

Saudi Arabia

The following is an extract from the anonymous brochure entitled "Marriage to Saudis," which was published and distributed by the consular bureau of the U.S. Department of State, from the mid-1990s - and later withdrawn under pressure:

If the Marriage to a Saudi Fails

In the worst scenario, an American wife can find herself summarily divorced, deported, and deprived of any right of visitation with her dual-national children. Sharia law decidedly favors men in the dissolution of marriage. And the laws of Saudi Arabia require that all individuals be sponsored by a Saudi citizen in order to receive a visa, resident or otherwise. Therefore, once a marriage breaks up, the ex-wife must leave the Kingdom and may only return with the explicit permission and sponsorship of her ex-husband. (In cases where the Saudi husband attempts to prevent his spouse from leaving, the Embassy can call upon Saudi authorities to facilitate the American wife's departure. The Embassy cannot force a Saudi husband to relinquish the children.)

In one instance, an American who had undergone a bitter divorce and child custody battle with her Saudi husband, applied for and received a visa to work with a company located in the Kingdom. Once the Saudi husband and the Saudi authorities discovered her presence, she was thrown into jail and ultimately forced to leave her position and the country.

What custody rights do women have under Sharia law? Theoretically, a mother should maintain custody of the children until the ages of 7-9, when their primary care would be transferred to their father. However, the ultimate objective of a Sharia court in the settlement of custody issues is that the child be raised a good Muslim. Whether a convert or not to Islam, an American woman will not overcome the prejudice against her upbringing and society. The Embassy has no knowledge of an American or any western woman ever winning custody of dual-national children in a Sharia court.

Can an American mother flee the Kingdom with her dual national children? It is impossible to legally leave the Kingdom without the express permission of the Saudi husband. A woman who wishes to leave her husband but is pregnant at the time, can be required to wait until after the birth of the child. The same would hold true if the Saudi husband passed away: custody of the children and any unborn child would remain with the closest living Saudi male relative.

Can an American woman be denied visitation rights with her children? A Saudi husband must give explicit permission for a divorced wife to visit her children in the Kingdom. The Embassy has worked with the Ministry of Foreign Affairs to create the "no-objection" visa. The ex-husband must be willing to sign a statement that he has no objection to his ex-wife visiting the Kingdom. In that statement, the ex-husband establishes how long he is willing to let his ex-wife remain in the country. The history of no-objection visas is mixed.

A husband often objects to the emotional disruption of a visit from the American wife. Often the husband's second wife becomes jealous, and the American mother finds that her visits are restricted in time and carried out in full view of the extended Saudi family.

Only one American wife has successfully made no-objection visits over the course of the last five years. She has been successful because she speaks Arabic (dual-national children quickly lose their English skills once their mother departs the Kingdom), has managed to maintain steady relations with her ex-husband, and reconciled herself to the fact that her child would spend at least his first 18 years in the Kingdom. If the custody dispute has involved kidnapping by one or both parents, then by the time the children reach the Kingdom the father has no

interest in facilitating relations with the American citizen mother. In these cases, all communication can be closed off and Saudi authorities will not intercede in family disputes. Consular Officers are rarely permitted to pay "Welfare and Whereabouts" visits.

The Saudi Arabian legal system is based on Shari'a. Shari'a courts exercise jurisdiction over common criminal cases and civil suits regarding marriage, divorce, child custody, and inheritance. Such jurisdiction extends to non-Muslims for crimes committed in the country. Shari'a courts base judgments largely on their interpretation of the Koran and the Sunna. Cases involving relatively small penalties are tried in Shari'a summary courts. More serious crimes are adjudicated in Shari'a courts of common pleas. Appeals from Shari'a courts are made to the courts of appeal. The Government permits Shi'a Muslims to use their own legal tradition to adjudicate noncriminal cases within their community. There is no comparable right for non-Muslims or foreigners, whose cases are handled in regular Shari'a courts.

Other civil proceedings, including those involving claims against the Government and enforcement of foreign judgments, are held before specialized administrative tribunals, such as the Commission for the Settlement of Labor Disputes and the Board of Grievances.

The military justice system has jurisdiction over uniformed personnel and civil servants that are charged with violations of military regulations. The Minister of Defense and Aviation and the King review the decisions of courts-martial.

The Supreme Judicial Council is not a court and may not reverse decisions made by a court of appeals. However, the Council may review lower court decisions and refer them back to the lower court for reconsideration.

The Council of Senior Religious Scholars is an autonomous body of 20 senior religious jurists, including the Minister of Justice. It establishes the legal principles to guide lower-court judges in deciding cases.

Judges are appointed by the Justice Ministry and confirmed by the Royal Diwan (Royal Court). The Ministry exercises judicial, financial, and administrative control of the courts. The Supreme Judicial Council, whose members appointed by the King, may discipline or remove judges.

Source: U.S. Department of State

Source of Law: The main sources of Saudi law are Hanbali fiqh as set out in a number of specified classical scholarly treatises by authoritative jurists, other Hanbali sources, other schools of law, state regulations and royal decrees (where these are relevant), and custom and practice.

Royal decrees have been used to direct courts to base judgements on several authoritative classical treatises by Hanbali jurists (e.g., al-Mughni of ibn Qudamah). A resolution of the Supreme Judicial Council passed in 1928 also directed the courts to rely on particular Hanbali sources in civil matters.

Standard Hanbali fiqh is applied to personal status cases.

Schools of Fiqh: The Hanbali school is the official madhhab in Saudi Arabia. There is also a Shi'i minority adhering to the Jaf'ari school.

Constitutional Status: Saudi Arabia has no formal constitution. The functions of a constitution are served by the Basic Law articulating the government's rights and responsibilities issued by King Fahd in March 1992. Article 1 of the Basic Law declares Islam the official state religion and the Qur'an and sunnah the Constitution. The Basic Law also provides that "[t]he state protects the rights of the people in line with the Islamic shari'a," affirms the independence of the judiciary and states that administration of justice is based on "shari'a rules according to the teachings of the holy Qur'an, the sunnah, and the regulations set by the ruler provided that they do not contradict the holy Qur'an and sunnah". Article 9 of the Basic Law states that "the family is the kernel of Saudi society, and its members shall be brought up on the basis of the Islamic faith". Article 26 provides that the state protects human rights "in accordance with the Islamic Shari'a"

Court System: Shari'a Courts have general and residual jurisdiction, i.e., jurisdiction over any case or matter the jurisdiction over which has not been expressly assigned to another tribunal. There are four levels of shari'a courts: Minor Courts, General Courts, Cassation Court, and the Supreme Judicial Council. Civil claims may also go to the Amarah in which case the Amir attempts to guide the parties in a dispute to a compromise; the matter is ultimately referred to the courts if a settlement is not reached. There are also a number of specialized tribunals for settling disputes in specific areas, such as commercial or labor law; these specialized tribunals are formed under various ministries outside of the Ministry of Justice. The highest appellate tribunal in all matters, the Board of Grievances, is also independent of the Ministry of Justice, and since its reorganization in 1982 has been made directly responsible to the King.

Source: Islamic Family Law Project, Emory University

U.S. State Department, Country Report on Human Rights Practices - Saudi Arabia - 2005. Released by the Bureau of Democracy, Human Rights, and Labor.

March 8, 2006.

Extracts:

On April 3, the late King Fahd issued a royal decree endorsing a reorganization plan for the judiciary proposed by the ministerial committee for administrative reforms. During the year the government was implementing the plan under which Shari'a remains the basis for the judicial system.

The government permitted Shi'a Muslims to use their own legal tradition to adjudicate cases

involving domestic issues, inheritance, and Islamic endowments. However, there were only two judges. The two courts, one in Al-Hasa and the other in Qatif, handled cases of Shi'a family law. However, these courts did not have adequate resources to serve the large Shi'a population in the Eastern Province, and either party to a dispute can appeal the Shi'a court's decision to a Shari'a (Sunni) court based on the Hanbali school of jurisprudence.

There was no comparable right for non-Muslims or foreigners, whose cases were handled in Shari'a courts.

A woman's testimony does not carry the same weight as that of a man. In a Shari'a court, the testimony of one man equals that of two women. Under the Hanbali interpretation of Shari'a followed in the kingdom, judges may discount the testimony of persons who are not practicing Muslims or who do not adhere to Hanbali doctrine. Legal sources reported that testimony by Shi'a was often ignored in courts of law or was deemed to have less weight than testimony by Sunnis.

Female parties to court proceedings such as divorce and family law cases generally had to deputize male relatives to speak on their behalf. In the absence of two witnesses, or four witnesses in the case of adultery, confessions before a judge were almost always required for criminal conviction--a situation that has led prosecuting authorities to coerce confessions from suspects by threats and abuse.

The government enforced most social and Islamic religious norms, the government's interpretations of which are matters of law. Women may not marry noncitizens without government permission; men must obtain government permission to marry noncitizen women outside the six states of the Gulf Cooperation Council (GCC). In accordance with Shari'a, women are prohibited from marrying non-Muslims; men may marry Christians and Jews, as well as Muslims. The government does not refuse marriage licenses between Sunni and Shi'a couples; tradition and culture, not law, restrict marriages between Sunni and Shi'a citizens.

Women

Shari'a prohibits abuse and violence against all innocent persons, including women. Although the government did not keep statistics on spousal abuse or other forms of violence against women, such violence and abuse appeared to be common problems based on anecdotal and media information available regarding physical spousal abuse and violence against women. Hospital workers reported that many women were admitted for treatment of injuries that apparently resulted from spousal violence; hospitals now are required to report any suspicious injuries to authorities.

Law and custom discriminate against women. Although they have the right to own property and are entitled to financial support from their husbands or male relatives, women have few political or social rights and were not treated as equal members of society. There were no active women's rights groups. Women may not legally drive motor vehicles and were restricted in their use of public facilities when men were present. Women must enter city buses by separate rear entrances and sit in specially designated sections. Women risked arrest by the religious police for riding in a vehicle driven by a male who was not an employee or a close male relative. On July 24 the religious police issued a statement that they never have, and never will, employ women.

The law provides that women may not be admitted to a hospital for medical treatment without the consent of a male relative; however this was not generally enforced. By law and custom, women may not undertake domestic or foreign travel alone.

In public, a woman was expected to wear an abaya (a black garment that covers the entire body) and also to cover her head and hair. The religious police generally expected Muslim

women to cover their faces, and non-Muslim women from other countries in Asia and Africa to comply more fully with local customs of dress than non-Muslim Western women. During the year, religious police admonished and harassed women who failed to wear an abaya and hair cover.

Women also were subject to discrimination under Shari'a as interpreted in the country, which stipulates that daughters receive half the inheritance awarded to their brothers. While Shari'a provides women with a basis to own and dispose of property independently, women often were constrained from asserting such rights because of various legal and societal barriers, especially regarding employment and freedom of movement. In a Shari'a court, the testimony of one man equals that of two women (see section 1.e.). Although Islamic law permits as many as four wives, polygamy was becoming less common due to demographic and economic changes. Islamic law enjoins a man to treat each wife equally. In practice, such equality was left to the discretion of the husband. The government placed greater restrictions on women than on men regarding marriage to noncitizens and non-Muslims.

Women must demonstrate legally specified grounds for divorce, but men may divorce without giving cause. In doing so, men were required to pay immediately an amount of money agreed upon at the time of the marriage, which serves as a one-time alimony payment. Women who demonstrate legal grounds for divorce also were entitled to this alimony. If divorced or widowed, a Muslim woman normally may keep her children until they attain a specified age: seven years for boys and nine years for girls. Children over these ages were awarded to the divorced husband or the deceased husband's family. Numerous divorced foreign women continued to be prevented by their former husbands from visiting their children after divorce.