



Research Paper

Consultative Assembly of Saudi Arabia and separation of powers: Theory and Reality

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ABSTRACT: *The study aimed to highlight the legal nature of the Saudi Shura Council by reviewing the Shura Council Law of 1990. The study concluded that the constitutional principle related to the separation of powers is not applied in the Saudi legal system. The study also concluded that the executive authority has a higher hand with regard to ratifying and executive laws, and therefore there is an overlap in jurisdiction between the executive and legislative authorities. Despite this, it seems that this special legal system is commensurate with the nature of the legal system and the system of government in Saudi Arabia. Nevertheless, the study recommended granting powers and a greater role to the Shura Council, especially with regard to monitoring the work of the executive authority.*

KEYWORDS: *Shura, Saudi Council, Consultative Assembly.*

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I. INTRODUCTION

The principle of separation of powers is considered one of the most important constitutional principles, which allows the three authorities to exercise their legal duties without interference from other powers. (Mojapelo 2013) However, despite the importance of this principle, there are some legal systems that do not apply this principle. In Saudi Arabia, for example, in theory there are three authorities, but by reviewing the practical reality, it can be noticed that the principle of separation of powers is not fully applied.

In the new era of Saudi's government, HH crown prince promised to propose many reforms. However, despite the promising reforms, the new laws have not dealt with Shura council, and it is still being with limited powers. Therefore, this article aims to investigate whether separation of powers is applied in Saudi Arabia regarding legislative authority. Also, it aims to find if current Shura council law needs reforms. Thus, the article will start with a brief definition of separation of power principle.

Separation of powers

Briefly, the above term can be defined as the model that divides the government into separate branches, each of which has separate and independent powers. (Scalia 1983) By having multiple branches of government, this system helps to ensure that no one branch is more powerful than another. (Mojapelo 2013)

Regionally, the most well-known example of separation of powers is the tripartite system found in Egypt and Kuwait, in which there are three individual branches of government: the executive branch, the legislative branch, and the judicial branch. (Habachy 1963; Sherif 2012)

The historical development of the Shura Council

Consultative councils appeared in the Kingdom of Saudi Arabia - for the first time - in conjunction with King Abdelaziz Al Saud's announcement of the establishment of the Kingdom in 1924 AD; The basic instructions of the Kingdom included a provision for the adoption of the principle of "Shura" as a method of ruling according to the legal foundations. (Al Harbi 2014)

The first advisory council was established in 1924 under the name "The National Council" of (12) members representing all the 12 neighbourhoods of Makkah City, and they were elected by Makkah scholars, notables and merchants. Its competences were also limited to organizing the basic matters necessary to run the country. The work of this council did not last long; It was dissolved only about six months after its founding. (Truitt 2018)

The dissolution of the civil council was followed by the establishment of another council called the "civil shura council," which was distinguished by its own instructions specifying the terms of its membership,

who had the right to vote, and the dates for voting. It was also distinguished as a combination of the two methods of election and appointment in its composition. Where the council included in its membership elected members representing all the neighbourhoods of Makkah City (12 neighbourhoods), who are elected by Makkah scholars, notables and merchants, provided that two of them are scholars and one of the merchants. The council also included in its membership three notables who were appointed by the king. This council was distinguished by the diversity of its specializations. Which was represented in: regulating judicial matters, municipal affairs, endowments, education, security, and trade. (Al Ibrahim, Atiya, and Zaki 2019)

As for the organizational aspect; This council was distinguished by the presence of a vice-president who would replace him when he had an impediment, in addition to the fact that the council included several permanent committees whose mission was to solve public problems. (Al-Tamami 2020)

Parliamentary life in the Kingdom of Saudi Arabia witnessed a qualitative transformation in 1926, when the basic instructions of the system of government were issued, which included the text for the establishment of a new council - an alternative to the Shura Council - called the "Shura Council". It consisted of (12) members for a period of one year. However, this council was dissolved on 6/7/1927 AD. (Al-Tamami 2020)

Several councils followed this council, and the subsequent eras of the founding of the Saudi state witnessed a remarkable development with regard to the powers of the Shura Council. (Al Harbi 2014)

Shura Council role:

Undoubtedly, the historical developments witnessed by the Saudi Shura Council led to an increase in the granted powers. For instance, the Council did not previously have the right to propose laws as it is now. However, the powers of the legislative authority in Saudi Arabia are still limited compared to their counterparts in Arab countries such as Egypt and Kuwait. (Habachy 1963; Sherif 2012)

Article 15 of the Saudi Shura Council Law issued in 1992 included the powers of the Shura Council, as it stipulated that:

"The shura council shall express its opinion on State's general policies referred by Prime Minister. The shura council shall specifically have the right to exercise the following: (a) Discuss the general plan for economic and social development and give view. (b) Revising laws and regulations, international treaties and agreements, concessions, and provide whatever suggestions it deems appropriate. (c) Analysing laws. (d) Discuss government agencies annual reports and attaching new proposals when it deems appropriate."

In addition, Article 17 provides that:

"The shura council's resolutions shall be submitted to the king who decides what resolutions to be referred to Cabinet. - If views of both the shura council and the Cabinet agree, the resolutions are issued after the king approval. - If views of both councils vary the issue shall be returned back to the shura council to decide whatever it deems appropriate and send the new resolution to the king who takes the final decisions."

As it can be seen, there is limitation regarding Shura's authorities in which members are not allowed to issue new law without other powers' approvals. Furthermore, with regard to oversight over the decisions of the executive authority or with regard to the general budget, the Shura Council does not have the powers that authorize it to exercise the powers of the legislative authority, as the role of a member of the Shura Council is limited to expressing an opinion only without the necessity of obligating this opinion to the executive authorities. (Frank Gardner 2013)

Additionally, the legislative authority in the Kingdom of Saudi Arabia does not have the right to question members of the government, and their powers are limited only to discussing the ministers in matters related to their competencies.¹

Does the consultative council law need reforms?

It is submitted that laws changing and updating to suit state's aims and necessities. Applying the current version of Shura law will grant an upper hand to the executive power over the legislative power. Ultimately, this may result in power misusing by the government which will lead eventually to corruption. (Al Ibrahim et al. 2019)

The main factor which should be taken into consideration that separation of powers will lead to a better performance of the state and that can be approached by allowing the legislative power to exercise its functions such as lawmaking, controlling over the budget, and amending of the constitution. (Al Ibrahim et al. 2019)

However, with this limited power for the legislative power, Saudi Arabia has effective ways to oversight corruption and the progress of the government. In 2017, the king of Saudi Arabia issued a decree

¹ Article 22 of Shura law provides that 'The Chairman of the Majlis Ash-Shura shall submit to the Chairman of the Council of Ministers requests to summon any government official to the meetings of Majlis Ash-Shura when matters relating to his jurisdiction are discussed. The official shall have the right to debate but not the right to vote.'

establishing a supreme anti-corruption committee, which was formed under the chairmanship of the Crown Prince and the membership of members of judicial and supervisory bodies. This precedent resulted in settlements estimated at about 400 billion Saudi riyals. (Habibi 2019)

Yet, Despite the effectiveness of this committee, it is a temporary committee, and there is no doubt that there is always corruption, and therefore granting oversight powers to the Shura Council may significantly reduce the financial and administrative corruption rate of the executive. (Gause III 2018)

II. CONCLUSION:

Although the importance of the power separation principle in making balance between the three powers in the states, Saudi Arabia has found a different approach regarding the powers of legislative authority where the power separation is not applicable in Saudi Arabia.

Yet, Shura council cannot be described as a legislative power since its members do not have the right to issue new laws without government's approval, besides the absence of ministers accountability.

This unique legal system could work for a certain time and fits with the special nature of Saudi legal system, but eventually Shura council should be given more powers to exercise their authorities and applying power separations which will lead to more efficiency regarding the state's progress.

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Shura Council Law

Royal Decree No. A/91

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2 Ramadan 1412 / 5 March 1992

Article One:

In compliance with Almighty God's words:

"It is part of the mercy of God that thou dost deal gently with them. Wert thou severe or harsh-hearted, they would have broken away from about thee: so pass over (their faults) and ask for (God's) forgiveness for them; and consult them in affairs (of moment). Then, when thou hast taken a decision, put thy trust in God. For God loves those who put their trust (in Him.)" (III, 159) and His other words, "Those who respond to their Lord, and establish regular prayer, who (conduct) their affairs by mutual consultation; who spend out of what we bestow on them for sustenance." (XL, 38)

And following His Messenger Peace Be Upon Him (PBUH) in consulting his Companions and urging the (Muslim) Nation to engage in consultation. The shura council shall be established to exercise the tasks entrusted to it, according to this Law and the Basic Law of Governance while adhering to Quran and the Path (Sunnah) of his Messenger (PBUH), maintaining brotherly ties and cooperating unto righteousness and piety.

Article Two:

The shura council shall hold fast to the bond of Allah and adhere to the sources of Islamic legislation. All members of the shura council shall strive to serve the public interest, and preserve the unity of the community, the entity of the State and nation interests.

Article Three:

The shura council shall consist of a Speaker and One hundred and fifty members chosen by the King from amongst scholars, those of knowledge, expertise and specialists, provided that women representation shall not be less than (20%) of members number. Their rights, duties and affairs shall be determined by a Royal Order.

Article Four:

It is stipulated that the member of The shura council shall be as follows:

- a. A Saudi national by descent and upbringing.
- b. A person well known for uprightness and competence.
- c. A person not less than 30 years of age.

Article Five:

A member may submit a request to resign his membership to the Speaker, who in turn shall bring it before the King.

Article Six:

Accountability of a member shall be done on failing to perform duties, and shall be trailed according to rules and procedures to be issued by royal decree.

Article Seven:

On vacancy of a member position, the King shall choose a substitution and a royal decree shall be issued to this effect.

Article Eight:

No member may exploit his membership for his own interest.

Article Nine:

The membership shall not be combined with any governmental post, or with the management of any organization, unless the King deems it necessary.

Article Ten:

Speaker, Vice-Speaker, Assistant Speaker and Secretary General shall be appointed and released by royal decree. Their ranks, rights, duties, and all their affairs shall be defined by royal decree.

Article Eleven:

Prior to assumption of their duties, Speaker, members and Secretary General shall take the following Oath before the King:

“I swear to Allah Almighty to be loyal to my religion, then to my King and Country, and not to reveal any of the State’s secrets, to preserve its interests and laws, and to perform my duties with sincerity, integrity, loyalty and fairness.”

Article Twelve:

Riyadh City shall be the seat of the The shura council. The shura council may convene in other locations within the Kingdom if the King deems it appropriate.

Article Thirteen:

The shura council term shall be four Hijri years, effective from the specified date in the Royal Decree issued for its formation. A new Majlis shall be formed at least two months prior to the end of the current Majlis. In case term of the current Majlis ends before a new formation; current Majlis shall remain active until the new formation is accomplished. Numbers of the newly selected members shall not be less than half of the current Majlis.

Article Fourteen:

The King, or whoever may deputize, shall deliver an annual royal speech at The shura council on State's domestic and foreign policy.

Article Fifteen:

The shura council shall express its opinion on State's general policies referred by Prime Minister. The shura council shall specifically have the right to exercise the following:

- a. Discuss the general plan for economic and social development and give view.
- b. Revising laws and regulations, international treaties and agreements, concessions, and provide whatever suggestions it deems appropriate.
- c. Analysing laws.
- d. Discuss government agencies annual reports and attaching new proposals when it deems appropriate.

Article Sixteen:

A meeting of The shura council shall not be valid without a quorum of at least two-thirds of members, including Speaker or whoever may deputizes. Resolutions shall not be considered valid without members' majority approval.

Article Seventeen:

The shura council’s resolutions shall be submitted to the king who decides what resolutions to be referred to Cabinet. - If views of both The shura council and the Cabinet agree, the resolutions are issued after the king

approval. - If views of both councils vary the issue shall be returned back to The shura council to decide whatever it deems appropriate, and send the new resolution to the king who takes the final decisions.

Article Eighteen:

Laws, international treaties and agreements, and concessions shall be issued and amended by royal decrees after being reviewed by the The shura council.

Article Nineteen:

The shura council shall form the necessary specialized committees amongst its members to exercise power within its jurisdiction. Further, it may form ad hoc committees to review any item on its agenda.

Article Twenty:

The shura council's committees may seek non-Majlis members assistance of whomever fit upon Speaker's approval.

Article Twenty-One:

The shura council shall have Steering Committee composed of Speaker, Vice Speaker, and heads of specialized committees.

Article Twenty-Two:

Speaker shall submit to Prime Minister requesting accountability of ministers. A minister shall have the right to participate in the deliberation but not the right to vote.

Article Twenty-Three:

The shura council shall have the jurisdiction to propose a draft of a new law or an amendment of an enacted law and study them within the shura council. Speaker shall submit the shura council' resolution of the new or amended law to the king.

Article Twenty-Four:

Speaker of the shura council shall submit a request to the Prime Minister in providing the shura council with documents and data in possession of government agencies, which the shura council deems necessary to facilitate its work.

Article Twenty-Five:

Speaker shall submit an annual report to the King regarding Majlis' work in accordance with its regulations.

Article Twenty-Six:

Civil service laws shall be applying to The shura council employees unless the regulations provide otherwise.

Article Twenty-Seven:

The King shall allocate The shura council special budget. The budget shall be spend in accordance with rules issued by royal decree.

Article Twenty-Eight:

The shura council's financial matters, auditing and closing accounts shall be regulated by special rules issued by royal decree.

Article Twenty-Nine:

The shura council regulations shall define the functions of its Speaker, the Vice Speaker, the General Secretary, the Assistant Speaker, its bodies, the methods of conducting its meetings, the management of its work, and the work of its committees and the voting procedure. The regulations shall also specify rules of debate, principles of responding and other matters conducive to order and discipline within the shura council, so that it may exercise its jurisdiction for the welfare of the Kingdom and the prosperity of its people. These regulations shall be issued by Royal Order.

Article Thirty:

Amendment of this Law can only be made in the same manner of the promulgation.