/country-chapters/saudi-arabia>> 05 Nov 2016.
- Ibn Athir, *Al-Nahih fi karib al-athar* (Al-maktab Al-Alalmia 1979) (Arabic).
- Ibn Godamh, *Al-Mogunee*, (Cairo University 1968).
- Ibn Hagar, *Al-Esabh fi Tamiz Al-sahaba, reviews by Adal Mouwd* (Dar Alkotab Al-Almiah, 1994).
- Ibn Qudamah, *Al-Mughni* (Dar Alam Al-Kutab Press, 1997).
- Ibn Taymiyyah T, *Majmooa Fatwas ibn Taymiyyah*, (Dar King Fahad Press 1995) (Arabic).
- Ibn Tiyyimiah, *Al-Estkamah* (2th edn, Dar Althkafah Wa Al-Nashar Baljamah 1991).

Ibn Uthaymeen M, 'A set of questions of interest to the Muslim family', 23-24 <
http://www.ibnothameen.com/all/books/article_16956.shtml > accessed on 05 Nov
2016.

Ibn Yunus B, *Kashaf al-Qana* (Dar Al-Kutab Al-alamih, 1997).

International Labour Organisation, 'Conventions and Recommendations' (*ILO*, 2016) <
<http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>> accessed 05 Nov
2016.

International Labour Organisation, 'Decent work agenda' (*ILO*, 2016)
<<http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>>
accessed 05 Nov 2016.

International Labour Organisation, 'Equal Remuneration Convention, 1951—No. 100'
(*ILO*, 2016)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100> accessed 05 Nov 2016.

International Labour Organisation, 'Equal Remuneration Convention, 1951—No. 100'.

International Labour Organisation, 'ILO and Gender Equality' (*ILO*, 2016) <
<http://www.ilo.org/gender/Aboutus/ILOandgenderequality/lang--en/index.htm>>
accessed 14 January 2016 accessed 05 Nov 2016.

International Labour Organisation, 'Maternity Protection Convention, 2000—No. 183'
(*ILO*, 2016) <
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C183> accessed 05 Nov 2016.

International Labour Organisation, 'Mission and Objectives' (*ILO*, 2016)
<<http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>>
accessed 05 Nov 2016.

International Labour Organisation, 'Ratifications for Saudi Arabia' (*ILO*, 2016) <
http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103208> accessed 14 Dec 2016.

International Labour Organisation, 'Workers with Family Responsibilities Convention,
1981—No. 156' (*ILO*, 2016) <

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C156> accessed 05 Nov 2016.

Is it Permissible in Islamic Sharee'ah for a woman to be a Ruler? <
<http://islamqa.info/en/20677>> accessed 05 Nov 2016.

Islamic Law in Saudi Arabia, Saudi Arabia gets ready to put order in its courts
<<http://cnpublications.net/2011/02/25/islamic-law-in-saudi-arabia/>> accessed 05 Nov 2016.

Islamic University in Madinah < <http://www.iu.edu.sa/en/Pages/default.aspx>> accessed 05 Nov 2016.

Jamjoom, M, 'Female Islamic Studies teachers in Saudi Arabia: A phenomenological study' (2010) 26 Teaching and Teacher Education 547.

Joffe-Walt B, 'Saudi Arabia Has the Highest Road Accident Death Toll in the World' (15 March 2010) <<http://www.greenprophet.com/2010/03/saudi-arabia-death-toll-driving/>> accessed 05 Nov 2016.

Jr J, 'Reservations to Multilateral Treaties: A Macroscopic View of State Practice' (1980) 74 the American Journal of International Law 372.

Kadens E and Young E, 'How customary is Customary International Law?' (2012-2013) 54 The William and Mary Law Review 885.

Kamali M, 'Fundamental Rights of the Individual: An Analysis of Haqq (Rights) in Islam' (1993) 10 American Journal of Islamic Social Sciences 340.

Kamali M, *Freedom, Equality and Justice in Islam* (Ilmiah Publishers 1999).

Kamali M, *Principles of Islamic Jurisprudence* (Islamic Texts and Society 2005).

Keddie, N *Women in the Middle East* (Princeton University Press 2007).

Khadija E: *The First Muslim and the Wife of the Prophet Muhammad* (Light New Jersey 2007).

Khutani M, Educational Right for Women in Islamic and International Human Rights law: A Study of Theory and its Application in Saudi Arabia, (University of Wollongong Thesis Collections 2013).

Kimmel M, *The Gendered Society* (Oxford University Press 2012).

- King Fahad Security College the official page online <
<http://www.kfsc.edu.sa/Pages/default.aspx> > accessed on 05 Nov 2016.
- King Fahad University of Petroleum and Minerals, Deanship of Student Affairs<
<http://www.kfupm.edu.sa/deanships/studentaffairs/default.aspx> > accessed 05 Nov
2016.
- Kingdom of Saudi Arabia's Memorandum regarding Human Rights in Islam and their
Applications in the Kingdom addressed to the specialised international agencies,
Ministry of Foreign Affairs 13.
- Koraytem T, 'Arab Islamic Developments on Human Rights' (2001) 16 Arab Law
Quarterly 255.
- Kumar R, *the History of Doing: An Illustrated Account of Movements for Women's Rights
and Feminism in India, 1800-199* (Zubaan 2002).
- Leila A, *Women and gender in Islam: Historical roots of a modern debate* (Yale
University Press 1992).
- Lepard, *Customary International Law: A New Theory with Practical Applications*
(Cambridge University Press 2010).
- Linderfalk U 'On the Meaning of the 'Object and Purpose' Criterion, in the Context of the
Vienna Convention on the Law of Treaties, Article 19 (2003) 72 Nordic Journal of
International Law 429.
- Mahfoth A, *Women's rights and issues on the contemporary world* (Legal Consulting
Firm series 1417 AH) (Arabic).
- Marcotte, R, 'How far have reforms gone in Islam?' (2003) 26 Women's Studies
International Forum 153.
- Mashhour, A, 'Islamic Law and Gender Equality: Could There be a Common Ground? A
Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in
Tunisia and Egypt' (2005) 27 Human Rights Quarterly 562.
- Mayer A, 'Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle
Eastern Experience' in Julie Peters and Andrea Wolper, *Women's Rights, Human
Rights: International Feminist Perspectives* (Routledge 1995).

- Mayer A, 'Islamic Reservations to Human Rights Conventions: A Critical Assessment' (1998) 15 RIMO Recht van de Islam: Human Rights and Islam 28.
- McCorquodale M and Williams S, *Cases and Materials on International Law* (Oxford University Press 2016).
- McDowall A, 'Foreign workers queue to quit Saudi Arabia after amnesty on fines' (Reuters, 28 May 2013) < <http://in.reuters.com/article/saudi-expatriates-workers-amnesty-idINDEE94R09D20130528>> accessed 29 05 Nov 2016.
- McGINNIS J, 'The Comparative Disadvantage of Customary International Law' (2006) 30 Harvard Journal of Law and Public Policy 7.
- Meijer R, 'Reform in Saudi Arabia: The Gender-Segregation Debate' (2010) XVII Middle East Policy 80.
- Miller-Rosser, K., Chapman, Y., Francis, K, 'Historical, Cultural and Contemporary Influences on the Status of Women in Nursing in Saudi Arabia' (2006) 11 The Online Journal of Issues in Nursing 1.
- Ministry of Saudi Higher Education about the Higher Education in Saudi Arabia < <http://he.moe.gov.sa/en/studyinside/aboutKSA/Pages/default.aspx> > accessed 05 Nov 2016.
- Moeckli D, Shah S and Harris D (eds), *International Human Rights Law* (2ed edn, Oxford University Press 2014).
- Moghadam V, Feminism, Legal Reform and Women's Empowerment in the Middle East and North Africa (2008) 59 International Social Science Journal 10.
- Morgan-Foster J, 'Third Generation Rights: What Islamic Law Can Teach the International Human Rights Movement' (2005) 8 Human Rights and Development Law Journal 67.
- Morsink J, 'Women's Rights in the Universal Declaration' (1991) 13 Human Rights Quarterly 229.
- Morsink, J. *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press 1999).
- Mosteller T, *Theories of Truth: An Introduction* (Bloomsbury 2014).

Mtango S, 'A State of oppression? Women's rights in Saudi Arabia' (2004) 1 *Asia-Pacific Journal of Human Rights and Law* 49.

Muedini F, 'Examining Islam and Human Rights from Perspective of Sufism', (2010) 7 *Muslim World Journal of Human Rights* 1.

National report submitted in accordance with paragraph 15 (a) of the annex to human rights council resolution 5/1 Saudi Arabia, A/HRC/WG.6/4/SAU/1 4 December 2008.

National Society for Human Rights, *Madda Insjam Al-Anzma Al-Saudiah Maa Etfakiat Huqaq Al-Insan Al-Rasih, (The Extent to Which Saudi Arabia Systems with Major Human Rights Conventions)* (National Society for Human Rights 2008) (Arabic).

Nawawi I, *Rawdat Al-Talibin Wa Amdt Al-Martyn* (Al-makub Al-Islami, 1991).

Nielsen H, 'The Concept of Discrimination in ILO Convention No.111' (1994) 43 *International and Comparative Law Quarterly* 827.

Nik S, 'A Conceptual Analysis of "Rights" in the International and Islamic Human Rights Instruments (2012) *American International Journal of Contemporary Research* 155.

Otto A, 'Gender Issues and International Human Rights: An Overview' (2012) *Human Rights Law Series* 1.

Paul H Robinson, *Codifying Shari'a: International - Norms, Legality and the Freedom to Invent New Forms*, - University of Pennsylvania <https://www.law.upenn.edu/fac/phrobins/books/CLRG_11%203%2006%20SNT.pdf> accessed 05 Nov 2016.

Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia, *Human Rights Watch*, 2008.

Peters J and Wolper A (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge 1995).

Peters R, 'Islamic Law and Human Rights: a contribution to on Ongoing Debate' (1999) 10 *Islam and Christian Relations* 1.

Princess Nourah Bint Abdulrahman University <<http://www.pnu.edu.sa/en/University/Pages/Intro.aspx>> accessed 05 Nov 2016.

- Profanter A, 'Achievements and Challenges in the Educational Realm in Saudi Arabia' (2014) 1 *European Scientific Journal* 207.
- Prokop M, 'Saudi Arabia: The politics of education' (2003) 79 *Wiley* 77.
- Quraishi A, 'What if Sharia Weren't the Enemy? Rethinking International Women's Rights Advocacy on Islamic Law' (2011) 25 *Columbia Journal of Gender and Law* 214.
- Qurtubī M, *Al Jami 'Li Ahkam Al Qur'an* (Dar 'Thia' al Turath al Arabi 1967).
- Rafiq A, 'Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World (An Analysis)' (2014) 4 *International Journal of Humanities and Social Science* 268.
- Rajkhan S, *Women in Saudi Arabia Status, Rights, and Limitations* (University of Washington Bothell 2014).
- Rehman J, 'the Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and *Talaq*' (2007) 21 *International Journal of Law, Policy and the Family* 108.
- Reisberg L, Saudi Arabia's Extravagant Investment in Higher Education: Is Money Enough? (The world view, 10 May 2011) <https://www.insidehighered.com/blogs/the_world_view/saudi_arabia_s_extravagant_investment_in_higher_education_is_money_enough> accessed 05 Nov 2016.
- Renard A, "'Only for Women:': Women, the State, and Reform in Saudi Arabia' (2008) 62 *Middle East Journal* 610.
- Ruling on appointing a woman as a judge, Islam question and answer<<http://islamqa.info/en/71338>> accessed 05 Nov 2016.
- Saadawi, N 'Woman and Islam (1982) 5 *Women's Studies International Forum* 193.
- Sabq, 'New Regulations and Punishment on Saudi Labour Law' (*Sabq Saudi Arabia*, 18 October 2015) <<http://sabq.org/w8Jgde>> accessed 05 Nov 2016.
- Said E, *Culture and Imperialism* (Vintage 1994).
- Saudi Arabia – Country of Concern, Corporate Report, Foreign Commonwealth Office, The Rt Hon William Hague MP and Senior Minister of State <

<https://www.gov.uk/government/publications/saudi-arabia-country-of-concern><

accessed on 05 Nov 2016.

Saudi Arabia to enforce law for women-only lingerie shops <

<http://www.theguardian.com/world/2012/jan/02/saudi-arabia-women-only-lingerie>>

accessed 05 Nov 2016.

Saudi Arabia: Accelerate Reforms for Girl's Sport in State School (Beirut, Human Rights Watch 11 April 2014).

Saudi Arabia: huge obstacles for first women lawyer, need protection from discrimination,

End to Guardianship restrictions < [http://www.hrw.org/news/2013/04/12/saudi-](http://www.hrw.org/news/2013/04/12/saudi-arabia-huge-obstacles-first-woman-lawyer)

[arabia-huge-obstacles-first-woman-lawyer](http://www.hrw.org/news/2013/04/12/saudi-arabia-huge-obstacles-first-woman-lawyer) > accessed 05 Nov 2016.

Saudi Arabia: UPR Submission September 2013, Human Rights Watch Report

<[http://www.hrw.org/news/2013/09/30/saudi-arabia-upr-submission-september-](http://www.hrw.org/news/2013/09/30/saudi-arabia-upr-submission-september-2013)

[2013](http://www.hrw.org/news/2013/09/30/saudi-arabia-upr-submission-september-2013)> accessed on 05 Nov 2016.

Saudi Labour has been issued by Royal Decree No. M/21 dated 6 Ramadan 1389 (15

November 1969) Decision of the Council of Ministers No. 745, dated 23/24

Sha'ban 1389

(3/4

November

(1969)

<[http://www.saudiembassy.net/about/countryinformation/laws/Labour_and_Workme](http://www.saudiembassy.net/about/countryinformation/laws/Labour_and_Workmen_Law-1of4.aspx)

[n_Law-1of4.aspx](http://www.saudiembassy.net/about/countryinformation/laws/Labour_and_Workmen_Law-1of4.aspx)> accessed 17 Dec 2016.

Saudi School Sport < <http://sports.tatweer.edu.sa/en/>> accessed on 05 Nov 2016.

Saudi to codify Sharia 'for clarity', (*the National World* ,

2011):<[http://www.thenational.ae/news/world/middle-east/saudi-to-codify-sharia-for-](http://www.thenational.ae/news/world/middle-east/saudi-to-codify-sharia-for-clarity)

[clarity](http://www.thenational.ae/news/world/middle-east/saudi-to-codify-sharia-for-clarity)> accessed 05 Nov 2016.

Saudi women celebrate: Monitoring system of cross-border movements suspended<

<http://rt.com/news/saudi-suspends-women-travel-619/>> accessed on 05 Nov 2016.

Saudi women unhappy with feminisation of lingerie

stores<<http://www.arabnews.com/news/466776>> accessed 05 Nov 2016.

Saussine A, *The Nature of Customary law, legal, Historical and philological perspectives*

(Cambridge University Press 2007).

Sawad A, 'Reservations to Human Rights Treaties and the Diversity Paradigm: Examining

Islamic Reservations' (PhD Thesis, University of Otago 2008).

Schabas W, 'Reservations to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child' (1997) 3 William and Mary Journal of Women and the Law 79.

Schroeder L, 'the Rights of Muslim Women in the Middle East: A Pathfinder' (2009) 37 International Journal of Legal Information 135.

Sexual harassment? Report at <<http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20140401200420>> accessed 05 Nov 2016.

Shah N, 'Women's Human Rights in the Koran: An Interpretive Approach' (2006) 28 Human Rights Quarterly 868.

Shah N, *Women, the Koran and International Human Rights law: The Experience of Pakistan* (Brill 2006).

Shaykk Saleh AL-Munajjid fatwa (161002) < <http://islamqa.info/en/161002> > accessed to 05 Nov 2016.

Shaykk Saleh AL-Munajjid fatwa (5538) < <http://islamqa.info/en/5538>> accessed on 05 Nov 2016.

Shivdas M and Coleman S, *Without Prejudice: CEDAW and the Determination of Women's Rights in a Legal and Cultural Context* (Commonwealth Secretariat 2010).

Simonton D, *A history of European women's work 1700 to the Present* (Routledge 1998).

Skogly S, 'Crimes against Humanity-Revisited: Is There a Role for Economic and Social Rights' (2001) 5 International Journal of Human Rights 58.

Skogly S, 'Crimes against Humanity-Revisited: Is There a Role for Economic and Social Rights' (2001) 5 International Journal of Human Rights 58.

Sohn B, 'The Human Rights Law of the Charter' (1977) 12 Texas International Law Journal 130.

Sonbol A, Shari' Court Records and *Fiqh* as Sources of Women's History (2010) 42 Religion & Literature 229.

Ssenyonjo M, *Economic, Social and Cultural Rights in International Law* (Hart Publishing 2015).

Staff Writers 'Physical Education for Saudi Girls Stir Debate' (Al-Arabiya News 15 April 2014) <<http://english.alarabiya.net/en/perspective/features/2014/04/15/Physical-education-for-girls-stirs-debate-in-Saudi-Arabia.html>> accessed on 05 Nov 2016.

Stalemate on 'mahram' conditions continue> [N.B. IS THE PRECEDING TITLE CORRECT?]< <http://www.arabnews.com/node/314145> > accessed on 05 Nov 2016.

Stephens B, 'Litigating Customary International Human Rights Norms' (1995-1996) 25 the Georgia Journal of International and Comparative Law 191.

The GCC's national employment challenge <<http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/07/31/the-gccs-national-employment-challenge/>> accessed 05 Nov 2016.

The General Presidency of Scholarly Research and Ifta, Fatwa no (13814) < <http://www.alifta.net/Fatawa/> > accessed on 05 Nov 2016.

the Kingdom of Saudi Arabia Portal of the General Presidency of Scholarly Research and Ifta <<http://www.alifta.net/>> accessed on 05 Nov 2016.

The national report submitted in accordance with para 15(a) of the annex to the Human Rights Council Resolution 5/1, Saudi Arabia, A/HRC/WG.6/4/SAU/1 4 December 2008.

The reason why the husband is regarded as superior and is given the role of *qawwaam* (protector and maintainer, fatwa no 43252<<http://islamqa.info/en/43252> > accessed on 05 Nov 2016.

The Shadow report of CEDAW prepared by 'Saudi women for Reform' Saudi Arabia, the executive summary Dec 2007 < <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/womenreform40.pdf> > accessed on 05 Nov 2016.

The world report about Saudi Arabia by Human Rights Watch 2013 regarding the rights of women and girls< <http://www.hrw.org/world-report/2013/country-chapters/saudi-arabia> > accessed on 05 Nov 2016.

Timmons M, *Moral Theory: An Introduction* (Rowman & Littlefield 2012).

- Tunkin G, 'Is general international law customary law only?' (1993) 13 *European Journal of International Law* 534.
- Tyrer D and Ahmad F, *Muslim Women and Higher Education: Identities, Experiences and Prospects* (Liverpool John Moores University and European Social Fund 2006).
- United Nations, *Convention on the Discrimination against Women, and its Optional Protocol-Handbook for Parliamentarians* (United Nations and the Inter-Parliamentary Union 2003).
- Venkairm B, 'Islamic States and The United Nations Convention On the Elimination of All Forms of Discrimination Against Women: Are The Sharia and The Convention Compatible?' (1990) 44 *American University Law Review* 1949.
- Vogel F, *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia* (Brill 2000).
- Vosko L, 'Gender, Precarious Work, and the International Labour Code: The Ghost in the ILO Closet' in Judy Fudge and Rosemary Owens (eds), *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (Oxford and Portland Oregon 2006).
- Wallace R and Martin-Ortega O, *International Law* (Sixth edition, Sweet and Maxwell 2009).
- Waltz S 'Universal Human Rights: The Contribution of Muslim States (2004) 26 *Human Rights Quarterly* 799.
- Wedgewood R, *the Nature of Normativity* (Oxford University Press 2009).
- Weichselbaumer D and Winter-Ebmer R, 'The Effects of Competition and Equal Treatment Laws on Gender Wage Differentials' (2007) 22 *Economic Policy* 235.
- Welchman, L, *Women and Muslim family laws in Arab states* (Amsterdam University Press 2007).
- Wellin J, 'International Indicators and Economic, Social, and Cultural Rights' (2008) 30 *Human Rights Quarterly* 933.
- Who are the *mahrims* in front of whom a woman can uncover? < <http://islamqa.info/en/5538>> accessed on 05 Nov 2016.
- Winter B, 'Religion, culture and women's human rights: Some general political and theoretical considerations (2006)29 *Women's Studies International Forum* 381.

Woman travelling with the driver in one car, and her mahram in another car, travelling with her <<http://islamqa.info/en/211092>> accessed 05 Nov 2016.

Women in Higher Education (Saudi Initiative & Achievements, Ministry of Higher Education, General Department for Planning & Statistics 2010) <<https://he.moe.gov.sa/en/docs/Doc1/VDMPI030.pdf>> accessed 05 Nov 2016.

Women on cloud nine as travel notification halted, Arab News <<http://www.arabnews.com/news/508841>> accessed on 05 Nov 2016.

Wood J, 'International Labour Organisation Conventions-Labour Code or Treaties' ICL (1991) 649.

Appendix 1

LABOR LAW, Royal Decree No. M/51, 23 Sha'ban 1426 / 27 September 2005

PART VI

WORK CONDITIONS AND CIRCUMSTANCES:

Chapter One: Wages

Article (89):

The Council of Ministers may, when necessary and upon a proposal by the Minister, set a minimum wage.

Article (90):

(1) The worker's wages and all other entitlements shall be paid in the Country's official currency. Wages shall be paid during working hours and at the workplace in accordance with the following provisions:

(1.1) Workers paid on a daily basis shall be paid at least once a week.

(1.2) Workers paid on a monthly basis shall be paid once a month.

(1.3) If the work is done by the piece and requires a period of more than two weeks, the worker shall receive a payment each week commensurate with the completed portion of the work. The balance of the wage shall be paid in full during the week following delivery of the work.

(1.4) In cases other than the above, the worker's wages shall be paid at least once a week.

(2) Wages may be paid through accredited banks in the Kingdom, with the consent of the worker, provided that their due dates do not exceed the dates specified above.

Article (91):

(1) If the worker, as a result of his own fault or violation of the employer's instructions and not as a result of a third party's fault or a force majeure, causes loss, damage or destruction to machineries or products owned by the employer while in his custody, the employer may deduct from the worker's wage the amount necessary for repair or restoration to the original condition, provided that such deductions do not exceed a five-day wage per month. The employer may file a grievance, if necessary, demanding more deductions if the worker has other properties from which collections may be made. The worker may file a grievance with the Commission for the Settlement of Labor Disputes regarding the allegations levelled at him or the employer's estimation of the damages. If the Commission rules that the employer is not entitled to claim such deductions or if it awards the employer a lower amount, the employer shall return to the worker the amounts unjustifiably deducted, within seven days from the date of the award.

(2) Either party shall file its grievance within fifteen work days; otherwise, it shall forfeit his right thereto. For the employer, the date of filing the grievance shall be from the date the occurrence is discovered, and for the worker from the date of his notification of the same by the employer.

Article (92):

No amount shall be deducted from the worker's wages against private rights without his written consent, except in the following cases:

(1) Repayment of loans extended by the employer provided that such deductions do not exceed 10% of his wage.

(2) Social insurance or any other contributions due on the workers as provided for by law.

- (3) Worker's contributions to thrift funds or loans due to such funds.
- (4) Instalments of any scheme undertaken by the employer involving home ownership programs or any other privilege.
- (5) Fines imposed on the worker on account of violations committed, as well as deductions made for damages caused.
- (6) Any debt collected in implementation of a judicial judgment, provided that the monthly deduction shall not exceed one quarter of the worker's wage, unless the judgment provides otherwise. First to be collected is alimony, followed by food, clothing and accommodation debts, before other debts.

Article (93):

In all cases, deductions made may not exceed half the worker's due wage, unless the Commission for the Settlement of Labor Disputes determines that further deductions can be made or that the worker is in need of more than half his wage. In the latter case, the worker may not be given more than three quarters of his wage.

Article (94):

(1) If any amount is deducted from the worker's wages for reasons other than those specified in this Law without his written consent, or if the employer delays, without a valid justification, payment of the worker's wages beyond the due date set forth in the Law, the worker, his representative or the head of the competent Labor Office may submit a request to the Commission for the Settlement of Labor Disputes to order the employer to return to the worker any wrongfully-deducted amounts or to pay him his outstanding wages.

(2) The said Commission may, if it establishes that the employer has unjustifiably deducted the said amounts or delayed the payment of the wages, impose on the

employer a fine not exceeding twice the amount deducted from the worker's wage or twice the outstanding wages.

Article (95):

(1) If the work contract or the work organization regulation does not provide for the wage binding on the employer, the wage estimated for the same type of work in the firm, if any, shall be adopted; otherwise, the wage shall be estimated in accordance with the profession's norms at the place where the work is performed. In the absence of such norms, the Commission for Settlement of Labor Disputes shall estimate the wage in accordance with the dictates of justice.

(2) The same shall also apply in determining the type and scope of the service that the worker is required to render.

Article (96):

(1) If the worker's wage is determined on the basis of piecework or productivity, the average wage which the worker receives for his actual workdays during the last year of his service shall be used as the basis for calculating any entitlements determined for the worker under this Law.

(2) If the entire wage is the amounts received as commissions, a percentage of sales or the like which are by nature subject to increases or decreases, the daily average wage shall be calculated on the basis of the amounts the worker receives for the actual work days, divided by them.

Article (97):

If a worker is detained or taken into custody by the competent authorities in cases related to work or occasioned by it, the employer shall continue to pay the worker 50% of the wage until the case is decided, provided that the period of detention or custody shall not exceed one hundred and eighty days. If said period exceeds that, the employer shall not be required to pay any portion of the wage for the excess period. If the worker is acquitted or the investigation is closed for lack of evidence or invalidity thereof, the employer shall return to the worker the amount previously deducted from his wage. However, if he is convicted, none of the payments made shall be recovered unless the judgment provides otherwise.

PART IX

EMPLOYMENT OF WOMEN

Article (149):

Taking into consideration the provisions of Article (4) of this Law, women shall work in all fields suitable to their nature. It is prohibited to employ women in hazardous jobs or industries. The Minister pursuant to a decision by him shall determine the professions and jobs that are deemed detrimental to health and are likely to expose women to specific risks; in which cases, women's employment shall be prohibited or restricted under certain terms.

Article (150):

Women may not work during a period of night the duration of which is not less than eleven consecutive hours, except in cases determined pursuant to a decision by the Minister.

Article (151):

A female worker shall be entitled to a maternity leave for the four weeks immediately preceding the expected date of delivery and the subsequent six weeks. The probable date of delivery shall be determined by the physician of the firm or pursuant to a medical report certified by a health authority. A woman may not work during the six weeks immediately following delivery.

Article (152):

During the maternity leave, an employer shall pay the female worker half her wage if she has been in his service for one year or more, and a full wage if she has served for three years or more as of the date of commencement of such leave. A female worker shall not be paid any wages during her regular annual leave if she has enjoyed in the same year a maternity leave with full wage. She shall be paid half her wage during the annual leave if she has enjoyed in the same year a maternity leave at half wage.

Article (153):

An employer shall provide medical care for female workers during pregnancy and delivery.

Article (154):

When a female worker returns to work following a maternity leave, she shall be entitled, in addition to the rest periods granted to all workers, to a rest period or periods not exceeding in aggregate one hour a day for nursing her infant. Such period or periods shall be calculated as part of the actual working hours and shall not entail any reduction in wages.

Article (155):

An employer may not terminate the employment of a female worker or give her a warning of the same while on maternity leave.

Article (156):

An employer may not terminate the employment of a female worker during illness resulting from pregnancy or delivery, and such illness shall be established by a certified medical report, provided that the period of her absence does not exceed one hundred and eighty days. The employment of such female worker may not be terminated during the one hundred and eighty days preceding the expected date of delivery in the absence of one of the legitimate causes provided for in this Law.

Article (157):

A female worker shall forfeit her entitlements under the provisions of this Part if she works for another employer during her authorized leave. In such event, the original employer may deprive her of her wage for the duration of the leave or recover any payments made to her.

Article (158):

In all occupations and places where women are employed, the employer shall provide them with seats for resting.

Article (159):

(1) An employer who employs fifty female workers and more shall provide them with a suitable place with adequate number of babysitters to look after the children under the age of six years, if the number of children reaches ten and more.

(2) The Minister may require the employer who employs a hundred women and more in a single city to set up a nursery, either on his own or in conjunction with other employers in the same city, or alternatively to contract with an existing nursery to care for the children of the female workers who are under six years of age during the work periods. In such case, the Minister shall set forth the terms and conditions regulating such facility as well as the charges imposed on the female workers benefiting from service.

Article (160):

A female worker whose husband passes away shall be entitled to a fully paid leave for a minimum period of fifteen days as of the date of death.

ART XII

WORKING IN MINES AND QUARRIES

Article (185):

Working in mines and quarries shall mean the following:

(1) Operations involving prospection, detection, extraction or manufacture of (solid or liquid) mineral substances, including precious stones, in the area for which the license has been issued.

(2) Operations involving extraction, concentration or manufacture of mineral sediments on or under the ground surface in the area of the license.

(3) Construction works, installation of structure and equipment related to the operations referred to in Paragraphs (1) and (2) of this Article.

Article (186):

No person under the age of eighteen or any woman regardless of her age shall be employed in a mine or quarry.

Article (187):

No person shall be allowed to engage in operations subject to the provisions of this Part until he undergoes a complete medical examination and proven to be physically fit for the required work. Such examination shall be repeated periodically. The worker may not be required to bear the costs of necessary medical examinations. The

Minister shall set forth pursuant to a decision by him the terms, conditions and periods that must be complied with.

Article (188):

The actual working hours spent by the worker underground shall not exceed seven hours a day. No worker shall be kept at the workplace, above or underground, for more than ten hours a day. If the work is conducted underground, such a period shall include the time needed for the worker to reach the underground and the time needed to return to the surface.

Article (189):

Access to the work location and facilities shall be prohibited for people other than the workers, persons authorized to inspect the mine or the quarry and persons holding special permits from the competent authority.

Article (190):

An employer shall keep a record to register and count the workers before their entry into the workplace and at the time of their exit therefrom.

Article (191):

An employer or the manager in-charge shall draft a list of orders and instructions related to the public safety.

Article (192):

An employer shall establish a rescue point in the vicinity of the workplace, equipped with necessary rescue and first aid equipment. Said point shall be equipped with suitable means of communication for immediate access and the employer shall appoint a trained technician to supervise the rescue and first aid operations.

Article (193):

Without prejudice to the provisions of Article (142) of this Law, the employer of each mine or quarry with at least fifty workers shall set up a suitable location with a room equipped with rescue and first aid equipment, another room for nursing and one or more locker rooms. As for quarries and mines with less than fifty workers located within a twenty-kilometre radius of each other, employers may pool their resources to establish a place of rescue and first aid in between such quarries and mines, or else establish their own places of rescue and first aid.

The Minister may determine the rescue and first aid equipment, protection and prevention measures in mines and quarries as well as employers' responsibilities and workers' rights and duties.

Appendix 2

Basic Law of Governance, Royal Order No. (A/91), 27 Sha'ban 1412H – 1 March 1992

Part One General Principles

Article 1:

The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam and its constitution shall be the Book of God and the Sunnah (Traditions) of His Messenger, may God's blessings and peace be upon him (PBUH). Its language shall be Arabic and its capital shall be the city of Riyadh.

Article 2:

The two holidays of the State shall be 'Id al-Fitr and 'Id al-Adha, and its calendar shall be the Hijri Calendar.

Article 3:

The flag of the State shall be as follows:

- (a) Its colour shall be green.
- (b) Its width shall be two-thirds its length.
- (c) Centred therein shall be the expression "There is no god but God and Muhammad is the Messenger of God", with an unsheathed sword under it. The flag may never be flown at half-mast. The Law shall set forth the provisions appertaining thereto.

Article 4:

The emblem of the State shall be two crossed swords with a date palm tree in the middle of the upper space between them. The law shall set forth the anthem and medals of the State.

Part Two

System of Governance

Article 5:

- (a) The system of governance in the Kingdom of Saudi Arabia shall be monarchical.
- (b) Governance shall be limited to the sons of the Founder King ‘Abd al- ‘Aziz ibn ‘Abd ar-Rahman al-Faysal Al Sa‘ud, and the sons of his sons. Allegiance shall be pledged to the most suitable amongst them to reign on the basis of the Book of God Most High and the Sunnah of His Messenger (PBUH).
- (c) The King shall select and relieve the Crown Prince, by Royal Order.
- (d) The Crown Prince shall devote himself exclusively to the office of the Crown Prince and shall perform any other duties assigned to him by the King.
- (e) The Crown Prince shall assume the powers of the King upon his death until the pledge of allegiance is given.

Article 6:

Citizens shall pledge allegiance to the King on the basis of the Book of God and the *Sunnah* of his Messenger, and on the basis of submission and obedience in times of hardship and ease, fortune and adversity.

Article 7:

Governance in the Kingdom of Saudi Arabia derives its authority from the Book of God Most High and the Sunnah of his Messenger, both of which govern this Law and all the laws of the State.

Article 8:

Governance in the Kingdom of Saudi Arabia shall be based on justice, shura (consultation), and equality in accordance with the Islamic Shari'ah.

Part Three

Foundations of Saudi Society

Article 9:

The nucleus of Saudi society is the family and its members should be brought up on the basis of the Islamic creed and its requirement of allegiance and obedience to God, to His Messenger and to those in authority; respect for and implementation of laws, and love of and pride in the homeland and its glorious history.

Article 10:

The State shall endeavour to strengthen family bonds, maintain its Arab and Islamic values, care for all its members, and provide conditions conducive to the development of their talents and abilities.

Article 11:

Saudi society shall be based on its members' holding fast to the bond of God, cooperating unto righteousness and piety, and maintaining solidarity, and avoiding dissention.

Article 12:

Promoting national unity is a duty, and the State shall prevent whatever leads to disunity, sedition and division.

Article 13:

Education shall aim to instil the Islamic creed in the young, impart knowledge and skills to them, and prepare them to be useful members in the building of their society, loving their homeland, and taking pride in its history.

Part Four

Economic Principles

Article 14:

All God's bestowed wealth, be it underground, on the surface, or in national territorial waters, on the land or maritime domains under the State's control, all such resources shall be the property of the State as defined by the Law. The Law shall set forth the means for exploiting, protecting, and developing such resources for the benefit, security, and economy of the State.

Article 15:

No concession is to be granted and no public resources of the country are to be exploited except pursuant to a law.

Article 16:

Public property has sanctity. The State shall protect it, and citizens and residents shall safeguard it.

Article 17:

Property, capital, and labour are basic constituents of the economic and social structure of the Kingdom. They are private rights which fulfil a social function in accordance with Islamic Shari'ah.

Article 18:

The State shall guarantee private property and its inviolability. No one shall be deprived of his property except for the public interest, provided that the owner be fairly compensated.

Article 19:

The public expropriation of property shall be prohibited, and the penalty of private expropriation may be imposed only by a court order.

Article 20:

Taxes and fees may be imposed only if needed and on a just basis. They may be imposed, revised, abolished, or exempted only in accordance with the Law.

Article 21:

Zakah (alms) shall be collected and spent as prescribed by the Shari'ah.

Article 22:

Economic and social development shall be accomplished according to a sound and just plan.

Part Five

Rights and Duties

Article 23:

The State shall protect the Islamic creed, apply its Shari'ah, enjoin the good and prohibit evil, and carry out the duty of calling to God.

Article 24:

The State shall maintain and serve the Two Holy Mosques, and provide security and care to those who travel to them as to enable them to perform Haj (Major Pilgrimage),

‘Umrah (Minor Pilgrimage), and Ziyarah (Visit of the Prophet’s Mosque) in ease and tranquillity.

Article 25:

The State shall strive to realize the aspirations of the Arab and Muslim nation for solidarity, unity, as well as to promote its relations with friendly states.

Article 26:

The State shall protect human rights in accordance with the Islamic Shari‘ah.

Article 27:

The State shall guarantee the right of the citizen and his family in emergencies, sickness, disability, and old age, and shall support the social security system and encourage institutions and individuals to participate in charitable work.

Article 28:

The State shall facilitate the provision of job opportunities to every able person, and shall enact laws that protect the workman and the employer.

Article 29:

The State shall foster sciences, arts, and culture, and shall encourage scientific research, protect Islamic and Arabic heritage, and contribute to Arab, Islamic, and human civilization.

Article 30:

The State shall provide public education, and shall be committed to combating illiteracy.

Article 31:

The State shall be responsible for the care of public health, and shall provide health care to every citizen.

Article 32:

The State shall endeavour to preserve, protect, and improve the environment and prevent its pollution.

Article 33:

The State shall create and equip armed forces for the defence of the creed, the Two Holy Mosques, the society, and the homeland.

Article 34:

Defense of the Islamic creed, society, and homeland is the duty of every citizen. The Law shall set forth provisions for military service.

Article 35:

The Law shall set forth provisions for Saudi Arabian citizenship.

Article 36:

The State shall provide security to all its citizens and residents. A person's actions may not be restricted, nor may he be detained or imprisoned, except under the provisions of the Law.

Article 37:

Residences shall be inviolable, and they may not be entered or searched without their owner's permission except in cases set forth in the Law.

Article 38:

Punishment shall be carried out on a personal basis. There shall be no crime or punishment except on the basis of a Shari'ah or a statutory provision, and there shall be no punishment except for deeds subsequent to the effectiveness of a statutory provision.

Article 39:

Mass and publishing media and all means of expression shall use decent language and adhere to State laws. They shall contribute towards educating the nation and supporting its unity. Whatever leads to sedition and division, or undermines the security of the State or its public relations, or is injurious to the honour and rights of man, shall be prohibited. Laws shall set forth provisions to achieve this.

Article 40:

Correspondence by telegraph and mail, telephone conversations, and other means of communication shall be protected. They may not be seized, delayed, viewed, or listened to except in cases set forth in the Law.

Article 41:

Residents in the Kingdom of Saudi Arabia shall observe its laws. They shall respect the values, traditions and sensibilities of Saudi society.

Article 42:

The State shall grant political asylum if public interest so dictates. Laws and international agreements shall specify the rules and procedure for the extradition of ordinary criminals.

Articles 43:

The court of the King and of the Crown Prince shall be accessible to every citizen and to everyone who has a complaint or a grievance. Every individual shall have the right to address public authorities in matters of concern to him.

Appendix 3

SHEIKH BIN BAZ'S FATWA

Employing women in governmental departments

[http://www.alifta.net/fatawa/fatawaDetails.aspx?languagename=en&BookID=14
&View=Page&PageNo=1&PageID=732](http://www.alifta.net/fatawa/fatawaDetails.aspx?languagename=en&BookID=14&View=Page&PageNo=1&PageID=732)

Praise be to Allah, the Lord of the Worlds. May peace be upon His servant and Messenger, Muhammad (peace be upon Him), his family, Companions, and their followers until the Day of Judgment.

I read the news published in the local papers dated 1/9/ 1400 A.H. about the decision the Civil Service Bureau in the Eastern Province made to employ women in governmental departments as translators and clerical workers. I also read the comment of brother Muhammad Ahmad Hassany in Al Nadwa Newspaper, dated 8/9/1400 A.H. His article was sincere advice truthfully given to the Muslims. May Allah reward and bless him. It is well known that female participation in work leads to blameworthy mixing between the two sexes. This is a very serious matter that leads to bitter consequences and goes against the texts of Islam that command women to stay at home and care for household affairs away from mixing with men. The authentic evidence clearly indicates that it is forbidden to be alone with a non-mahram woman or to look at them. It forbids the means to falling into what Allah forbids. There are so many legal indications that definitively prohibit all kinds of intermixing of the two sexes that may lead to bad consequences.

For example, Allah says, ﴿And stay in your houses, and do not display yourselves like that of the times of ignorance, and perform As-Salât (Iqamât-as-Salât), and give Zakât and obey Allâh and His Messenger. Allâh wishes only to remove Ar-Rijs (evil deeds and sins) from you, O members of the family (of the Prophet صلى الله عليه وسلم), and to purify you with a thorough purification.﴾ ﴿And remember (O you the members of the Prophet's family, the Graces of your Lord), that which is recited in your houses of the Verses of Allâh and Al-Hikmah (i.e. Prophet's *Sunnah* - legal ways, so give your

thanks to Allâh and glorify His Praises for this Qur'ân and the *Sunnah*). Verily, Allâh is Ever Most Courteous, Well-Acquainted with all things.) Allah (Exalted be He) also says: ﴿And when you ask (his wives) for anything you want, ask them from behind a screen: that is purer for your hearts and for their hearts.﴾ Allah (Exalted be He) also says:

﴿O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies (i.e. screen themselves completely except the eyes or one eye to see the way). That will be better, that they should be known (as free respectable women) so as not to be annoyed. And Allâh is Ever Oft-Forgiving, Most Merciful.﴾ Allah (Glorified and Exalted Be He) also says, ﴿Tell the believing men to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts). That is purer for them. Verily, Allâh is All-Aware of what they do.﴾ ﴿And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts) and not to show off their adornment except only that which is apparent (like both eyes for necessity to see the way, or outer palms of hands or one eye or dress like veil, gloves, head-cover, apron, etc.), and to draw their veils all over Juyûbihinna (i.e. their bodies, faces, necks and bosoms) and not to reveal their adornment except to their husbands, or their fathers, or their husband's fathers) Till His saying, ﴿And let them not stamp their feet so as to reveal what they hide of their adornment. And all of you beg Allâh to forgive you all, O believers, that you may be successful﴾ Moreover, the Prophet (peace be upon him) said, ﴿Beware of entering upon women – meaning non-mahram women. A person from Al-Ansar said, “O Messenger of Allah, what about the in-laws?” He said, “[The entering of] the in-law [upon a woman is destructive to religion like] death [ends life].﴾ Islam forbids being alone with a non-Mahram woman under any circumstances except when a Mahram (spouse or permanently unmarriageable relative) exists. Women are also prohibited to travel without a Mahram, so as to ward off the means to evil and close the door to sin, and protect both parties from the snares of the Satan. Hence, it is authentically reported that the Prophet (peace be upon him) said, ﴿I have not left behind me graver trial to men than

women.) It is also authentically reported that he (peace be upon him said), (Beware of this world! Beware of women, for the fall of the children of Israel began with the temptation of women.) He (peace be upon him) also said, (No man should be alone with a woman, for the third of them is Satan.) Thus, the Ayah and Hadith clearly state that it is obligatory to stay away from mixing that leads to evil, undermining of families, and destruction of societies. So, there is nothing that forces us to oppose these proofs and commit things that bring Allah's wrath and punishment. When we look at the situation of women in some Muslim countries, we see that they have lost their dignity because of their going out of their homes and working in fields that are not theirs. Wise people in these countries and in the west have said that it is essential for women to go back to their natural position for which Allah has prepared them physically and mentally, but it is too late (for them).

The officials in the Civil Service Bureau and General Presidency for Girls' Education should fear Allah. They are not to open a door to evils in Muslims' lives, especially if closing this door is hard. They should know that we advise this country, individuals, and governments, to help keep the society cohesive and solid following the teachings of the Qur'an and *Sunnah*. They have to block the means to weakness, Fitnahs, and evils, especially at this time where the enemies spare no effort to ruin the Muslims. We are, now, in dire need to Allah's support and protection from the evils and plots of the enemies. It is, therefore, impermissible to open the closed doors of evil.

I hope my speech will be a reminder for the officials in the Civil Service Bureau and General Presidency for Girls' Education that they are obliged to apply the commands of Allah and His Messenger and consider the public interest of all people. They should also take advantage of the commentary written by Muhammad Ahmad Hassany. He states that the problem of shortage of employees cannot be solved by women's employment in men's jobs. Rather, the proper solution is to create incentives for the thousands of youth who refrain from governmental work and turn to private businesses and organizations. Government work involves many obstacles that hold youth back from it. To overcome these obstacles, they should simplify the procedures

and applications of employment and offer good packages for the employees. The government can then ensure surplus employees in each department. I am assured that this speech will convince the officials to retract their statement about women's employment in men's jobs. They will do so when they know that this act is prohibited in the Qur'an and Sunnah, goes in conflict with the sound Fitrah (natural disposition), and ruins the society. The enemies of Islam eagerly wish that women will go out and work with men. For decades, they have been striving and spending money to achieve this purpose, so we hope that our Muslim sons and brothers do not support or facilitate their purposes.

May Allah protect our country and all Muslim countries from the evil plots and grant the officials success to help people rectify their affairs in this life and the Hereafter.

May Allah grant the officials in the Civil Service Bureau and General Presidency for Girls' Education success to do what benefits people in this life and the life to come, and protect us, them, and all Muslims from the delusive trials and means of disgrace. Allah is the One Who is Capable of doing so. May Peace and blessings of Allah be upon our Prophet Muhammad, His family, Companions, and their followers in righteousness!