

RELIGIOUS COURTS IN MUSLIM COUNTRIES: THE GRIP OF THE WESTERN LEGAL SYSTEM ON THE TRANSFORMATION OF THE KUWAITI JUDICIARY

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Abstract

This research aims to examine the existing justice system in one of the Muslim countries in the world, namely Kuwait, which has undergone transformation due to the influence of the western legal system. This research is library research, namely research carried out by examining various related research and literature. The data source in this research is secondary data. The results of this research are that the grip of the Western legal system has changed the structure of the legal system in Kuwait. This can be seen in the legal system in Kuwait which has undergone a transformation, initially only influenced by Islam but currently also influenced by foreign legal systems, such as France, England and Egypt. This is due to the background of the Kuwaiti state which was once under the supervision of a foreign country such as England. The legal system in Kuwait has currently undergone a transformation, in the form of a combination of British common law, French civil law, Egyptian civil law and Islamic law (Shariah) by implementing the Sharia Law for its civil law. This causes the courts in Kuwait to be divided into three levels: the Court of First Instance, the Court of Appeal and the Court of Cassation. Within each of the three levels of courts, special boards or tribunals are created to adjudicate civil, criminal, commercial or financial, administrative, and personal status matters, and the courts may establish additional special councils or tribunals as necessary.

Keywords: *Islamic Law, Kuwait, Courts, Legal System*

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INTRODUCTION

It is no secret that the legal systems in Muslim countries have been adopted and transformed due to the interference of Western legal systems. They plundered the land of Muslim countries and then penetrated the local government and judicial system into their system. The Muslim country of Kuwait is no exception. This country, which is known for its strategic location and rich oil resources, has also become an easy target for foreign countries to control all the wealth of the Kuwaiti state. These countries are Britain, Turkey, France and Egypt.

These countries created a transformation of the legal system for the people of Kuwait, so that the lives of Kuwaiti people who were previously governed entirely by sharia then turned into a mixture of British French and Egyptian law. This also changed the order of life of the Kuwaiti people who were originally strong against religious sharia slowly began to loosen the Islamic religious sharia. Various struggles occurred in the application of law in Kuwait, the effects of which are felt to this day. Among them is the form of Kuwaiti state judiciary which is not fully based on sharia. The purpose of this research is to examine the judicial system in one of the Muslim countries in the world, namely Kuwait, which has undergone a transformation due to the influence of the western legal system and the benefits of this research are to be a comparison of knowledge in the field of justice, especially in Muslim countries.

METHOD

This research uses the library research method by reviewing various related research and literacy through various books, national and international journals and websites that are guaranteed validity.

RESULTS AND DISCUSSION

A. Kuwait Country Profile and History

Kuwait means a collection of small houses and tents where people live temporarily for a few months during the rainy season, and it can also mean not settled. The country is located in the northwest of the Persian Gulf, bordered by Iraq to the west and north, the Persian Gulf to the east and Saudi Arabia to the south. Kuwait has many islands, its coast is about 300 miles long, and Kuwait Bay is one of the best natural harbours in the Arabian Gulf region¹. The country has an area of 17,818 km² with a population of 4,805,000, the majority of whom are Muslims. Islam is the official state religion of Kuwait², as stated in the Kuwaiti constitution of 1962 which was amended in 1992 article 2 which reads: "the religion of the state Islamic Law shall be a main source of legislation"³:

Although Kuwait is a country with a small area, it is rich in oil. In the bowels of the Ahmadi region (the name of a city near Iraq), there are 9 million metric tonnes of oil with a production of 985 thousand barrels per day. OPEC data for 2018 shows that Kuwait is very rich in oil and natural gas reserves. Known oil reserves amount to 96.8 billion barrels, which is 10% of the world's oil reserves and number 6 in the world. Natural gas reserves amount to 1,498 trillion cubic metres. Kuwait has clean water sources in A-Rawdatayn and Al-Shigaya, but they are not sufficient for the national clean water needs. Clean water is obtained through seawater distillation." Kuwait also

¹ Michael S. Casey, *The History of Kuwait (Greenwood Histories of the Modern Nations)* (United Kingdom: Greenwood Press, 2007).

² Lathifah Munawaroh, "Kesehatan Tes Sebagai Syarat Pra Nikah (Studi UU Pernikahan Di Kuwait)," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 10, no. 1 (June 24, 2019), <https://doi.org/10.21043/yudisia.v10i1.4684>.

³ Salman Al-Farizi, "Ketentuan Mahar Di Negara Muslim (Studi Komperatif Hukum Keluarga Di Maroko Dan Kuwait)," *Institutional Repository UIN Syarif Hidayatullah Jakarta* (2021), <https://doi.org/https://repository.uinjkt.ac.id/dspace/handle/123456789/55687>.

has 864 m³ of natural gas and little nitrogen and sulphur. In addition, the country has fishery products ⁴.

Kuwait's demographic condition is influenced by Islam. Islam came to this country since the time of Caliph Umar bin Khattab (15-30 A.H.) The Islam that developed in this country followed the Sunni school of Maliki and Hanbali as well as the Shi'a minority⁵. Sunnis are about 80% of the Muslim population, while Shias account for about 20%. Other religions practised in the country of Kuwait are Christianity and Hinduism⁶. The population of Kuwait totalled 733,096 based on 1970 records. The official language is Arabic⁷.

Usage Arabic as the official language of Kuwait is due to the fact that the tribes in Kuwait originated from the Unaizah clan who came individually from the Arabian Peninsula, namely Badanah, Jawah and al-Jawf. The Shabbah (the current ruling) tribe is a tribe of three descendants of Khafilah, Zayyad and Jalahamah. Each of these descendants appointed an emir who was obeyed by all, Shabbah I, the foundation of the Shabbah family. This family ruled from 1756-1772. After previously in 1752 Sultan Sabah ibn Jarir of Bani Utub ruled Kuwait for the first time⁸. After that, all the tribes were under the authorisation of the Ottoman government"⁹.

History records that the reason why the British were able to convert Kuwait's legal system into a Western legal system was because the Kuwaiti leader at the time was afraid of his country being controlled by Turkey, so he collaborated with the British. It all started when there was a war between Iran and Turkey in 1776, Iran controlled Basrah and Kuwait was under its control. Britain and the East India alliance had changed their land trade route from Basrah to Kuwait. They knew the route through Turkish control of Kuwait because Kuwait had become a major trading centre. All this was done to protect the security of the Mediterranean and Indian trade through the Arabian Gulf. From then on, Abdullah Ibnu Shabbah received the title of guardian of Basrah on behalf of

⁴ Haling Nasiki, "Dinamika Hukum Keluarga Islam Di Kuwait Dalam Bidang Perwakafan Dan Waṣiyyat Al-Wājibah," *Al-Mizan* 15, no. 2 (December 1, 2019): 224–43, <https://doi.org/10.30603/am.v15i2.1316>.

⁵ Nasiki.

⁶ Ahmed al Jaber Street Sharq, "Joint Report on Article 16, Muslim Family Law and Muslim Women's Right In Kuwait," *Musawah For Equality In The Family*, 2017, <https://doi.org/http://abolish153.org/community/RAMA/uploads/2015/10/Abolish153-Joint-Report-for-68-CEDAW-Session.pdf>.

⁷ Ajjid Tohir, *Perkembangan Peradaban Di Kawasan Dunia Islam*, 1st ed. (Jakarta: PT.RajaGrafindo Persada, 2009).

⁸ Mufrodi Ali, *Islam Di Kawasan Kebudayaan Arab*, 1st ed. (Jakarta: Logos Wacana Ilmu, 1997).

⁹ Tohir, *Perkembangan Peradaban Di Kawasan Dunia Islam*.

the Turkish government. In 1871, this position was succeeded by Shaykh Mubarak Al-Shabbah (1896-1915) and his successors changed the system of government from Masyaikhah to Imarah. Fearing Turkish occupation, he co-operated with the British and by 1899 Kuwait was under British control. Everything outside the agreement was not allowed to be determined except on the recommendation of the British, especially those related to foreign affairs"¹⁰.

Technically, Kuwait was not colonised by Great Britain. Instead, the two countries made the Anglo Kuwaiti Treaty. Kuwait was under British jurisdiction from 1925 and until the country became independent in 1961. The Anglo Kuwaiti Treaty provided that Britain would provide protection but would not interfere in Kuwait's internal affairs. The United Kingdom has entered into such agreements with several other countries, including, for example, Bahrain. The treaties affect the external politics of the Gulf states, but they are intended to have no consequences for their internal affairs¹¹.

The British continued to try to capture Kuwait's legal system and transform it into a western legal and administrative system. In 1904, the British government elected its political representative in Kuwait. Therefore, there were negotiations between Britain and Turkey to recognise the Kuwaiti government in 1906. Shaykh Salim, who succeeded Shaykh Mubarak in World War I, supported Turkey. Therefore, the British limited Kuwait's power"¹². Historically, Kuwait was a British territory in 1914. During this period of British rule, Kuwait had to accept Western legal and administrative systems, such as British-Indian Law, including the Indian Penal Law 1980, which was applied to non-Arab residents in the country of Kuwait and for residents who were Muslims, Islamic law was still applied, especially in the field of family law"¹³. Between 1925 and 1961, the country had two separate and very different Jurisdictions, the latter applying to most Kuwaiti citizens while the former applied to other groups, mostly British, Americans, Greeks, and a few others¹⁴. Kuwait became independent on 19 June 1961 and in 1962 Kuwait issued a constitution called the Kuwaiti constitution which is based on Islamic sharia¹⁵.

¹⁰ Tohir.

¹¹ Abdulrahman F S H Alhajri, "Separation of Powers in the Kuwaiti Criminal Justice System: A Case Study," *European Journal of Interdisciplinary Studies* 4 (July 24, 2018): 59, <https://doi.org/10.26417/ejis.v4i2a.p59-79>.

¹² Tohir, *Perkembangan Peradaban Di Kawasan Dunia Islam*.

¹³ Al-Farizi, "Ketentuan Mahar Di Negara Muslim (Studi Komperatif Hukum Keluarga Di Maroko Dan Kuwait)."

¹⁴ Alhajri, "Separation of Powers in the Kuwaiti Criminal Justice System: A Case Study."

¹⁵ *Ibid.*

In 1963, after independence, Kuwait officially became a member of the United Nations. The joining of Kuwait as a member of the UN took a very long process. Starting from the alliance of Arab countries asking Kuwait to join as a member so that the sovereignty of the Kuwaiti state is protected. Finally, in 1962 Kuwait joined after the members of the assembly of representatives as the makers of the UUDS were determined as many as 20 people. After joining the UN, the government structure continued to be completed with the formation of several ministers and consultative assemblies¹⁶. Kuwait also created the Kuwait National Committee and succeeded in drafting a number of laws and updating some of the previous laws. Among the new laws is the law of compulsory probate or *Qanun Wasiyyah al-Wajibah* in 1971¹⁷.

B. Legal System in Kuwait

When Kuwait became a British territory, it had to accept Western legal and administrative systems, so with some changes, British-Indian Law, including the Indian Penal Law 1980 was applied to non-Arab residents in this country, while for the Muslim population Islamic law was still applied, especially in the field of family law¹⁸. The Kuwaiti government system uses a constitutional monarchy with a king named Sheikh Sabah al-Ahmad al-Jaber al-Sabah and a prime minister named Sheikh Sabah al-Khaled al-Sabah¹⁹.

Kuwait's parliament is called the National Assembly (*Majlis a-Ummah*). The National Assembly consists of 75 members, of which 50 are elected by secret ballot and 25 are appointed by the Amir. The term of office of the National Assembly is 4 years. The last National Assembly election was on 26 November 2016. The duties of the Parliament are to make laws and oversee the government cabinet. Parliament has the right to ask questions and interpellations as well as submitting motions of no confidence against Ministers²⁰.

In the development of Islamic law legislation, Kuwait is famous for its reforms in the field of waqf and legislation. In the field of waqf, the many practices of waqf in Kuwait can be understood from looking at the reality that the country of Kuwait is rich in natural resources, the

¹⁶ Tohir, *Perkembangan Peradaban Di Kawasan Dunia Islam*.

¹⁷ Al-Farizi, "Ketentuan Mahar Di Negara Muslim (Studi Komperatif Hukum Keluarga Di Maroko Dan Kuwait)."

¹⁸ Nasiki, "Dinamika Hukum Keluarga Islam Di Kuwait Dalam Bidang Perwakafan Dan Waṣiyyat Al-Wājibah."

¹⁹ Al-Farizi, "Ketentuan Mahar Di Negara Muslim (Studi Komperatif Hukum Keluarga Di Maroko Dan Kuwait)."

²⁰ Nasiki, "Dinamika Hukum Keluarga Islam Di Kuwait Dalam Bidang Perwakafan Dan Waṣiyyat Al-Wājibah."

lives of its people are prosperous, so that endowing some of their assets becomes a culture for the people of Kuwait. Therefore, with the many practices of this waqf, the government as the supreme power holder makes a rule of law, so that the assets that have been waqf can be inventoried for the benefit of many people. Similarly, the rules of wasiyyat wajibah are regulated so that later the heir does not leave his children (heirs) in a stranded state due to excessive granting of wasiyyat to someone²¹.

Legislation began during the reign of Amir Shaykh Abdullah Salim Al-Sabah²². The Kuwaiti Constitution states "The family is the basis for the formation of a society built on religious morals and patriotism" therefore the laws regarding family relationships and property rights must be regulated according to Islamic law. In general, Islamic family law in Kuwait does not differ from what is regulated by Classical Fiqh²³. However, just like other Muslim countries, family law in Kuwait has also undergone reforms. Legal reforms Islamic family law in Kuwait only came into being in 1982 under the name of Code of Personal Status or Qanun Ahwal al-Syakhsiyyah, after 3 years of the Kuwaiti head of state declaring that the Kuwaiti legal system would gradually be adapted to Shari'a in 1978. The basis of family law in Kuwait is Islamic Law, Egyptian and Moroccan Law. This Islamic family law in Kuwait continues to be updated and the last one occurred in 2011²⁴.

The Kuwait Personal Status Act (KPSA) No.51 of 1984 (Kuwait Personal Status Act/Family Law Act) is the main codified law governing matters relating to marriage and family relations in the majority Sunni Muslim population of Kuwait²⁵. The KPSA is based on an amalgamation of rules drawn primarily from the four schools of Sunni jurisprudence. Where the KPSA does not address a specific personal status issue, a judge must adjudicate a case in accordance with the general rules and principles of the Maliki school of jurisprudence. Article 346 of the KPSA stipulates that the law applies to those who follow the Maliki school of jurisprudence

²¹ *Ibid.*

²² Mohammad Fairuzzabady, "Hukum Islam Di Dunia Islam Modern," *Mizani: Wacana Hukum Ekonomi Dan Keagamaan* 1, no. 2 (2014), <https://doi.org/http://dx.doi.org/10.29300/mzn.v1i2.58>.

²³ Muhammad Imaduddin, "Sistem Hukum Keluarga Islam Di Kuwait Dan Perbandingan Antara UU. No. 51 Tahun 1984 Code Of Personal Law Kuwait Dengan KHI Kompilasi Hukum Islam Indonesia," Wordpress.com, 2015, <https://doi.org/https://imaduddinkompas.wordpress.com/sistem-hukum-keluarga-islam-di-kuwait-dan-perbandingan-antara-uu-no-51-tahun-1984-code-of-personal-law-kuwait-dengan-khi-kompilasi-hukum-islam-indonesia/>.

²⁴ Al-Farizi, "Ketentuan Mahar Di Negara Muslim (Studi Komperatif Hukum Keluarga Di Maroko Dan Kuwait)."

²⁵ Sharq, "Joint Report on Article 16, Muslim Family Law and Muslim Women's Right In Kuwait."

as the school representing the majority of Kuwait's Sunni population, while adherents of other schools must be governed by "their own rules"²⁶.

Kuwait applies a family court system that administers the KPSA primarily for Sunnis and applies different fiqh (Islamic jurisprudence) rules for the Shia minority. Non-Muslims apply their own customary or religious law in the Courts. In 2015, Kuwait enacted a law establishing the Family Court as an autonomous judicial entity in each governorate that handles matters relating to personal status including marriage, divorce, maintenance, custody, and inheritance matters²⁷.

While the legal system in Kuwait is a mixture of two legal systems, namely the Islamic legal system to regulate personal provisions, such as marriage, divorce and inheritance, and the other legal system is the Egyptian legal system or the French legal system to regulate the legal system other provisions²⁸. However, the influence of the Islamic legal system is not limited to personal provisions, but also affects banking, investment, insurance and other financial services such as some tax laws²⁹.

The development of legal reform in Kuwait was halted in 1976 when there were tensions in Parliament that wanted the head of state (amir) to resign). Finally, around February 1978, the head of state made a declaration that Kuwait's legal system would gradually be brought into line with sharia. As a result, three years later a number of new laws were finalised, including the Code on Personal Law (Qanun Ahwal al-Syakhsiyyah)³⁰. The Kuwaiti Code of Personal Law was important in enabling judges to unify the law in many provinces of Kuwait, just as it was important for KHI to unify several schools of fiqh, both classical and modern, in Indonesia³¹. This law is based on doctrines selected from Islamic legal principles and similar legal provisions from Egypt and Morocco. Furthermore, during this period, the Encyclopaedia of Islamic Law was also prepared, which is expected to be a monumental work in the Islamic world³².

²⁶ Sharq.*loc.cit.*

²⁷ Sharq. *loc.cit.*

²⁸ Al-Farizi, "Ketentuan Mahar Di Negara Muslim (Studi Komperatif Hukum Keluarga Di Maroko Dan Kuwait)."

²⁹ Al-Farizi.

³⁰ Nasiki, "Dinamika Hukum Keluarga Islam Di Kuwait Dalam Bidang Perwakafan Dan Waṣiyyat Al-Wājibah."

³¹ Imaduddin, "Sistem Hukum Keluarga Islam Di Kuwait Dan Perbandingan Antara UU. No. 51 Tahun 1984 Code Of Personal Law Kuwait Dengan KHI Kompilasi Hukum Islam Indonesia."

³² Nasiki, "Dinamika Hukum Keluarga Islam Di Kuwait Dalam Bidang Perwakafan Dan Waṣiyyat Al-Wājibah."

In 1980, the Civil Code was also enacted. The Islamic law that they follow has become a living law in their daily lives, especially since Islamic law has become the official religion of Kuwait. It can also be understood that these two issues can be seen by looking at the mazhabs adopted by the population, namely the Maliki, Hanbali and Shia minorities. As for the issues of waqf and wasiyyat wajibah because they relate to wealth, the government intervenes in these matters³³.

C. Religious Courts in Kuwait

The development of law in Kuwait experienced significant development (legal products in 1951-1961). During the reign of Amir Shaykh Abdullah al Salim al-Sabah many new laws were drafted, including:

1) Sharia Law on waqf 1951 which makes family waqf prohibited in certain specified circumstances.

2) Civil and Commercial Procedure Code 1960

3) Civil Code 1961

4) Commercial Code 1961

5) Criminal Procedure Code 1961

6) Law on Damage 1961.

The laws that came into being in 1960 were the result of the assistance of the famous Arab jurist, 'Abd al-Razag al-Sanhuri, who began working in Kuwait in 1959. Furthermore, in 1959, the Amir of Kuwait was given the facility to codify the law, so for two years many laws were compiled based on Aglo-Egyptian and French Legal materials. Kuwait's protectorate status over Britain ended with its independence on 19 June 1961, and in 1962 the country's Constitution (UUr) was promulgated, making sharia (Islam) the basis of law in the country. It declared Islam as the state religion and Sharia as the main source of law in the country. In 1963, the Kuwaiti National Committee, based on the provisions of this Constitution, succeeded in drafting a number of new laws and amending some of the laws that were in force in the country before independence. Moreover, since 1965, the Government (Amir) gave experts the opportunity to make changes to

³³ *Ibid.*

the law in a wider range of fields, including succession. In addition, Kuwait also has the Inheritance Law Reform 1971 and Further Legislation³⁴.

Kuwait has promulgated many unique laws that reflect important Islamic Law principles, which do not exist in other Arab countries, such as the Zakat house law, Zakat law, institutionalising the management of waqf property (waqf), Islamic tax law, and Islamic banking and finance law. It also enacted laws that benefited directly from the US, UK, France, and some Arab countries in civil, commercial, criminal, and insurance laws³⁵.

There are no sharia courts in Kuwait. The Judiciary Law of 1990 regulates the court system and jurisdiction of the different courts and includes issues of appointment of judges, responsibilities, standing and dismissal of judges. There are three levels of courts in Kuwait:

1. Court of First Instance (a small court to handle small disputes, and a large court).
2. Court of Appeal
3. A Court of Cassation other than the Constitutional Court which has exclusive jurisdiction over constitutional and electoral disputes.

Within each of the three levels of courts, specialised boards or tribunals are created to hear civil, criminal, commercial/financial, administrative, and personal status matters, and the courts may establish additional specialised boards or tribunals as needed³⁶.

The High Judicial Council and the Minister of Justice share responsibility for appointing judges to all levels of courts in Kuwait. The High Judicial Council and the Minister of Justice share responsibility for appointing judges at all levels of courts in Kuwait. Article 20 of the Kuwaiti Judiciary Law (amended in 1996), gives the Minister of Justice primary responsibility for nominating new judges. New judges are generally nominated from among the public prosecutors. The Superior Judicial Council must then approve these nominations before official appointment decisions are issued by Emiri (head of state) Decree. Promotion of judges to senior judicial positions, such as the positions of President and Vice President of the Court of Cassation and President of the High Court of Appeal and Court of First Instance, is also issued by Emiri Decree

³⁴ *Ibid.*

³⁵ Mohammed A.A. Al-Moqatei, "Three Key Characteristics in Kuwait Legal System," *IALS Conference*, n.d., <https://doi.org/http://www.ialsnet.org/meetings/enriching/moqatei.pdf>.

³⁶ Salma Waheedi, "Islamic Sharia in the Legal Orders of Saudi Arabia and Kuwait," in *Constitutional Review in the Middle East and North Africa* (Nomos Verlagsgesellschaft mbH & Co. KG, 2021), 307–28, <https://doi.org/10.5771/9783748912019-307>.

based on a proposal from the Minister of Justice and approval from the High Judicial Council. The Judiciary Law requires that a judge be a Muslim in good standing who is a graduate of the Faculty of Law or the Faculty of Sharia, or equivalent, may serve as a public prosecutor and judge³⁷.

Family judicial councils in Kuwait, having jurisdiction over all personal status matters, from the first instance level to the highest appellate level, operate as units or councils within each respective court level. In 2015, Kuwait enacted a law establishing family court councils in each governorate, responsible for the application of the Personal Status Law and the resolution of all disputes relating to family matters. Following the promulgation of the Jafari Personal Status Law in 2019, separate Jafari and Sunni family court chambers were created, each to apply its own laws. Non-Muslims can request that the court apply the customary or religious laws of their own community. As in all other courts in Kuwait, family court judges are not required to be experts in Islamic law but may seek advice from jurists or scholars trained in relevant Islamic fiqh schools³⁸.

There are two separate legal systems in Kuwait. The first system is based on Sharia, or Islamic law derived from the Qur'an. Sharia courts handle family and personal matters, and hu' is rarely codified. In the second civil law system, the Tin, First Court handles civil and commercial matters, as well as some criminal cases. In general, judgements of these Courts are appealable, however there are some cases where the Court's judgement is final, or can only be appealed before an appellate body consisting of judges of the Court. Most appeals from the Court of First Instance are conducted in the Court of Appeal. The High Court of Appeal consists of the Division for Discontinuance and the High Appellate Division. The Constitutional Court was established by the Constitution to interpret the Constitution and deal with challenges to the Constitution. The State Security Court was established in 1969 to deal with crimes that are dangerous to the internal or external structure of the state. The judgement of this court is final and inviolable³⁹.

Until recently, the judiciary in Kuwait was exclusively dominated by male judges. In a historic turn of events on 5 July 2020, the High Judicial Council approved the Attorney General's move to appoint eight female prosecutors to the position of judge. The eight new judges were among 22 Kuwaiti women appointed as prosecutors in 2014. These appointments came after a legal battle waged by Dalal Al- Hamdan, a Kuwaiti woman applicant for the position of public

³⁷ Waheedi.

³⁸ *Ibid*

³⁹ *Ibid*

prosecutor against the Ministry of Justice, which rejected her application on the grounds that the position of judge was reserved for men only. The applicant, who had fulfilled all the requirements for the position, took her case to the High Administrative Court, arguing that the action taken by the Ministry was not justified by law as the Judiciary Law does not exclude women from engaging in public prosecution or judiciary. This amounted to gender-based discrimination in violation of the Kuwaiti Constitution. The High Court granted the appellant's request, after discussing in detail the constitutional basis of the ruling including the content of Article 2 which limits the application of sharia as one among many sources of law and the recognition of the diverse views of shari'a scholars with respect to the permissibility of appointing women to the judiciary = Islamic parliamentarians and conservatives in Kuwait continue to express strong opposition to the appointment of women to the judiciary on the grounds that it is "contrary to the nature of women," and "opposition to the appointment of women to the judiciary to sharia"⁴⁰.

Kuwait's 1962 Constitution includes several provisions guaranteeing equality of citizens and non-discrimination on the basis of religion. Article 8 of the Constitution stipulates that the state guarantees security, tranquillity and equal opportunities for all citizens, and Article 29 (1) on Religion, Dignity and Liberty establishes the right to non-discrimination on the grounds of religion. That all people are equal in human dignity and in public rights and duties before the law, regardless of their religion. Freedom of belief and religion is further emphasised in Article 35, which states that freedom of belief is not restricted and that the state shall protect the freedom to perform religious rites prescribed by custom, provided that they do not conflict with morals or disturb public order⁴¹.

Two possible reasons for the restrictions on freedom of religion here: first, the Explanatory Memorandum to the Constitution states that "religion" in the freedom of religion clause refers to the Abrahamic religions, although it makes clear that nothing in the Constitution demands restrictions on the practice of other religions but rather leaves the matter to the discretion of lawmakers. Secondly, conditioning religious practice so as to "not disturb public order or decency" provides an excuse for lawmakers to enact laws restricting freedom of religious practice and

⁴⁰ Waheedi, "Islamic Sharia in the Legal Orders of Saudi Arabia and Kuwait."

⁴¹ Waheedi.

worship using this very broad and undefined excuse. Finally, the 1959 Nationality Law prohibits the naturalisation of non-Muslims, although there are Kuwaiti citizens who were born Christian"⁴².

The 1960 Penal Code includes provisions that can be used to target the free expression of religious beliefs, including prohibitions on insulting any religion and expressing opinions that may offend, disrespect or disparage religion, its teachings, or rituals. The law does not prohibit proselytising, but proselytising by non-Muslims can be prosecuted under the Penal Code provisions prohibiting defamation of religion. In practice, religious freedom in Kuwait is broadly guaranteed for both Sunni and Shia Muslims, who practice their faith freely, although there have been cases where preachers have been sanctioned for engaging in political speech or sermons deemed unlawful. Penal Code prohibition on offensive speech. In recent years, a number of activists and journalists have also been convicted and sentenced for blasphemy and offensive speech"⁴³.

The Christians in Kuwait are allowed to practice freely, within general limits to avoid public nuisance or offending Islam, and there are recognised Christian churches in Kuwait. Apart from Bahrain, Kuwait is the only other Gulf Arab monarchy with a Christian population, estimated at 260. According to the US State Department's Religious Freedom Report, adherents of non-Abrahamic religions generally report that they can perform their religious rituals in private spaces without government interference, as long as they do not disturb neighbours or violate public assembly rules. There are no Hindu or Sikh temples, although there are large numbers of Hindu and Sikh foreign workers in Kuwait"⁴⁴.

Based on the above description, it can be analysed that the judiciary in Kuwait is not only influenced by Islamic law but also by external legal systems such as France, England and Egypt. This is due to the background of Kuwait which was once under the supervision of foreign countries such as Britain. As a result, the judiciary in Kuwait is not entirely a sharia court. However, for personal status issues or family law issues are submitted to the sharia court which is sourced from the Qur'an.

CONCLUSIONS

⁴² *Ibid*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

The grip of the Western legal system has changed the order of the legal system in Kuwait. This can be seen in the legal system in Kuwait which has been Kuwait's legal system underwent a transformation from being influenced only by Islam to being influenced by external legal systems, such as France, England and Egypt. This is due to the background of the Kuwaiti state which was once under the supervision of outside countries such as Britain. The legal system in Kuwait at this time has undergone a transformation, in the form of a combination of British common law, French civil law, Egyptian civil law and Islamic law (Sharia) by applying the Sharia Law to its civil law. However, there are two separate legal systems in Kuwait. The first system is based on Sharia, or Islamic law derived from the Qur'an. Sharia courts deal with family and personal matters, and the law is rarely codified. In the second civil law system, the Court of First Instance handles civil and commercial matters, as well as some criminal cases. The courts in Kuwait are divided into three levels: 1. Court of First Instance, 2. Court of Appeal, 3. Court of Cassation. Within each of the three levels of courts, specialised boards or tribunals are created to hear civil, criminal, commercial/financial, administrative, and personal status matters, and the courts may create additional specialised boards or tribunals as needed.

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