



## Research Article

# The Theocratic Foundations of Penal Policy in Saudi Arabia: Law, Religion and Punishment in Contemporary Perspective


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Abstract	Manuscript Information
<p>The penal policy of Saudi Arabia is amongst the most unique examples of a theocratic criminal justice system prevailing in the present day. As the system is based on Islamic Sharia, it vests the power of making criminal laws upon God and not the legislature, thereby creating a new perspective for understanding law, morals, and punishment. This paper seeks to critically analyse the Saudi penal policy through doctrinal, comparative, and critical analysis of its theology, laws, jurisprudence and reforms. By interacting with classical Islamic scholars and Western legal scholars as well as analysing the case study of Raif Badawi's prosecution, the paper examines whether Saudi Arabia is moving towards legal rationality or not. The comparison of Saudi laws with the laws of India, especially the Bharatiya Nyaya Sanhita, 2023, along with analysis under international human rights law, will be performed to see if there is anything that can prove that Saudi laws have become less severe, discretionary, and theological.</p>	<ul style="list-style-type: none"> <li>▪ <b>ISSN No:</b> 2583-7397</li> <li>▪ <b>Received:</b> 13-03-2026</li> <li>▪ <b>Accepted:</b> 10-04-2026</li> <li>▪ <b>Published:</b> 15-04-2026</li> <li>▪ <b>IJCRM:5(2); 2026:</b> 631-634</li> <li>▪ <b>©2026, All Rights Reserved</b></li> <li>▪ <b>Plagiarism Checked:</b> Yes</li> <li>▪ <b>Peer Review Process:</b> Yes</li> </ul>
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## INTRODUCTION

The criminal policies of Saudi Arabia can be considered a product of a distinctive legal approach in which religion and law become indivisible. Unlike other contemporary states that base their criminal legislation on constitutional and secular democratic principles, Saudi Arabia's criminal policies rely heavily on religious doctrines, such as the Quran and Sunnah. Crime is viewed not only as a breach of state sovereignty but also as a deviation from God's will. Punishment, therefore, becomes a means of enforcing morals and correcting the spiritual deviancy of a person.

Such a distinctive character of punishment gives rise to new objectives of criminal sanctions. Punishment is no longer regarded merely as a tool for deterrence and retaliation. It becomes a factor that helps to maintain social and religious morality.

### 2. Legal Framework and Court Structure

The legal framework in Saudi Arabia is based on the Basic Law of Governance, enacted in 1992, where it has been proclaimed that Sharia Islamic law is the supreme law of the country. It creates an arrangement where all statutory laws should adhere to the religious principles. According to the Law of the Judiciary enacted in 1975, there exists a hierarchical structure consisting of trial courts, appellate courts and a Supreme Court, which functions under the guidance of the Supreme Judicial Council. However, despite the existence of this official judicial system, no doctrine of precedent applies in practice, since there exist no publications of any judicial decisions. The judges have considerable discretionary power in using *ijtihad*. The absence of an elaborated code of criminal law also contributes to the discretionary power, making the legal system rather unpredictable and non-uniform.

### 3. Jurisprudential Foundations

Saudi criminal policy is based on an approach to natural law that is divine in origin, in which the legitimacy of laws emanates from religion. Although there are similarities between this system and traditional natural law theory, it is distinguished by its limited potential for interpretation and development. Notably Islamic scholars like Al-Mawardi and Ibn Taymiyyah stressed the importance of punishing offenders as a means of ensuring order but also warned against excessive punishment based on principles like doubt and public interest.

By adopting a critical stance toward this legal framework, one can draw some useful lessons from contemporary legal theories about how it functions. For instance, examining how the act of punishment reflects sovereign power in understanding the performative nature of punishments carried out in public. Equally important is the idea of law as an apparatus for maintaining social control.

### 4. Hudud and Qisas: Doctrinal Depth, Juristic Philosophy and Contemporary Relevance

The penology of Saudi Arabia reaches its greatest depth in terms of its philosophical foundations in the doctrines of Hudud and

Qisas, which are not only concepts of criminal law but reflect a philosophy of life based on the sovereignty of God. It is important to understand that the Hudud and Qisas are not only parts of the legal theory and practice in Saudi Arabia but also express epistemological principles regarding the relationship between religion, morality and law.

Hudud crimes, defined as breaches of the rights of God (Haq Allah), presuppose an absolutist understanding of the moral principles established by God and not subject to any amendments by humans. Classical Islamic jurists, such as Al-Mawardi, insisted that it was necessary to establish Hudud to ensure social order and discipline, which could help to preserve moral integrity in society. Nevertheless, the application of Hudud was accompanied by juristic ideas of moderation in dealing with them since, according to Ibn Taymiyyah, it is better to avoid the imposition of penalties when there are some doubts about guilt.

In the interplay between rigidity and practicality, one can see the complexity of the juridical system. Indeed, even though the prescribed penalties for crimes such as stealing or adultery seem harsh, the process of enforcing them is strictly regulated by high standards of evidence. In many cases, Saudi courts opt to apply *Ta'zir* to offences that would otherwise require Hudud, hence sparing themselves from the duty to impose mandatory punishments. In this regard, Hudud is not only a demonstration of divine power but also an implicit threat.

On a theoretical level, the legal system of Saudi Arabia is quite different from utilitarianism espoused by Jeremy Bentham. For example, punishment is not seen as a means of promoting public well-being; instead, it is considered the manifestation of the divine will. Likewise, the separation between law and morality proposed by H. L. A. Hart does not apply to the Islamic legal system, in which laws and ethical norms are deeply intertwined. Punishment as performance is also an interesting aspect that can be studied in light of the work of Michel Foucault, who discusses punishment as a show of sovereign power.

In the case of Qisas, a different paradigm based on the principles of retributive justice is established. It exhibits a moral equivalence in which punishment resembles the offence committed. Contrary to Hudud, however, Qisas features an important aspect of ethical temperance. According to classical Islamic scholars like Al-Ghazali, it is morally more virtuous to exercise forgiveness (*afw*) and compensation (*diya*) than to engage in vengeance.

The integration of retributive, restorative and moral dimensions makes Qisas unique when compared to contemporary penal codes. First, the power of determining the type of legal process granted by the Saudi system to the victim's relatives constitutes a case of privatised justice. Although the involvement of victims increases their sense of responsibility for their cases, it may give rise to inconsistencies in applying the law. In Kant's theory, the punishment must be carried out as a moral obligation rather than a matter of personal judgment.

On another level, the combination of Hudud and Qisas highlights the dialectical nature of divine power and human power within this legal system. As far as Hudud represents the supremacy of divine power, it is the latter that creates room for the human

factor in this system. These two features shape the very essence of Saudi criminal legislation and distinguish it from contemporary legality.

By contrast, other legal systems, such as that of India, have well-defined and codified laws (such as the *Bharatiya Nyaya Sanhita*, 2023). Besides, such frameworks are subject to the limits set by the constitution, making their operation much more predictable than that in Saudi Arabia.

### 5. Case Law and Judicial Practice: Contemporary Illustrations of Penal Policy

Despite the lack of a precedent-based approach to judicial decisions, there have been several landmark cases that shed light on the way the penology of Saudi Arabia functions. Although non-binding in terms of legislation, these decisions can be regarded as illustrative jurisprudence since they indicate judicial patterns of decision-making and penal policy functioning.

One of the cases, which attracted considerable attention due to the controversial nature of the decision, is the case of *Raif Badawi*. In 2014, he was accused of blasphemy and punished by a ten-year jail term and one thousand lashes for his alleged crimes. This is a clear example of Ta'zir punishment used to regulate speech and demonstrate the intersection of penal policy with religion and politics in the Kingdom. It is noteworthy that the international community expressed its disapproval regarding this case.

Another important landmark case refers to the abolishment of flogging as a type of punishment in 2020 after a series of cases of judicial corporal punishments. This is an indicator of the shift from traditional Ta'zir penalties to other forms of punishment, such as incarceration and fines.

*Abdullah al-Huwaiti's case (2019-2021)*, where a minor defendant was sentenced to death in a crime related to robbery, became one of the issues that received international attention. Despite the reversal of the sentence in a later development, it is evident that there are still concerns associated with issues such as due process, proof and the handling of juveniles in the Saudi judicial system.

Cases about Qisas also remain relevant in contemporary practice, as evidenced by the retaliatory injury case (2000 and subsequent judicial references), where a judge permitted the infliction of retaliatory harm on the criminal. Retaliation continues to be implemented literally, even though they do not occur frequently because of the alternatives available, such as diya payments.

Finally, cases of capital punishment for drug trafficking-related offences (2022-2024) emphasise the wide-ranging nature of Ta'zir jurisdiction, as death penalty sentences have been applied to crimes outside the Hudud category, which means that the penalties are applied quite strictly to ensure the desired deterrence effect.

Furthermore, criminal cases related to political dissidence and national security, such as the mass execution in 2022, highlight the deployment of penal policy as a means of state control. Despite being legally justified under specific statutes, there has been considerable criticism regarding the lack of openness and procedure in such criminal cases.

In light of the above, some distinguishing features associated with Saudi penal policy can be highlighted. Firstly, there is a significant amount of judicial discretion when it comes to criminal proceedings in Saudi Arabia. Secondly, the application of religious ideology in the judicial process is still prevalent. Finally, the severity associated with Saudi penal policy is complemented by selective reforms.

### 6. Comparative Analysis with India

Comparing with India will illustrate how far apart a theocratic system is from a constitutional penal system. India follows an established Constitution providing for fundamental rights and judicial review. *Bharatiya Nyaya Sanhita*, 2023, gives a codified criminal law, which is necessary for a clear and consistent application of criminal sanctions. The Indian judicial branch has been quite active in formulating penal policies through decisions based on principles such as due process and proportionality. The limitation of the death penalty and the development of personal freedom show the emphasis on human rights protection.

On the contrary, the existence of a codified penal code does not feature the penalty in Saudi Arabia. Moreover, there is no judicial review as understood in the context of the modern Constitution. In addition, there are very serious punishments and few procedural guarantees.

### 7. International Law and Human Rights Perspective

Under the light of international law, there are many concerns associated with the Saudi penal policy. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, among other similar instruments, condemn torture, inhumane, or degrading treatment. Such measures as flogging and capital punishment are considered to be a violation of these standards.

Even though there have been attempts in recent years to eliminate some of these problems, the presence of harsh penalties still indicates that there is a clash between international standards and domestic customs.

### 8. Recent Developments (2024–2026): Reform, Continuity, and Contradictions in Saudi Penal Policy

Indeed, the trends in the development of Saudi Arabia's penal policy in 2024-2026 are indicative of an intricate interaction between the process of legal reforms pursued by the government and the theocratic conservatism still prevalent in this country. While the efforts towards implementing further institutional transformations in line with Saudi Arabia's Vision 2030 strategy proceed steadily, some important aspects of Saudi Arabia's criminal law reveal serious contradictions inherent in the discourse of reformism and traditional penal practices.

One of the most notable developments is the attempt at creating codified criminal laws by means of passing the Penal Code for Discretionary Sentences (Ta'zir). This step represents a revolutionary change for Saudi Arabia, whose law is traditionally lacking codified criminal legislation. The criticism is directed, however, at the fact that the draft law fails to restrict judges in

exercising discretion and prescribing capital punishment for crimes.

In addition, Saudi Arabia has recently enacted a number of new laws, such as the Law of Evidence and the Civil Transactions Law. Such changes have resulted in enhancing the effectiveness of courts, but do not change the subordinate position of the newly adopted laws, which are always secondary to Sharia law.

One of the most important institutional changes has been related to the digitalisation of the judicial system through the implementation of e-litigation systems and the unification of translation services for the better functioning of courts. Such developments improve access and efficiency of the judicial system, especially for international plaintiffs and represent an effort towards modernising the administration of justice.

Nevertheless, in addition to positive changes in the procedures, it is essential to mention that recent information about executions increased dramatically over the last few years, showing unprecedented numbers in 2024 and 2025 when more than a hundred prisoners were executed in the country, including non-violent crimes like drug smuggling. It means that in spite of the modernisation of procedures, the substance of the penal policies has not changed.

Moreover, several human rights organisations mentioned violations of due process laws and illegal detentions. Thus, the penal law continues to be used by the state to exercise its power. The examples of such practice include cases of activists' and human rights defenders' detention and restriction of their fundamental rights.

The most illustrative case is that of *Manahel al-Otaibi (2024)*, where the women's rights advocate was imprisoned for eleven years under closed proceedings in connection with personal expression and internet activities. This case demonstrates the growth of penal regulation into the sphere of personal autonomy and represents one more example of the persistent struggle for reform and control.

Among other examples are stricter penalties in regulatory issues like labour law and environmental protection. For example, fines and imprisonment are provided for violation of such laws, demonstrating the tendency towards regulatory penalisation characteristic of modern states.

From the socio-economic perspective, reforms like Saudization (nationalising the workforce) and foreign citizens' ownership of property since 2026 are worth mentioning. Although these innovations are not related to criminal law, they create conditions for labour regulations and economic crimes.

## CONCLUSION

The Saudi Arabian penal system is an extremely sophisticated form of theocratic policy wherein religion and law merge to produce punishment. Though some reform may suggest a certain amount of flexibility in responding to modern-day challenges, it remains a system that emphasises the divine imperative rather than modern law.

In contrast to other constitutions like that of India, the penal policy of Saudi Arabia does not appear to be focused on

individual rights. Its future development hinges on its capacity to combine religion with international standards of law.

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