Enhancing the rule of law in Oman through judicial reform: merging (دمج) Ibadi and Western judicial thought

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at the
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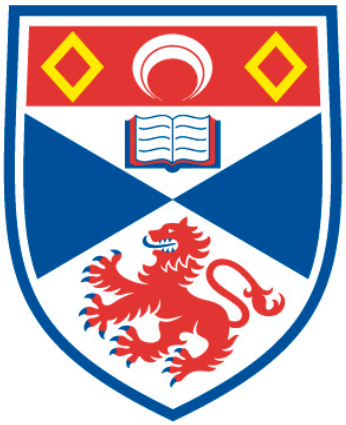

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ABSTRACT

The aim of the study is to identify the weaknesses in the current judicial system in Oman and propose reforms to strengthen them. In order to achieve this, the constitutional principal of the 'Rule of Law' is used as the main area of focus. Reforms to enhance the adherence to the rule of law may lead to a more effective judicial reforms to enhance the performance and efficiency of the judiciary. The study aims to look at the history of the justice system in Oman and try to fuse traditional conceptions of justice with modern western conceptions, to reach an indigenous justice system for Oman. The Imamate system is 1250 years old and has an extensive judicial experience. The institutions of the Imamate and its functions are compared to the modern institutions of the state today and to western judicial thought. The Imamate state was influenced by the Ibadi sect of Islam and the research aims at bridging different religious thoughts of justice to that found in Oman. It is argued that the values of justice worldwide are the same and are derived from religion. The study analyses the four main universal pillars of the rule of law, namely: Government bound by the law, Equality before the law, Accessibility, Impartiality and Judicial Independence and the Protection of Fundamental Rights. A survey has been conducted to measure the level of adherence to the rule of law, and to identify the key weaknesses through a numerical indicator. Based on the literature and the survey findings, proposals for reform in the different sectors of the judiciary are identified and proposed.

Table of Contents

List of Tables and Figures

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My Country, Oman

The Land of Prosperity, Tolerance and Traditions,

I Will Always Serve You to See You the Best

My Parents,

Thank you for all your Sacrifices,

Without you I Would Never Have Been the Man I am Today

My Fellow Countrymen/women,

Together We Will Build a Greater Future for Oman

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Acronyms and Abbreviations

A.D: Anno Domini

A.H: After Hijra

B.C: Before Christ

CCCP: The Omani Code for Civil and Commercial Procedures

CEDAW: The Convention on the Elimination of all Forms of Discrimination Against Women

CMIS: Content Management Interoperability Services

EU: European Union

GDP: Gross Domestic Product

GPP: General Population Poll

HM: His Majesty

IT: Information Technology

LGBT: Lesbian Gay Bisexual & Transsexual

MENA: Middle East and North Africa

MIS: Management Information System

MP: Member of Parliament

NCSI: National Centre for Statistics and Information (Sultanate of Oman)

NGO: Non-Governmental Organization

QRQ: Qualified Respondent Questionnaire

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNESCO: United Nations Educational, Scientific and Cultural Organization

UNHRC: United Nations Human Rights Council

UPR: Universal Periodic Review

US: United States of America

USAID: United States Agency for International Development

WJP: World Justice Project

Introduction

For some time, judicial reform and development has gained importance in the minds of legislatures and legal scholars across the world. Its importance has grown because it is concerned with improving the quality of justice that embodies fundamental notions of fairness and equality. Judicial reform can promote economic growth, judicial independence and secure the citizens fundamental rights and freedoms. The aim of this study is to enhance the situation of the Rule of law in Oman through judicial reform. The study identifies the four universally accepted main pillars of the Rule of law, namely: Government bound by the law, Equality before the law, Accessibility, Impartiality and Judicial Independence, and the Protection of Fundamental Rights. Each pillar is defined and explored with the current state of each in Oman outlined.

The aim of the study is to propose judicial reform initiatives by focusing the reform efforts towards achieving a better adherence to the Rule of Law. The study aims to construct reform proposals that are intrinsic and home driven, and which also reflects the current challenges facing this sector in Oman. Experiences and local traditions from the Imamate state of Oman and earlier could be fused and modernised with Western judicial thought to reach such a conclusion. The study could be of assistance to the 2040 Vision team, which indicated the enhancement of the Rule of Law in Oman as a primary goal for the vision.[1]

The researcher has judged particular primary and secondary sources in accordance with the accepted criteria and standards. The researcher has created literary work within the patterns made available in the Omani traditions and has judged them by the standards embodied in the best of the works available on the topic of this research. The researcher has evaluated and rejected works which did not appear to adhere to these standards.[2]

Without independent reflection, the researcher adhered to Omani traditions as his accepted standard in a way which implies agreeance with the standard. Further, the researcher tried to conform with the intellectual traditions accepted by his elders and contemporaries. [3] This study may be considered as enriching to the Omani traditions. The researcher aims to conduct

[1] *See Oman Vision 2040,* Online Source: https://www.2040.om/governance.php
[2] Maclean, Ian, et al. *The Political Responsibility of Intellectuals*. Cambridge Univ. Press, 2009, pp. 258-278
[3] ibid

his research to the best of his ability and judges its quality by the standards of his society that he accepted.

The enrichment of the tradition has not been the researcher's primary objective.[4] The researcher strives to produce a work satisfying to himself and his audience in Oman. The researcher argues against the transplantation of foreign legal systems and tries to reaffirm and reinforce the validity of the Omani tradition against criticisms.

A recurrent theme in the criticisms of authority in modern societies is the denial of the legitimacy of authority in these societies. Some scholars assert that since the authorities are illegitimate, they have no valid grounds to govern. The legitimacy of authority is acknowledged only when it is conducting itself responsibly to a higher law- divine or natural.[5]

The researcher prefers to influence the exercise of authority as an advisor or expert rather than a decision-maker. Further, the researcher does not aim to criticise the society and its structure. However, the researcher's conclusion is in partial conflict with the status quo. The researcher feels responsible for persuading the government and the public opinion to act in a way that conforms with the Omani norms and standards. Moreover, the researcher does not argue against the legitimacy of the current political system.

Legitimacy has been defined as going in line with the norms, values, beliefs, practices and acceptable procedures by the group.[6] The legitimacy of a political system stems from the belief that the socio-political system in place is in line with those accepted beliefs and practices. Confidence in the political system is contingent on the populace's feeling that their shared values and goals are being represented. This gives the system a perceived legitimacy that allows an effective exercise of power.[7] The legitimacy given to the system by the people means that the people are more likely to follow its laws and regulations [8] and less likely to protest or attempt to bring down the system[9]. Moreover, the legitimacy of the system allows

[4] ibid
[5] ibid
[6] Jost, J. T., & Major, B. (Eds.), *The psychology of legitimacy: Emerging perspectives on ideology, justice, and intergroup relations*, New York, US: Cambridge University Press, 2001, p.33
[7] Tyler T. R, *Legitimacy and legitimation*. Annual Review of Psychology, 57, 2006, pp. 375–400
[8] Tyler & Huo, *Trust in the law: Encouraging public cooperation with the police and courts*. N.Y: Russell-Sage Foundation, 2002
[9] Levi M., & Stoker L, *Political trust and trustworthiness*. Annual Review of Political Science, 3, 2000, 475–5

its authorities to maintain the socio-political system without having to resort to destabilizing strategies [10].

The researcher is not attempting to maintain the status quo; however, he acknowledges the impact of dramatic social change on society. Some scholars drew a distinction between 'incremental social change' and 'dramatic or abrupt social change' [11]. Incremental changes are intended to continually improve the components of the organization. Such changes, whether big or small, have a succession of manageable changes and adaptation processes. On the other hand, dramatic changes are often linked to major changes and the reconstruction of the elements in the organization, and usually involve a break with the past. Such changes are more traumatic, painful and demanding, as people are required to learn new set of behaviours and discard old ones. Further, such changes are not meant to improve the system in place but rather install a new order. [12] Moreover, some scholars stated that incremental change allows for the people to adapt to such changes gradually, while dramatic change is so sudden that it does not necessarily allow people to adapt to the process [13]. The researcher tries to ensure that the reforms proposed do not disrupt the social structure of the Omani society. According to Bishop, social change refers to "the ability of a group to behave differently, even to creating brand new elements, within the same social identity" [14].

The researcher argues that in order for the policy reforms to be accepted and considered by the policy makers and the citizens alike, the reforms should reflect the social norms and culture of the society. Albert and Sabini argue that in an environment in which society supports the system, changes are perceived as less disruptive than they would be in a non-supportive environment [15]. The researcher argues that policy reforms, including judicial reform, should be made in line with the general long vision plan of the state and to ensure that those reforms complement one another when necessary. Moreover, the researcher argues that encompassing the cultural and social peculiarity of the society in the reform proposals

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[10] Sidanius J, & Pratto F, *Social dominance: An intergroup theory of social hierarchy and oppression*. New York: Cambridge University Press, 1999.
[11] Nadler, D. A &Tushman, M. L, *Types of organizational change: from incremental improvement to discontinuous transformation*, San Francisco, CA: Jossey-Bass, 1995, pp. 14–33.
[12] ibid
[13] Newman, K. L, *Organizational transformation during institutional upheaval*, Academic Management Review*,* 25, 2000, pp. 602–619.
[14] Sablonnière, R, *Toward a Psychology of Social Change: A Typology of Social Change*, Front. Psychology*,* 2017, 8, p.397.
[15] Albert, S., & Sabini, J, *Attributions About Systems in Slow Vs, Rapid Change*, Proceedings of the Division of Personality and Society Psychology, *1*(1), 1974, pp. 91–93.

make such reforms more likely to be accepted by the people. People tend to trust policy reform that might have previously been applied to them, they are familiar with through other societies sharing similar values or has been proven to be successful in the past.

The Omani culture and social norms are derived from the Ibadi doctrine of Islam. The Imamate system of state was the political ideology of this doctrine, which ensured the unity of the state throughout Omani history. This system helped Oman to be a power in the Indian Ocean and East Africa and contained institutions of State capable of ensuring equality, justice and security. The Imamate state created, and for the first time in Oman, an environment of scholarship, cooperation and communication with the rest of the world. The researcher tries to bring attention back to this system that was purely the result of Omani social norms and traditions inspired by the Ibadi doctrine of Islam. This system, as will be discussed in Chapter two, carry similar constitutional principles to that of modern Western democracies. The researcher argues that the judicial institution in the Imamate system and the values it carried could be explored, analysed and developed to make it adhere to values of justice, equality and the adherence to the 'Rule of Law' as we know them in the twenty-first century.

Although the concept of the Rule of Law is usually adhered to best under liberal democracies, the researcher argues that it can also be achieved under a Monarchy. Democracy is a culture, and the political and legal culture among Omanis is very weak. Establishing systems and institutions of democratic rule in developing countries will not suffice in establishing justice and the spirit of the Rule of Law, as people lack awareness of political and legal affairs. This can hinder their constructive participation in the development of the nation. Fifty years ago, Oman was a medieval state torn by war and poverty. There were only three male schools across the entire country and no higher education institutions. Oman today has more than 1700 schools for boys and girls and more than 20 higher education institutions. Further, state and security institutions were very limited, and the judiciary was outdated.[16]

The discovery of oil in the early 1960s opened a new chapter for Oman. It was only in 1970 that Oman truly started a shift from being a backward nation to a nation that could be classified today as a modern state. The increase in government revenues gave the government

[16] Allen, Calvin H, and W L. Rigsbee, *Oman Under Qaboos: From Coup to Constitution, 1970-1996*. London, Frank Cass, 2000, pp. 2-10

under the leadership of HM Sultan Qaboos Al Said the opportunity to invest in infrastructure and social welfare programs. It also helped establish state and security institutions necessary to maintain safety and security. Moreover, the judiciary received special attention in the development efforts and reached an acceptable level of fairness and equality.

The strategy for development that Oman is undergoing is one that adopts gradual change. This is to ensure political, social, cultural and economic harmony. A fast change towards democracy can lead to disastrous results. This was apparent in states like Iraq, Egypt and Libya. An example of gradual change towards democracy in Oman is the evolution of the Consultative Council; the elected legislative branch. The Council was first established in 1981 with appointed members by the Sultan, and in 1991 became fully elected. It was only in 1996 that a two-house parliamentary system, one elected and one appointed, was introduced into the Omani political system. Further, the judiciary became fully independent and a separation of powers was established between the different powers of the state in the year 2011.

Moreover, it was only in 1996 that a constitution for the country was issued. This was a remarkable political development for Oman, outlining the rights and duties of the state and citizens for the first time since 1970. It also adopted some constitutional principles of a modern state. Chapter two discusses the reasons for introducing the constitution in 1996 and not 1970.

Those changes took place gradually to ensure their success and to equip the Omani citizens with the understanding and knowledge necessary to be active participants in the political and social affairs. The researcher argues that the rapid development that took place in Oman was only possible under a Monarchical system, as such developments require fast and decisive decision making. Further, the majority of the citizens were not qualified to run modern state institutions. In an interview given shortly after taking over Oman in 1970, Sultan Qaboos explained, "I am a man with one foot in my country - backwards as it is, with its tribal customs, its life dominated by Islam - and the other in the 20th century. I must be very careful to keep my balance" [17].

[17] Rawson, Harve Else. *Travels of an Iconoclast: an American Psychologist's Perspective on Countries That Best Illustrate World Problems: A Travelogue/Dialogue/Commentary on Exotic Travel Destinations*, Authorhouse, 2005, p.55

Prior to 1970, Oman had a population of around 700,000 inhabitants and only 20% of the population were considered literate. Today, Oman has a population of 4.6 million inhabitants and a literacy rate of 94%.[18] This increase in population and level of education paved the road for more sustainable development. It is human resources that build nations, not concrete buildings. It can be argued that Oman today has a greater number of human resources capable of shaping a more democratic future for Oman. The researcher hopes for a future where the government and the citizens work hand-in-hand in achieving the development goals set in all sectors. Further, awareness of political, social, economic and legal affairs among citizens increased. This helps ensure that the transition of state institutions towards democracy is successful and includes less irrational resistance.

It is important to highlight that when quoting the biblical and qur'anic verses, the researcher chose the uncontested texts, and that are accepted by all sects and religions. Further, the quotes from the Sunnah (Prophet Mohammed words) were also chosen based on their acceptance by all Islamic sects. Since the Ibadi sect is conceived as liberal (by Muslims and other religious followers), its interpretation of the religious texts is more likely to be accepted. The Ibadi doctrine encourages the cooperation and coexistence with the different schools of thought and sects. It also allows for the sharing of knowledge and understandings between the different sects and religions to reach a constructive dialogue when addressing religious jurisprudence and interfaith dialogue. The Ibadi doctrine is enriched by sharing common values and interpreting them moderately. This what distinguished Oman from the rest of the middle east as a country known for its tolerance and coexistence between all the sects (Ibadi, Sunni and Shia't) and faiths (Judaism, Christianity, Buddhism and Hinduism) practiced.

To reach a conclusion about the above stated hypothesis, the study is divided into seven chapters. The first chapter sets the theoretical background of the study. It starts by outlining the different theories regarding the origins of justice and its development. The researcher argues in favour of a middle ground theory between Natural and Positive law when considering the concepts of the 'Rule of Law' and 'Justice'. It is argued that the concept of the Rule of Law has Positive and Natural law aspects, and the better adherence to the four pillars of the rule of law can be achieved when both aspects are applied simultaneously to the concept. The researcher argues that the pillars of 'Government bound by the law'. 'Equality

[18] National Centre from Statistics and Information, Oman, website: www.ncsi.gov.om

before the law, and the ‘Accessibility, Impartiality and Judicial Independence of the Judiciary’, can be best adhered to under a Positive law understanding of justice that includes a strict set of rules and procedures. On the other hand, the pillar of the ‘Protection of Fundamental Rights’ is argued to be better adhered to under a Natural law understanding of justice.

Furthermore, the theories of legal culture, legal transplantation, judicial reform and the rule of law are explained. The researcher argues that judicial reform efforts should be indigenous and home grown, but not be transplanted from one state to the other. It is argued that the legal culture across societies differ and therefore the understanding of justice and the administration of justice differs from one country to the other. Moreover, the definition of the rule of law differs fundamentally from one society to the other, however, the researcher chose the definition that is universally accepted almost everywhere.

The second chapter outlines the political and judicial history of Oman. It further discusses the constitution of 1996 and the reason for adopting it then, not earlier. It then describes the historic development of the judiciary in Oman from 751 A.D. until the present day. The first section highlights the Imamate system and the judiciary in it. The Imamate system was established in 751 A.D. and ended in 1959. Judicial affairs and judicial independence in this period are outlined. Moreover, alternative dispute resolution mechanisms in the state are also highlighted. The second section outlines the development of the judiciary from 1970 until the present day. It was from the year 1970 onwards that Oman witnessed the rapid development in all sectors including the judiciary. Judicial guarantees are set, and independence of the judiciary was protected in legislations and the Constitution. The final section outlines the methodology of the survey conducted in Oman, and the results and findings of the survey. The third chapter explains the first pillar of the Rule of Law that the reform efforts should be focused on. The first pillar is ‘Government bound by the law’, and the literature concerning the concept is explored in detail. The chapter moves on to describe the situation of the concept in Oman and the main weaknesses in it. It also identifies the level of adherence to the concept through the scores of the survey conducted. The chapter concludes by proposing reforms to better enhance adherence to the concept.

The fourth chapter explains the second pillar of the Rule of Law that requires reform, which is ‘Equality before the law’. The literature on the concept is outlined and the methods to protect it are described therein. The chapter moves on to explain the level of adherence to the

concept in Oman and the main challenges it faces. It also brings forward the results of the survey on the topic and helps to further identify different weaknesses. The chapter concludes by proposing reforms to better protect the concept and ensure equality across all sectors of the state.

The fifth chapter explains the third pillar of the Rule of Law that needs urgent reform, that of: 'Accessibility, Impartiality and Judicial Independence'. The chapter starts by identifying the available literature on the concept and the reform initiatives that are recommended by different states and international organisations. It also highlights the methods of protecting the impartiality of judges and the methods to better ensure judicial independence. The chapter also explains the methods of enhancing the accessibility and affordability of the justice system. The chapter further discusses judicial appointment and promotion, and the methods of impeachment of judges. The chapter also describes the condition of the concept in Oman. Judicial appointment and judicial assistants are outlined. Finally, securing the independence of the judiciary in Oman is explained. The survey results are added at the end to identify the key areas of weakness in the justice system. The chapter concludes by proposing reforms to better enhance the civil and criminal justice systems and make them more accessible, affordable and impartial.

The sixth chapter explains the fourth pillar of the Rule of Law that needs reform, which is: 'The Protection of Fundamental Rights'. It begins by outlining the literature available concerning the concept. The importance of human rights and its protection are explained and the significance of a constitutional court as a guardian to those rights is detailed. The chapter moves on to describe the state of the concept in Oman and identifies the key weaknesses that needs reform. The survey results are also used to assist in identifying the areas of weaknesses. The chapter concludes by proposing reforms to better protect the fundamental rights of the citizens.

The final chapter presents the conclusion for the research and the reform proposals to be focused on. This chapter is divided into four sections. The first section presents an overall summary of the research and the key findings. A discussion on the contribution of the study follows. The third section acknowledges the research limitations and the final section offers directions for future research.

Chapter 1

Theoretical Background

1.0 Introduction

It is essential to establish a comprehensive theoretical framework to act as a blueprint for the recommendations to be set with reforming the judiciary in Oman and thus enhancing the rule of law. The theoretical framework includes social, political and legal theories that are interlinked and can help in outlining the working theory to be used in the thesis.

The study links strengthening the rule of law as a core component to judicial reform. The study argues that a successful judicial reform in Oman is possible by considering the components of the Rule of law and try to strengthen and enhance it. Improving the functioning of the courts, the public prosecution, the public defenders and the police is one step towards achieving a successful judicial reform. It is important that when assessing the possible reform efforts to also consider the legal culture of the Omani society and to take into consideration the traditional, historical and religious aspects of it. Legal transplantation is a fast way to implement a judicial system in developing countries. However, many transplanted systems have failed to operate in the recipient states due to the cultural clash.

To reach a conclusion for the theoretical framework to be used for the thesis, this chapter will first outline the origins of justice. The second part highlights the concept of justice in old Mesopotamia and how it was perceived. In the third part, the different forms of justice and the different philosophical and social perspectives are discussed. The fourth part outlines how justice is perceived within religious thought. The fifth part discusses justice and the way it is perceived in philosophical thought and the theoretical commitments of the thesis. The sixth part outlines the theories of the concept of the Rule of Law. The differing interpretations to the concept in Germany, France, the UK and the US is also outlined. Furthermore, the concept of the Rule of Law in Islamic jurisprudence and in Oman is explained briefly. The seventh part distinguish between the concepts of rule of law and rule by law. The eight part considers theories surrounding the notion of a legal culture. The ninth part outlines the theories surrounding the concept of legal transplantation. Judicial reform theories and a specific judicial reform theory for Oman will be discussed in the tenth part. The last part outlines the differing theories of Comparative Law. The conclusion sets the working theory for the thesis.

1.1 The Origin of Justice

Justice is one of the most sacred and common themes in social behaviour. It can have different interpretations even among the same society. Wherever there are people who want something and whenever there are resources to be distributed, the key driving force for the decision-making process will be of the diverse forms of Justice. Moreover, Justice has sovereignty over concepts such as liberty and equality, and it does not have an end point. People may demand liberty and might suddenly be forced to stop at a certain point, as a result the freedoms do not turn out to have opposite consequences. On the other hand, people could not stop trying to be fair, nor can any society reach saturation point in achieving justice, as there is no definitive end to justice. Justice in this sense, is a public good that can regulate the relationship between the concepts of liberty and equality, as it will ensure an equilibrium between the two[19].

Nonetheless, injustice has accompanied human existence since its inception. The distinction between people emerged and arose primarily from the concept of property that depends on individual and selfish interests. Since the primitive communities shifted to regulatory communities, equality was abandoned due to the possession of land by a group of individuals and that of taking advantage of others. Over time, those individuals had laws protecting them from any form of punishment, protecting their interests and recognising the legitimacy of the economic differences between the social groups[20].

1.2 Justice in Old Mesopotamia

Historically, the Mesopotamians are the oldest legislators of Justice. The old Mesopotamian laws predates those of the other old civilisations such as, the Egyptian, the Greek and the Roman by tens of centuries[21]. The Mesopotamians put their views on the theme of Justice and injustice at the heart of their vision of God, the Universe and man. Justice to them was associated to order in the same way that the values of righteousness are all associated to it. On the other hand, injustice was associated to chaos in the same way that the values of evil were also associated to it.

[19] Ahmed Jamal Dahir, *Studies in Political Philosophy*, Amman, Dar Maktabat Al Kindi, 1988, p.186
[20] Fischer, E., 1899-1972. *The Necessity of Art, a Marxist Approach*. Baltimore: Penguin Books, 1963, p. 68-69
[21] Tillich, Paul, *Love, Power and Justice*, New York, Oxford University Press, 1963, p.30

Since the Mesopotamians realised the relationship between the Sun and the different life activities, they considered it the God of Justice and Righteousness, the abolisher of ambiguity and the revealer of facts. The God of Justice was also seen by the Mesopotamians as the God of knowledge. The Mesopotamians dedicated the 20th of every month to celebrate the God of Justice "Shamash" and his two sons "Kitto" and "Misharu". Their names mean Truth and Justice[22].

This concept of Justice, however, has been subject to the serving of the God only by the man and pleasing it. Therefore, if the man was served justice, then that was because the God gave it to him and not because he deserved it. As for the concept that justice is a right for all mankind, it only started to take shape slowly during the second millennium B.C; the millennium in which the codes of Hammurabi appeared[23]. This Babylonian King (1750-1792 B.C) stated in the introduction of his codes that the Gods sent him *"to bring about the rule of righteousness in the land, to destroy the wicked and the evil-doers; so that the strong should not harm the weak; so that I should rule over the black-headed people like Shamash, and enlighten the land, to further the well-being of mankind.".*[24]

Since that era, people sensed that justice is a legitimate right and not a personal favour. However, the view that justice is a right for all mankind contradicted the view of people back then to life. Primary problems emerged, such as the justification of death, the problem of virtuous men who suffer misfortunes despite their eminence, and behind those two problems, people had a deep sense of pain and tragedy. As a result, the Epic of Gilgamesh appeared in the early second century B.C to express the hidden discontent and the deep feelings of injustice. It further emphasised on the idea of human rights that was present back then and demanded justice in all of the universe.[25] Death was seen as evil and the ultimate punishment. The question of why a human deserved to die if he did not commit a sin arose. This does not end the saga to a nice conclusion, instead its emotions remain heated and its vital questions continue to remain unanswered.[26]

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[22] Habbi, Yousef, *Al Insan Fi Adab Wadi Al Rafidayn*, Baghdad, Silsilat Al Mawsoo'a Al Sagheera, 1980, p. 58
[23] Al Ta'an, AbdulRidha, *Al Fikr Al Siyasi Fil Iraq Al Qadim*, Baghdad, Dar Al Rashid, 1981, p.538
[24] King, L.W, *The Code of Hammurabi*, Yale Law School, Lillian Goldman Law Library, 2008, Online Source: http://avalon.law.yale.edu/ancient/hamframe.asp
[25] Sandars, N. K. *The Epic of Gilgamesh*. Penguin, 2006.
[26] Jamal Mawlood Thubyan, *Tatawwor fikrat Al Adil fil Qawanin Al Iraqiyyah Al Qadimah*, Baghdad, Dar Al Sho'on Al Thaqafiyyah Al Ammah, 2001, p.122.

This ethical problem and its questionable condemnations and missionary elements became the starting point for religions, philosophies and ideologies that appeared later in different civilisations. These religions tried to explain the nature of justice, its purpose and the methods to achieve it practically. Although people continued acknowledging in every age that they did not succeed in achieving justice yet, the history of mankind could be seen as a history of resistance to injustice, and a history of bloody conflicts in order to impose a uniform standard to justice. This was due in part to continuous search of mankind for justice at all times, using it in all its means, including its simple wording and its deep ideas. However, this standard remained impregnable to selection or agreement.

1.3 Justice: A Heterogeneous Concept

Justice is an ambiguous concept.[27] Some see it as an abstract concept in the world of the mind and could not be applied to the real world. Furthermore, the social, political and economic justice that has been applied are merely attempts to preserve the rights endorsed by the natural and moral law.[28] Some approached the concept from an optimistic point of view by saying that human nature has ascended throughout history, creating within mankind a type of censorship obliging them to respect the rule "treat others the same way you expect them to treat you". This was later adopted as an internal sense of justice within the individual[29]. Others adopt a neutral standpoint by saying that justice is merely a manifestation of the influence of the powerful at all times. Powerful individuals become more successful and eventually convince themselves and others that their methods to achieve profits and maintain their status quo is not only acceptable, but undeniably desirable, ethical and fair.[30]
Justice is seen from different philosophical and social perspectives. For example, there is justice that stands on the idea of 'Rights' and there is justice that stands on the idea of 'Good'.[31] Furthermore, if achieving the concept of "giving everyone his right" is based on the idea that the entitlement of a person to his right is due to him being a human, then this type of justice is called natural justice. On the other hand, if the entitlement of a person to his right is based on the general rule accepted by society, then this type of justice is called conventional

[27] Dierckxsens, G., *The Ambiguity of Justice: Paul Ricœur on Universalism and Evil*, University of Pittburgh Press, Vol 6, No 2, 2015, p. 32-49.
[28] Miller, David, *"Justice",* The Stanford Encyclopedia of Philosophy (Fall 2017 Edition), Edward N. Zalta (ed.), Online Source: https://plato.stanford.edu/archives/fall2017/entries/justice/
[29] ibid
[30] ibid
[31] Lebacqz, Karen, *Six Theories of Justice: Perspectives from Philosophical and Theological Ethics*. Minneapolis: Augsburg Pub. House, 1986.

justice. Moreover, if this right is based on a rule that makes the violator of that right responsible for its violation in front of a public authority, then this type of justice is called legal justice.[32]

Cumulative Justice refers to the contractual relations that obliges each individual to give the other his/her full rights without taking into consideration his/her personal or social status. Distributive Justice, meanwhile, operates by distributing rewards and setting punishments, i.e. by identifying whether the individual deserves a reward or a punishment.[33]

Social Justice refers to a type of equality that has a fundamental importance in achieving public interests.[34] Political Justice is represented by the presence of a constitution that guarantees the distribution of political freedom, social equality and natural rights.[35] Economic justice is achieved when the economic system succeeds in engaging all individuals to the economic life and distribution of wealth among them at rates that are commensurate with their work and their contribution to the national GDP.[36]

Criminal Justice envisages to defending the community from crime, and at the same time evaluates the behaviour of the offender who got out of the context of society, while guaranteeing the right of every accused to enjoy the full right to defend himself until the trial comes to the right conclusion of whether to convict or to acquit.[37] The term Absolute Justice or fairness is also common, which describes law as a natural concept if not a rightful one. Fairness requires to judging things according to the spirit of the law, while justice requires judging matters according to the text of the law.[38] In psychology, the social justice concept is used to describe the feelings of the majority of the people on the basis of their needs and efforts.[39]

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[32] Gould & Kolb, *A Dictionary of the Social Sciences*, New York, The Free Press, 1964, p.364
[33] Knight, C., *Responsibility and Distributive Justice*, Oxford: Oxford University Press, 2011
[34] Witcher, Sally. *Inclusive Equality: A Vision for Social Justice*. 1st ed., Bristol University Press, 2013, p.31-62
[35] Kirchheimer, Otto. *Political Justice: The Use of Legal Procedure for Political Ends*. Princeton University Press, 1961.
[36] Gordon, H. Scott. *"Ideas of Economic Justice."* Daedalus, vol. 92, no. 3, 1963, pp. 433–446
[37] Munro, Jim L. *"Towards a Theory of Criminal Justice Administration: A General Systems Perspective."* Public Administration Review, vol. 31, no. 6, 1971, pp. 621–631
[38] Brecht, Arnold. *"Relative and Absolute Justice." Social Research*, vol. 6, no. 1, 1939, pp. 58–87
[39] ibid

1.4 Justice in Religious Thought

Justice is the axis of moral beliefs in any religion. It is the legislative and psychological solution suggested by religion to the eternal dilemma of mankind: The battle between good and evil.

In Confucianism and attributed to Confucius (479-551 B.C), the moral base is seen as one that is incorporated within the human and cannot be detached. The human does not conduct evil based on knowledge, but on ignorance, but if he knew the good, he will lean to it naturally. The reasons for the disasters that happened to mankind was due to private property.[40]

Judaism believes that God loves justice, and that he built his throne on it. It also believes that for a human to live a life of Right, he has to treat others justly at all the times.[41] According to the Torit: "The word of the lord is straight/right in all his actions/loves justice and fairness/ and with his mercy the earth shall be filled". (Psalm 33:45)

Christianity emphasised that all rules should be just, and that the human should be alert and not fall into evil. God is just and will judge people according to their actions.[42] According to the Bible: "Masters, grant to your slaves' justice and fairness, knowing that you to have a Master in Heaven". (Colossians 4:1)

Islam considered justice a main principle that should be achieved in all aspects of human activity. The Quran confirms, in many of its texts, on the promotion and administration of justice as a goal in every Islamic society. Justice in the Quran is described by three different synonyms, which are: justice, measure and scale. The subject of justice and the derivatives of the concept are mentioned around thirty times. The Quran stated: "Indeed, God orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded".[43]

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[40] Helin, J., *The Oxford Handbook of Process Philosophy and Organization Studies,* Oxford, Oxford University Press, 2014, p.48

[41] Wilson, H. S., *Justice in World Religions*, Ecumenism*: prospects and challenges:* Festschrift to the Rev. G. Dyvasirvadam, 2001, p.69

[42] Dengerink, J., *The Idea of Justice in Christian Perspective,* Toronto, Wedge Publishing Foundation, 1978, p.22.

[43] The Holy Quran, Surat Al Nahl, (16:90)

The divine order of *'Zakat'* (alms) imposed on all Muslims is a way to ensure social justice, as it forms the essence of the Islamic economic system. Such a system was imposed to withhold any one person from controlling the fates of others and their properties. Money in Islam has a social function rather than serving the interests of the individual, as money is intended for the performance of the social services that are in the public's interest.[44] Furthermore, Islamic law guarantees every poor person the right to come in front of a court and file for a financial support from his/her richer relatives.[45] Such sufficiency assurances means that Islam guarantees the basic needs for human life. The Quran in (20:118-119) stated, after God sent Adam and Eve to earth: *"Indeed, it is [promised] for you not to be hungry therein or be unclothed. And indeed, you will not be thirsty therein or be hot from the sun."*[46]

With the emergence of the Arab-Islamic state and its expansion, the Quran became the main source of research among Muslim philosophers in all ethical matters. Moreover, the Muslim philosophers and scholars were influenced by the Greek philosophical heritage, particularly those of Plato and Aristotle.

Al Farabi was influenced by the concepts of ethics brought forward by the Greek philosophers. Justice for Al Farabi was not to be understood as Equality Justice but more as Distributive Justice. Al Farabi states that: "Justice is dividing the common wealth of the people of the city among all of them. Each member of the city has a share from this wealth equal to his efforts made to the society and getting more or less of this share is seen as tyrannical".[47] Individuals and groups in his virtuous city are classes that compete with each other and the winner is the happiest. Justice in the view of Al Farabi is a competition, as he views competition as a human nature.[48]

Ibn Khaldun (1332-1406) indicated that the human being is wired to the good and bad together and to both cooperation and aggression. The human being to Ibn Khaldun is civilized in nature and his life situation flourishes by coexisting with other humans. Nonetheless, the human has animal instincts that makes him aggressive and could abuse his fellow human. Ibn Khaldun excludes the possibility of societies reaching the Utopian level.

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[44] The Islamic Supreme Council of America, Online Source: http://islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html
[45] ibid
[46] The Holy Quran, Surat Taha, (20:118-119)
[47] Mahdi, Muhsin, *Al Farabi's Philosophy of Plato and Aristotle*, University of Cornell Press, 1970, p.196-197.
[48] ibid

He believes that the hope enticing people every now and then, is the belief of the emergence of a saviour restoring peace and equality and holding justice in the way the society was administered at the Well-Advised Caliphas time, and that this merely a mirage. In his view, the corrupt situation is the result of objective circumstances, and will remain unchanged unless a major global shift occurs.[49]

All Religions generally agree on counting the divine act as absolutely fair and impeccable from injustice and arbitrariness. The injustices that occur on earth are a man-made evil and therefore, should be punishable.

1.5 Justice and the Rule of Law

After discussing the origin, development and religious understandings of justice, it is important to link the concept of 'Justice' with the concept of the 'Rule of Law'. Substantively, justice defends the correctness of a case, and procedurally, the rule of law assures a fair legal process.[50] Conflict arises when a fair legal system is perceived as unjust. In other words, there are the defenders of what is 'Just', and there are defenders to what is 'Right'. The researcher argues that the concept of justice and the concept of the rule of law are two different sides of the same coin. The rule of law is the means for the knowledge and enforcement of justice in a social setting.[51] It is important to view justice and the rule of law as means of addressing social problems to neutralize the appeal of favouring one concept to the other.

John Rawls characterized the rule of law by notions of procedural justice and the rational existence of authority.[52] According to Rawls, there are two sets of procedural precepts for law to be enacted and for the rule of law to be created. The first set was classified by Rawls as the initial procedural precepts required during the legislative or enactment activity, which states that: 1) laws should be reasonable, 2) enacted in good faith, 3) public acceptance that the laws are properly enacted and has a proper subject matter, and 4) the recognition of a defence of impossibility or of mitigating circumstances.[53]

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[49] Hussain, Taha, *Falsafat Ibn Khaldun Al Ijtima'iyah*, Cairo, Matba'at Al Etimad, 1925.
[50] Randy E. Barne, *Can Justice and the Rule of Law Be Reconciled?* Foreword to the "Symposium on Law and Philosophy," 11 Harv. J.L. & Pub. Pol'y 597, 1988, p.598
[51] Rawls, J., *A Theory of Justice,* Revised edition, USA, Harvard University Press, 2009
[52] ibid
[53] ibid

The second set of procedures were classified as limits on judicial or rule application activity, which includes: 1) similar cases must be treated similarly, 2) the criteria of similarity should be defined by the legal rules, 4) the distinctions should be justified, 4) consistency in the decisions made, 5) no offence without previous promulgation of law, and 6) the prospective application of the criminal laws.[54] Rawls suggested that his theory is of justice was supported by Fuller, Hart and Lucas. Those post war positivists view the basis of the rule of law as the following of the requirements of the legal procedure and the articulation of the basis for legal decisions.[55]

For Rawls, the procedural rules are the necessary condition for the rule of law. Rawls asserts that these rules define the notion of natural justice and are the guidelines set to preserve the integrity of the judicial process.[56] Rawls suggests that the "subject of justice is the way in which major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation". [57]

H.L.A. Hart asserts that it is impossible to distinguish between a just and moral legal system to one that is not.[58] Hart emphasised that justice is an inherent nature of a legal system and is sufficiently guaranteed. According to Hart, "a minimum of justice is necessarily realized whenever a human behaviour is controlled by general rules publicly announced and judicially applied".[59] For Hart, the idea of justice is the application of law equally, within the capacity of the people to obey, and in general must not be retrospective. He also admits the danger of lacking any notion of substantive justice in a legal system.[60]

Fuller suggests that if legal procedures are confirmed with, it will result in a just rule of law. According to Fuller, there are eight procedural requirements for a just law: 1) the existence of general rules, 2) promulgation, 3) prospectivity, 4) clarity, 5) consistency, 6) the defence of impossibility, 7) constancy through time, 8) congruence between official action and declared

[54] ibid
[55] Donald H. Hermann, *The Fallacy of Legal Procedure as Predominant over Substantive Justice: A Critique of "The Rule of Law" in John Rawls' A Theory of Justice'*, 23 DePaul L. Rev. 1408 ,1974
[56] Rawls, J., *A Theory of Justice,* Revised edition, USA, Harvard University Press, 2009
[57] ibid
[58] Hart, H. L. A. *The Concept of Law*. Oxford: Clarendon Press, 1961
[59] ibid
[60] ibid

rules.[61] Fuller emphasizes that the adherence to the procedural requirements of the rule of law should be prioritised over substantive elements of law.[62]

Lucas suggests that the aim of the rule of law is not to secure absolute justice, nut to minimize the effects of injustice. This can be done through rules of procedure designed to prevent certain sets on injustices. The procedural rules set by Rawls and some other positivists are viewed as divorced from substantive justice. The quest for the rule of law is the connection between the legal and the moral rules.[63] This was absent in Rawls and his supporters accounts of the rule of law.

Friedman criticised Fuller's account by stating that German Nazi state, for example, complied with the eight requirements identified. Friedman asserts that the Nazi legal system was not valid due to it not complying with the basic principles of humanity.[64] This is a substantive matter of justice that Fuller failed to recognise.

Ronald Dworkin is neither a Natural Law advocate nor a Legal Positivist, since he criticised both. His theory could be categorized as a middle ground theory between the two.[65] Dworkin was a major critique of theory of the 'Concept of Law' advanced by Hart. As per Dworkin, Hart failed to take into account concepts other than 'Rules' for law and failed to incorporate standards and principles that are not 'Rules'.[66] Dworkin suggests that decision making is influenced by not only the rules, but also by the principles and standards followed by the society.[67] Dworkin argues that "positivism is a model of and for a system of rules, and its central notion for a single fundamental test for law forces us to miss the important roles of these standards that are not rules". [68]

In addition to criticising the Legal Positivism activists, Dworkin also criticised Natural Law theorists. He rejected the idea that there are predetermined, absolute and metaphysical moral principles that determines the moral standards upon which the validity of man-made laws are

[61] Fuller, L. *The Morality of Law: Revised Edition*. New Haven; London: Yale University Press, 1969
[62] ibid
[63] Lucas, J. R. *The Principles of Politics*. Clarendon Press, 1985
[64] Friedmann, Wolfgang G. *Legal Theory*. Columbia University Press, 1967
[65] Alexander, Larry. *"Striking Back at the Empire: A Brief Survey of Problems in Dworkin's Theory of Law"* Law and Philosophy, vol. 6, no. 3, 1987, pp. 419–438
[66] Donato, James. *"Dworkin and Subjectivity in Legal Interpretation"* Stanford Law Review, vol. 40, no. 6, 1988, pp. 1517–1541
[67] ibid
[68] Dworkin, Ronald. *Taking Rights Seriously*. Bloomsbury Academic, 2017, p.22

based.[69] Moreover, he rejected the view on the existence of a link between justice and law advocated by Natural Law theorists. Dworkin views that the validity of the law should not be determined by the justice or injustice it serves.[70]

When justifying the contention that citizens have rights against their government, Dworkin appealed to the concepts of human dignity and political equality. Dworkin states: "It makes sense to say that a man has a fundamental right against the Government, in the strong sense, like free speech, if that right is necessary to protect his dignity, or his standing as equally entitled to concern and respect, or some other personal value of like consequence".[71]

Dworkin suggests that there should be a distinction made between 'rules' and 'principles'. 'Rules', unlike 'principles', can either be valid or invalid. A rule can be overridden or invalidated by another rule in a case, while a principle can be overridden but not invalidated. He further suggests that the law cannot be made of 'rules' alone but should also be made of other standards, such as policies and principles.[72] For Dworkin, rules, policies and principles make the "moral fabric" of a society.[73] They are regarded as the guardians of the interests of a society that are deemed valuable and that are specified as rights. The moral fabric must be interpreted in light of the best moral political and social standards to achieve the single 'right answer'.[74]

Furthermore, Dworkin addressed the question of judges adjudicating 'hard cases' by rejecting the term 'strong discretion' of judges introduced by legal positivists. He asserted that the judge, when adjudicating a 'hard case', have to search through the moral fabric and decide how to apply the law in the best way possible.[75] For Dworkin, the judge does not have a quasi-legislative discretion, but rather a discretion contingent on him/her providing the 'right answer'. The new rule introduced by the judge relies on the moral fabric as its source.

Finally, Dworkin suggests that in 'hard cases', judges undertake a process of interpretation to fill in the gaps in the law. He identified three stages for this. First, the pre-interpretive stage

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[69] Covell C., *Ronald Dworkin: Legal Philosophy and the Liberal Theory of Justice. In: The Defence of Natural Law*. Palgrave Macmillan, London, 1992, pp. 145-149
[70] ibid
[71] Dworkin, Ronald. *Taking Rights Seriously*. Bloomsbury Academic, 2017, p.199
[72] Keating, Gregory C. *"Justifying Hercules: Ronald Dworkin and the Rule of Law"* American Bar Foundation Research Journal, vol. 12, no. 2/3, 1987, pp. 525–535
[73] ibid
[74] ibid
[75] Dworkin, Ronald. *"Hard Cases"* Harvard Law Review, vol. 88, no. 6, 1975, pp. 1057–1109

that includes the collection of available data in the form of texts, judicial precedence and other relevant materials. Second, the interpretive stage where the judge evaluates the data collected and advance his/her interpretation in the best wat possible. Third, as a result of the two stages mentioned above, legal questions can be settled, since the best answer or 'right answer' has been achieved.[76] Dworkin emphasized the importance of judges balancing between judicial precedence and 'coherence' with the current moral standards (social goals and principles of justice) to achieve the 'right answer' for a hard case.[77]
John Finnis criticised Dworkins concept of the 'right answer' emerging from the balance between 'fit' and coherence'. Finnis argues that the values proposed by Dworkin to be compared and balanced are incommensurable.[78] As a result, a single 'right answer' cannot be determined based on the comparison of two values, as this would mean that the judge has to choose a value he sees fit. This is a form of discretion. Further, Finnis argues that not all aspects of legal practice are interpretive. He gave legislation as an example for this, as not all legislation is seen as merely an interpretive action.[79]

Finnis argues that the codification of law should be guided by moral principles and rules. He further suggests that "those moral norms are a matter of objective reasonableness…; and that those same moral norms justify: 1) the institution enacting the law, 2) the principles guiding the institutions within that institution (e.g. separation of powers), and 3) the main institutions regulated and sustained by law.[80]

Aquinas views law as "consisting partially of rules derived from natural law like conclusion deduced from general principles, and for the rest of rules which are derived from natural law like implementations of general directives." Moreover, he asserted that a law can be invalid because of morally perverse content (a law contradicts with either divine or natural law), or because a human agent acted in *ultra vires*.[81]

The research adopts the middle ground proposed by Dworkin for the understanding of justice and the rule of law. The researcher argues that the concept of the rule of law has positive and

[76] ibid
[77] Keating, Gregory C. *"Justifying Hercules: Ronald Dworkin and the Rule of Law"* American Bar Foundation Research Journal, vol. 12, no. 2/3, 1987, pp. 525–
[78] George, Robert P. (ed.), *Natural Law Theory: Contemporary Essays*, Oxford University Press, 1992, p.144
[79] ibid
[80] Finnis, John. *Natural Law and Natural Rights*. Oxford University Press, 2011, p.290
[81] Donnelly, Jack. *"Natural Law and Right in Aquinas' Political Thought"* The Western Political Quarterly, vol. 33, no. 4, 1980, pp. 520–535

natural law components. The first three pillars of the universally accepted definition for the rule of law, namely: Government bound by the law, Equality before the law, and the accessibility, impartially and independence of the judiciary, require positive law to ensure adherence to them. Fuller and Rawls sets of procedures can apply here, as little moral consideration may be attached to those pillars. Further moral aspects under those pillars can be protected by positive law, and thus, the emergence of 'hard cases' is rare.

The researcher further argues that the fourth pillar of the rule of law, 'Fundamental rights and their protection', is better protected under the umbrella of Natural Law. Human rights and civil liberties are best protected when a judge describes the nature of the law based on the social understanding of justice and apply it accordingly.

The researcher argues that for fundamental rights to be protected, they should be morally justified. The best moral justification for such rights is associating them to religion. The divine source can then be utilised to ensure promulgation and adherence to universal human rights that are in line with the culture peculiarity of each nation. The researcher agrees with Aquinas view that a law can be invalid because of morally perverse content (a law contradicts with either divine or natural law), or because a human agent acted in *ultra vires*. The researcher argues that this can help better protect fundamental rights if judges interpreted law in this manner. This is further discussed in chapter 6 of the thesis.

A universal definition for the rule of law may be partially achieved, however, cultural clashes can lead to undermining such attempts. This is evident when looking into the pillar of Fundamental rights. Although the UDHR is signed by the majority of the nations of the world, some aspects of it is in clash with many cultures and societies. The researcher argues that that by applying the Natural Law understanding to law, such conflicts can be resolved. The peculiarity of each society and culture will be preserved, and a universal definition and application for the rule of law achieved. The next section discusses the different definitions and theories for the rule of law.

1.6 Rule of Law Theories

The term 'rule of law' is a vague term and there is no general consensus to the meaning of it.[82] There are, however, two competing definitions to the concept, a formal definition and a substantial definition. Formal definitions to the concept look at what criteria is present and what is not in the laws and the justice system. Such criteria include an independent and impartial judiciary, absence of discriminatory laws, laws that are public, absence of retroactive laws and the availability of judicial review provisions.[83] There is no definitive list to the formal criteria, however, all formal definitions measure the rule of law by confirming those standards to the legal system. The substantial definition looks at the content of the laws and its suitability with the values of democracy. The laws should uphold the values of democracy, defend human rights and the rights of the minorities. It should further prevent injustice and tyranny and thus create a balance between individual needs and public interest.[84]

Nonetheless, there is a common understanding regarding the features of the concept of rule of law. To determine a working definition to rule of law, international organisations found that it is essential to outline the desired purposes or goals that the law tries to correct. The purpose of the principle of the rule of law is to assist the governments in providing security and the capability to predict and think logically. The concept is defined based on five goals that it aims to achieve: (1) government bound by the law, (2) equality before the law, (3) establishing law and order, (4) upholding fundamental rights, and (5) securing justice efficiently and impartially.[85]

The UN Secretary General defined the concept of rule of law as: "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."[86]

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[82] Fallon, Richard H. *"The Rule of Law' as a Concept in Constitutional Discourse." Columbia Law Review*, vol. 97, no. 1, 1997, p. 1–56

[83] Waldron, Jeremy, *"The Rule of Law",* The Stanford Encyclopedia of Philosophy (Fall 2016 Edition), Edward N. Zalta (ed.), Online Source: https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/

[84] ibid

[85] *See definitions by: United Nations, World Justice Project and World Bank.*

[86] Online Source: https://www.un.org/ruleoflaw/what-is-the-rule-of-law/

Since the rule of law ends are challenged and are dependent of the historical developments in a state, they cannot simply be stated as given. It is important to realise that the rule of law end goals is both culturally and historically determined. Therefore, reform efforts when trying to identify new end goals should first look into old ideas and reinterpret and reemphasise them. This will result in saving time and enhance the rule of law through an intrinsic and indigenous process.

(a) The Rechtsstaat (Germany)

The doctrine of the Rechtsstaat (state of law) originates from the German jurisprudence, particularly to that of Hegel's philosophy. This theory was founded by German jurisprudence and later adopted by the French jurisprudence to respond to the urgent need of establishing a foundation for public law. The German scholars took Hegel's ideas and his definition of the state and used it to lay the theoretical bases for the 'state of law'. Ideologically, the concept of the state changed from a relationship of oppression and domination to an objective system. Such a system provides to communities' security and stability in a given region. It also provides a supreme authority responsible for managing and administrating state matters and has the support of the general public.[87]

The Rechtsstaat doctrine includes in its definition, several meanings. It refers to an institutional system in which the public authority is subject to the power of law. It also calls for devoting rights and freedoms whilst also protecting them from the arbitrariness of the state. It finally links the inception and continuity of the state to the law, arguing that the state and law represent the same thing.[88]

The state, in the German school of thought, is not the one that makes law, but the body responsible for expressing it [89]; as the state and law are similar sides of the same coin. The state arises from the legal system and the hierarchy of the rules within it. The binding rules to the state form a sequential and harmonic set of rules that is gradual in its binding powers. Every rule that is below in hierarchy must be in accordance with the rule above it. This makes the powers of the state limited. Thus, the state is merely a manifestation of the law that

[87] Brooks, Thom (2017) *'Hegel's philosophy of law.'*, The Oxford Handbook of Hegel. Oxford: Oxford University Press, pp. 453-474. Oxford handbooks.
[88] Gosalbo-Bono, R., *The Significance of The Rule of Law and Its Implications For The European Union And The United States*, University of Pittsburgh Law Review, Vol. 72:229, p.241
[89] ibid

clearly limits its arbitrary powers. It can also be a mean to a kind of a rational organisation for the state. [90]

The doctrine was reinterpreted in the beginning of the 20th century by Hans Kelsen. Kelsen defined the Rechtsstaat as a relatively centralised legal system that has the following characteristics: justice and administration are linked to it by the laws, i.e. by general laws issued by an elected Parliament. The head of state leading the executive may or may not participate in the law-making process. The members of the executive are responsible for their own work and the judiciary should be independent. Furthermore, the citizens enjoy a set of freedoms and rights, especially the freedoms of thought, belief and expression.[91]

(b) The Etat de Droit (France)

In France, the concept was adopted by Raymond Carre de Malberg. He tried to take the concept from the German jurisprudence and apply it on the French model of state, which is characterised by its revolutionary manner. This caused a type of blend between this theory and the idea of the French revolution of the state, nation and sovereignty.[92] This was achieved despite it rejecting several elements of the original German theory, considering it either not proven or does not correspond to the French legal thought.[93]

De Malberg defined the concept of Etat de Droit as a state that bounds itself to a legal system in its relationship with its citizens, in order to protect their individual rights. Its behaviour is subject to two sets of rules: the first defines the rights of the citizens and the second specifies the means and methods used to achieve the goals of the state. These two sets of rules make the powers of the state limited by implementing it to the devoted legal system.[94]

(c) The Rule of Law (UK and USA)

The early beginnings to the Anglo-Saxon theory of the rule of law is attributed to A.V Dicey. In his paper published in 1885, Dicey considered the English common law as superior to the French administrative law and asserted that the English unwritten constitution is

[90] ibid
[91] Vinx, Lars. *Hans Kelsen's Pure Theory of Law: Legality and Legitimacy*. Oxford University Press, 2008
[92] Gosalbo-Bono, Ricardo. *The Significance of the Rule of Law and its Implications for the European Union and the United States*. University of Pittsburgh Law Review, [S.l.], v. 72, n. 2, 2010
[93] ibid
[94] ibid

characterised by its loyalty to the rule of law[95]. Dicey discerned a definition for the rule of law from the constitution that eliminates the administrative law based on equality before the law; and which denies the servants of the throne from having any privileges in litigation matters.[96]

Dicey's theory of the rule of law is based on three elements. First, no one is punishable nor considered guilty unless he/she commits an offence that is set forth by the law and based on correct legal proceedings, and before a competent judicial authority. Secondly, all persons are equal before the law and can resort to the judiciary freely and without discrimination based on social status or wealth. And third, general constitutional principles emerge from decisions made by the judicial authorities on special cases. It derives the general constitutional principles by enforcing the judicial decisions.[97] Thus, the results of this perception are first the exclusion of arbitrary power through the principle of legality, and also the exclusion of expanding the discretionary powers given to public officials. Secondly, equality before the law is achieved by the existence of a unified legal and judicial system addressing all matters, whether private or crown related. Finally, individual rights and freedoms do not have to be written in a specific bill of rights and emerge from ordinary legislation and the principles of common law.[98]

Hayek defined the rule of law as a system in which "a government in all its actions is bound by rules fixed and announced beforehand- rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the bases of this knowledge".[99]

(d) Rule of Law in Islamic Jurisprudence

The Islamic judicial thought doctrine is consistent with the common general understanding of the concept of the rule of law. It is consistent with the formal interpretation to the concept, relating to the necessity of the existence of a law organising the society. This is achieved through emphasising the necessity of having general abstract provisions to rule the relationship between the people in a society. These provisions are derived from the Islamic

[95] Waldron, Jeremy, *"The Rule of Law", The Stanford Encyclopedia of Philosophy* (Fall 2016 Edition), Edward N. Zalta (ed.), Online Source: https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/
[96] ibid
[97] Robson, William A. *"Dicey's Law of the Constitution: A Review."* Michigan Law Review, vol. 38, no. 2, 1939, pp. 205–207.
[98] ibid
[99] Hayek, F., *The Road to Serfdom,* London, Routledge & Kegan Paul, 1944, p.54

Shariah. Islam placed Shariah law as a system governing the various walks of life.[100] During the 12th century, Muslim scholars worked on entrenching the concept of the rule of law by utilising Shariah law as a constitution organising trade, political, economic and banking relations. It further emphasised that no one can claim superiority over the law, not even the Calipha himself. Finally, the scholars of that generation worked on spreading the culture of equality before the law.[101]

The Islamic social thought is also consistent with the substantial interpretation to the concept, relating to the commitment of the state, represented in its legislative and executive powers, to the laws and its standards. This was indicated in many Islamic texts, such as a speech given by Prophet Mohammed in which he said: "*Those whom were before you were cursed by letting go the honourable if he stole and punishing the weak for a similar act. In the name of God, the Almighty, if Fatima my daughter steal, I will punish her*".[102]

Welton states that "*the Islamic world, too, has a devotion to the rule of law that has prevailed through much of its history and, while severely impaired in the 19th and 20th centuries by Western colonialism and its aftermath, has resurfaced as a desired virtue, fully compatible with Islamic law and tradition*".[103]

(e) Rule of Law in Oman

The Rule of law has been established in Oman for a long time. The Islamic Shariah emphasised on the equality before the law, law and order and the protection of freedoms and rights. This was adopted by Oman and was safeguarded by the Ibadi school of thought and by the Imamate governmental system. In recent history, and particularly in 1996, the issuance of the first Omani written constitution marked the importance of the concept in the eyes of the legislator. The constitution in Article 59 states: *"The rule of Law shall be the basis of governance in the State"*.[104]

[100] Iqbal & Lewis, *An Islamic Perspective on Governance,* Cheltenham, Edward Elgar, 2009, p.255-258
[101] Article from Al Daar Newspaper, Kuwait, 1/11/2009.
[102] Al Asqalani, A., *Fath Al Bari,* Dar Al Rayyan lil Turath, 1988, Hadith no.: 3288
[103] Mark David Welton, *Islam, the West, and the Rule of Law*, 19 Pace Int'l L. Rev. 169 (2007)
[104] Oman Basic Statute of the State 1996, Official Gazette, Oman

1.7 ‘Rule OF Law’ vs. ‘Rule BY Law’

Some scholars made a distinction between ‘Rule of Law’ and ‘Rule by Law’.[105] Under the concept of Rule of Law, the law should be above every person and institution in the land. On the other hand, the concept of the Rule by Law implies the use of law as an instrument of political power. The state uses law to control the people and ensures that the law is not used to control the state. China is an example of a country that adopted such an approach.[106] Thomas Hobbes is seen as an advocate for Rule by Law. Hobbes developed a specific concept for justice by saying that injustice is the violation of the general rules. Justice for him is the obedience to the strong who can make himself obeyed.[107]

Moreover, democratic values of liberty, equality and justice are enshrined within the concept of the Rule of Law. Therefore, it includes within it substance and procedure of the law. On the other hand, Rule by Law tends to be value neutral and merely procedural.

Finally, Rule by Law allows the judiciary to challenge the executive power of the state and not the legislator, even if the laws issued are arbitrary or unjust. On the other hand, Rule of Law allows the judiciary to challenge both.

It can be argued that a system of ‘Rule by Law’ is in place in Oman. The Sultan is the head of the legislature, the executive and the judiciary. The Sultan also has the power to legislate laws, appoint ministers and the head of the Supreme Court. For this reason, the concept of the rule of law cannot be established fully in Oman. Nonetheless, the researcher argues that in order to establish rule of law in Oman, it is necessary to implement the changes gradually and without possible unrests. The researcher recommends addressing this issue as a long-term goal in the judicial reform process. It is beyond the scope of this paper to discuss the suitability of a monarchical or a liberal democracy system for Oman at the time being.

There are five identified functions for courts in authoritarian regimes: 1) social control and side-lining opponents, 2) legitimation of the regime, 3) controlling administrative agents and maintaining elite cohesion, 4) facilitate trade and investment, and 5) the delegation of controversial reforms to the judicial institutions to avoid political backlash.[108] It can be

[105] Tamanaha, B., On the Rule of Law: History, Politics, Theory, Cambridge: Cambridge University Press, 2004
[106] Waldron, Jeremy, "*The Rule of Law*", *The Stanford Encyclopedia of Philosophy* (Fall 2016 Edition)
[107] Green, Leslie, *"Legal Positivism",* The Stanford Encyclopedia of Philosophy (Spring 2018 Edition)
[108] Ginsburg, T., & Moustafa, T. (Eds.), *Rule by Law: The Politics of Courts in Authoritarian Regimes*. Cambridge: Cambridge University Press, 2008,

argued the regime in Oman facilitate the courts for such functions. The researcher stresses the importance of ensuring a proper adherence to the rule of law and judicial independence in the judicial reform efforts. It is also important to not use the rule of law rhetoric as a tool of ensuring legitimacy. This was the case in Egypt under President Anwar Sadat and China in the post Mao era.[109]

1.8 Legal Culture

Culture is defined as the accumulated social heritage that is common to a community or a nation and determines the way of life of that community or nation. It also identifies the members of the community or nation.[110]

Culture features certain characteristics, most importantly is that it is common to all or the majority of the community. It is also historical, meaning that its components are produced by individuals during which they reacted to satisfying different needs. It then gradually turned to well established practices which is then transferred from one generation to the other. This is usually done through family education and formal education, such as schools and universities. It is also characterised as being binding. This is due to those general elements which are common among the majority of individuals, therefore, putting those individuals under social pressure if he/she did not abide by the elements of the culture and its practices.[111] Culture can also be used to understand the influences of social, political, economic and religious factors on legal systems.[112]

There are many approaches connecting law to culture within the legal scholarship. One of the approaches is the historical school that was founded by German jurisprudence during the first half of the 19th century. It viewed law as the product of the nation's culture and is part of the people's daily practices. The historical school views the function of the statutes as a reflection of the existing social practices but not to create law. Just as each nation has its own language expressing its unique spirit, it will also have its own distinctive law.[113]

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[109] Ibid, p. 6
[110] Hofstede, G., *Dimensionalizing Cultures: The Hofstede Model in Context*. Online Readings in Psychology and Culture, 2, 2011, https://doi.org/10.9707/2307-0919.1014
[111] ibid
[112] ibid
[113] Menachem Mautner, *Three Approaches to Law and Culture*, 96 Cornell L. Rev. 839 (2011) Available at: http://scholarship.law.cornell.edu/clr/vol96/iss4/25

The constitutive approach was developed by the American jurisprudence in the 1980's. It views law as participating in the constitution of culture and thereby the people's minds, practices and social relations.[114]

Another approach was founded by the Anglo-American jurisprudence in the 20th century. It views the law that the courts create and apply as a distinct cultural system. The adoption of the culture by the law practitioners in the course of their studies and work, leads to constitute, direct and determine the way those practitioners think, argue and resolve cases. The legal culture, however, allows for more than one possible solution. Therefore, although objectivity in the law may be achieved, there is also a degree of inconsistency and subjectivity in its application.[115]

Friedman asserted that "by legal culture we mean the ideas, values, attitudes, and opinions people hold, with regard to law and the legal system."[116] The supporters of legal culture, therefore, include in their notion an analysis of the application of law that is not limited to legal rules and principles only. Legal researchers need to determine how the law influences society, "…as a social institution, as interacting behaviour, as ritual and symbol, as a reflection of interest group politics, as a form of behaviour modification…".[117] Friedman's concept of legal culture considers legal systems has three components: (1) structural, such as the courts; (2) substantive, such as what the judges say; (3) public attitudes or values, which involves decisions made by society on when, what and how legal institutions will be used.[118]

As a result, law and societies interact and react to each other, and legal reform cannot be established without considering the society and its culture.[119]

Taylor considered law to be part of the culture gained by the individual for being a member of that community. It is also considered an intangible wealth to culture, which in turn reinforces the legislation derived from customs and religion.[120]

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[114] ibid
[115] ibid
[116] Friedman, Lawrence M. *"Legal Culture and Social Development."* Law & Society Review, vol. 4, no. 1, 1969, pp. 29–44., JSTOR, www.jstor.org/stable/3052760.
[117] ibid
[118] ibid
[119] ibid
[120] Edward B. Taylor, *Primitive Culture* 1 (3d ed. 1889)

The individual receives his culture through the process of socialisation that is embodied in the form of behaviour or act and practiced in his/her daily social life. This behaviour is learnt and acquired from the surrounding social culture. The learning process is done through socialisation, which means a process of teaching and education based on social interaction. This is done to give the individual a set of behaviours, standards and trends suitable for certain social roles. This set of behaviours makes the individual capable of keeping up with his group and blend with them. Upbringing is responsible for giving the individual his legal culture and the customs and legislation of the society he /she lives with. It then works in building the character of the individual that is similar to the values and customs of the society he/she lives among. The individual gains his/her legal culture through the social upbringing institutions, which includes the family, the educational institutions and the media.[121]

The legal culture among Omani citizens is weak. This is due to the lack of familiarity of the rules and regulations concerning them or the inability to understand them. Defeat and accepting the problem is another reason. Many individuals waive their financial and civil claims as they prefer defeat and accepting the problem rather than going to court. In addition, the bureaucracy involved in the courts system pushes people away from going to them in order to avoid the sequential procedures.

Moreover, the individual cannot benefit his/her full rights and claim for it if he/she is incapable of understanding the legal changes and developments. This is due to legal illiteracy, which requires legal awareness within the general culture.

1.9 Theories of Legal Transplantation

Transferists argue that borrowing other laws is necessary for legal change, and there is very little in law that is totally original.[122] Watson stated that the exportation of a rule or a system of law from one country to another proved to be a success to the legal development in the receiver country.[123] Moreover, Watson argues that legal rules may easily be borrowed by other nations, irrelevant of the social, economic, geographical and political circumstances from those of the donor nation.[124] Watson also argued that legal culture differs between lay

[121] Maluleke, MJ., *Culture, Tradition, Custom, Law and Gender Equality*, 2012, p.2-22. http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812012000100001&lng=en&tlng=en
[122] Alan Watson, *Legal Transplants and Law Reform*, 92 Law Quarterly Review 94, 1976
[123] ibid
[124] ibid

people, lawyers and lawmakers and therefore must be distinguished. Furthermore, Watson believes that legal change is driven by the legal culture of the nation.[125]

The Culturalists' ideas originated from Montesquieu sceptic view that law cannot cross cultural boundaries. For Montesquieu, law expresses the spirit of the nation and is strongly linked to its geographic, customary and political context. Moreover, he argues that transferring laws across cultural boundaries is a great risk. Laws cannot change manners and customs, as those two evolve.[126]

Culturalists view law as a product of culture, and that it reflects the needs of the society. Therefore, transferred laws, in their opinion, are unlikely to exert the same behaviour in other societies. For Culturalists, legal systems are much more than mere rules, and has deeper underlying socio-political dynamics.[127] Furthermore, Culturalists argue that law develops within itself and that modernisation must be achieved internally. They further argue that the norms and philosophy of the native society must be incorporated with the introduced foreign legal and political norms.[128]

The Middle Ground theory suggests that similar historical, legal, political, socio-cultural and legal-cultural experiences between nations can lead to a successful legal transplant.[129] Interaction and harmony between the legal system and the legal culture is important. For the law to be effective, it must be understood and respected in the context that it is applied, so that that citizens have faith in the system and demand the judicial institutions to perform their tasks efficiently.[130] Transplantation of law and legal institutions from one state to the other may lead to a clash between the imported rules, institutions and ideas with the local culture. Past experiences of such attempts show a process of selection, resistance, reform and integration before achieving the desired goals.[131]

The rapid modernisation that Oman underwent meant the need to have a modern justice system, capable of protecting the interests of the individuals. Thus, Oman adopted the

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[125] ibid
[126] Atar, N., *The Impossibility of a Grand Transplant Theory,* Ankara Law Review, Vol.4 No.2 (Winter 2007), pp.177-197
[127] ibid
[128] ibid
[129] Xanthaki, Helen. *"Legal Transplants in Legislation: Defusing the Trap."* The International and Comparative Law Quarterly 57, no. 3, 2008, p.659-73. http://www.jstor.org/stable/20488235
[130] ibid
[131] ibid

Egyptian civil law form of legal system. The Egyptian civil law legal system in turn was adopted from the French model. This Egyptian-French model was transplanted to Oman's judicial system, as it was a quick fix at that time. This, however, was not the best solution for the long run. Oman's justice system is lacking efficiency and organisation that should be addressed urgently. Such problems are caused by the transplantation of a legal system that is not inherent to Oman.

1.10 Judicial Reform Theories

Judicial reform is defined as the process that a state undergoes in order to improve the functioning of its legal system, in terms of fairness and efficiency.[132]

The legal system includes the legal framework, which consists of: the constitution, statutes, regulations, customary law and international treaties. It also consists of the institutions that work alongside to establish the judicial process. This in return gives effect to the legal norms in a society. Those institutions include the courts, the judicial administration, the public prosecution and the defenders. It also includes the alternative dispute resolution institutions. In addition, the legal system includes other institutions, such as: institutions providing education and training, legal advice and legal aid. Those institutions may be public or private such as: law schools, law societies, bar associations and human rights organisations.[133]

Judicial reforms are motivated by four predominant aims and objectives.[134] The first is to facilitate economic development. A key argument is that a well-functioning legal system is a pre-condition for economic development. The second aim is to protect human rights and provide access to justice to all members of society. The third aim is to secure law and order, protect citizens against crime and provide security for them. Finally, it aims to secure democratic accountability, good governance and the integrity of the political process. [135]

The nature of the problems surrounding the justice sector varies from one country to the other. A major problem inherent in many countries is poor accessibility. Another problem is the lack of responsiveness and capabilities when cases reach the legal system. Moreover, the lack of judicial independence and autonomy is a big concern. Furthermore, the shortage of

[132] Mohammadi, M. *Judicial Reform and Reorganization in 20th Century Iran*. New York: Routledge, 2008
[133] ibid
[134] ibid
[135] ibid

resources and/or the inefficient use of the resources available is the root cause of many problems. Finally, the lack of legitimacy of the courts is a massive problem.

To overcome such problems, judicial reform efforts has been made through different types of interventions. These efforts include: law reform, court reform, judicial administration reform, legal community support, reform of legal education and training and access to justice programmes.
To establish a specific theory of judicial reform, it is important to look at the theories on the rationality of legal and judicial change. There are four main theories in this domain; the Mirror theory, the Isolation theory, the Functionalist theory and the Inter-societal isolation theory.

The *Mirror theory* views that legal and judicial changes as intertwined with other forces of societies, apart from the law and the judiciary. Such forces include social class relations, national spirit, the market and power relations.[136]

The *Isolation theory* views the legal and judicial changes as separate from any influences, even within the same society. The development, in this theory's' point of view, is a result of internal pressures of legal and judicial nature, and can be explained without reference to the social, economic and political factors.[137]

The *Functionalist theory* focuses on the function of law rather than the legal structure it operates under. It explains that judicial change is a consequence of functional changes. According to Fuller, the law's essential function is to guide the societies behaviour and that nothing can be considered as law unless it is capable of achieving that function. To perform this function, Fuller put forward eight principles that a system of rules must fulfil. The first is that the rules must be conveyed in general terms. The second is that the rules must be promulgated publicly. The third is that the rules should be prospective in effect. The fourth is that the rules should be understandable to the public. The fifth is that there should be consistency in the law. The sixth is that the rules should not ask for more than what human nature can do. The seventh is that the rules should be consistent and not change frequently. Finally, the officials must work in accordance with the rules and law.[138]

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[136] Ewald, William, *"Comparative Jurisprudence (II): The Logic of Legal Transplants,"* The American Journal of Comparative Studies, Vol. 43, No. 4, 1995, p.489– 510.
[137] Mohammadi, M., *Judicial Reform and Reorganization in 20th Century Iran*. New York: Routledge, 2008
[138] Fuller, Lon L. 1964 *The Morality of Law*, New Haven: Yale University Press.

The *Inter-societal isolation theory* views the judicial changes occurring due to interactions between the judicial systems of other societies rather than the interactions taking place in one society. The Transplantation theory adopted by Watson is a good example for the Inter-societal isolation theory. Watson views that rules can be easily transferred from one society to the other, and that law is independent from economic and social changes.[139] Watson states that: "there is no close, inherent, necessary relationship between legal rules and the society in which they operate".[140]

Other than the judicial reform theories mentioned earlier, there are four possible alternative theories for explaining judicial reform in societies like Oman. Those theories include: The Dependence theory, the Efficiency theory, the Materialist theory and the Development theory.

According to the dependence theory, Western imperial powers had and continue to have the communication technologies and military might. Those powers try to define the less powerful states legal system. The dependence theory looks at developed nations in the modern international system as responsible for clarifying and enforcing legal and property rights within their territories. Those nations further request that the client states provide information about its legal rights and to enforce them as a precondition for the exchange between the states to take place.[141]

In the efficiency theory, judicial reform is explained with respect to introducing change in the personnel of the justice system and the high-ranking officials in the judiciary. It also considers changing some mechanisms to avoid a backlog of cases, expedite the process for adjudication and to fight against corruption.[142]

The Materialist theory looks at judicial reform as something secondary with subsidiary importance. It considers law as an instrument of economic and social policy and reflection of a capitalistic, bourgeois, imperialist, exploitive society, economy and government.[143] Finally,

[139] Alan Watson, *Legal Transplants and Law Reform*, 92 Law Quarterly Review 94 (1976)
[140] ibid
[141] Mohammadi, M., *Judicial Reform and Reorganization in 20th Century Iran*. New York: Routledge, 2008
[142] ibid
[143] Sutton, John R., *Law/Society: Origins, Interaction, and Change*, London, Pine Forge Press, 2001

economic development theories link economic growth and the urgent need of a clear and efficient legal framework for economic development with judicial reform efforts.[144]

Economic development has been growing going in Oman since the 1970's. The most recent judicial reform was made due to the economic and social growth Oman achieved in the new Millennia. The most recent judicial reform was outlined by Royal Decree (9/2012).

1.11 Comparative Law Theories

Comparative Law scholarship emerged in Europe and was of importance in the legal scholarship debates. Eduard Lambert and Raymond Salleilles where among the first notable scholars to discuss comparative law and, because of their efforts, this field gained importance among the academic legal community. However, Lambert and Salleilles differed in their views to the purpose of comparative law. Salleilles view was that comparative law should be employed to help develop the laws of a nation in a given era. On the other hand, Lambert's view was that comparative law should be employed to help align the legal systems in heterogeneous environments and establish a legal system that is suitable to all.[145]
Lambert's view on the purpose of comparative law is to reach general legislative principles. It aims at achieving coherence between laws in social environments that have similar legislative sources. It is open to foreign laws to discover its sources and analyse its components and assets to try and achieve a universal law.[146]

According to Lambert, Comparative Law is not a single scientific field, but contain within it two branches of science that differ in objectives and subject and only share the outer appearance in common and the use of comparative method. For this, Lambert emphasised the need to distinguish between the two. The first is the science of legal phenomena. Its purpose is the disclosure and development of legal phenomena, whether in old legislations or modern ones, and whether they are civilized laws or uncivilized. Lambert called this 'Comparative History'. The second is the science that Lambert called 'Comparative Legislation', and it is an element of positive law. This field considers a set of rules that are already in place and has historical, social and political ties.[147]

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[144] ibid
[145] Jamin, C., *"Saleilles' and Lambert's Old Dream Revisited."* The American Journal of Comparative Law 50, no. 4 (2002): 701-18. http://www.jstor.org/stable/41616735.
[146] ibid
[147] ibid

The objective of comparative history is purely scientific. It aims at finding the truth and the disclosure of the ties and relations between the legal phenomena in its organisation and development, and its regression and dissolution. It aims at a target that is difficult to reach, which is the knowledge surrounding natural law that governs the social relations, particularly, legal relations. In this context, comparative law scholars should simplify their research prospects and extend it to all legal systems in all religions, always and with all nations. This should be done to establish a general layout explaining the emergence of legal systems and its development and disappearance, and to extract the standards that determine the degree of civilisation growth that are inherent to the provisions of the law.[148]

Comparative legislation, in Lamberts view, has a practical and beneficial purpose. Its aim is to search among the various legislations that are similar for the common grounds in their legal systems. This common ground could be used to develop national legislations and update them.[149]

Although the essence of Salleilles theory aims to employ comparative law in developing national legislations, he hoped to establish a universal law that uses comparative law as a tool to reach such an objective. He aimed to replace the static nature of natural law to it and to become a general law that different national legislations follow gradually. Despite the impossibility for establishing a single universal positive law, Salleilles theory is a futuristic dream that he pursues by presenting an adaptable paradigm for such a dream.[150]

According to Salleilles, the aim of comparative law can be summarised in three points:
(1) Study the different legislations from a social perspective; (2) Study the legislations that depend in its organisation on the different laws of the communities within the same nation and study those individual legislations separately; (3) Draw a single model or multiple models of the different legal systems, and this model becomes the target that all legal systems seek gradually.[151]

[148] ibid
[149] ibid
[150] ibid
[151] ibid

1.12 Conclusion

A comprehensive working theory for the study can be drawn. There is no one universal justice system. Each society interprets justice in a different way. Furthermore, justice can be seen from different philosophical and social perspectives. It can be classified as either Natural justice, Conventional justice, Legal justice, Cumulative justice, Social justice or Criminal justice. Moreover, justice is the access of moral beliefs in any religion. Judaism, Christianity and Islam have all expressed the importance of upholding justice in society. All religions generally agree on counting the divine act as fair and impeccable from injustice and arbitrariness. The injustices that occur on earth are a man-made evil and should be punishable.

Justice in the philosophical thought may be classified under three main perspectives: The Positivist perspective, the Natural perspective and the Utilitarian perspective. The Positivist perspective defines justice as the obedience of individuals to the laws of the authority. The Natural perspective considers it as an inherent part in humans and should only be explored to use the mind, followed by applying it by the means of positive law that enhances the principles of Natural law. The Utilitarian perspective sees that justice is achieved when the laws achieve their goals in fulfilling the people's benefit and well-being. None of those perspectives, however, provided a complete solution to the issue of the essence of justice and the rule of law. The research adopts the middle ground theory proposed by Dworkin for the understanding of justice and the rule of law. The researcher argues that the concept of the rule of law has positive and natural law components. The first three pillars of the universally accepted definition for the rule of law, namely: Government bound by the law, Equality before the law, and the accessibility, impartially and independence of the judiciary, require positive law to ensure adherence to them. Fuller and Rawls sets of procedures can apply here, as little moral consideration may be attached to those pillars. Further moral aspects under those pillars can be protected by positive law, and thus, the emergence of 'hard cases' is rare.

The researcher further argues that the fourth pillar of the rule of law, Fundamental rights and their protection, is better protected under the umbrella of Natural Law. Human rights and civil liberties are best protected when a judge describes the nature of the law based on the social understanding of justice and apply it accordingly.

The researcher argues that for fundamental rights to be protected, they should be morally justified. The best moral justification for such rights is associating them to religion. The divine source can then be utilised to ensure promulgation and adherence to universal human rights that are in line with the culture peculiarity of each nation. The researcher agrees with Aquinas view that a law can be invalid because of morally perverse content (a law contradicts with either divine or natural law), or because a human agent acted in *ultra vires*. The researcher argues that this can help better protect fundamental rights if judges interpreted law in this manner. This is further discussed in chapter 6 of the thesis.

A universal definition for the rule of law may be partially achieved, however, cultural clashes can lead to undermining such attempts. This is evident when looking into the pillar of Fundamental rights. Although the UDHR is signed by the majority of the nations of the world, some aspects of it is in clash with many cultures and societies. The researcher argues that that by applying the Natural Law understanding to law, such conflicts can be resolved. The peculiarity of each society and culture will be preserved, and a universal definition and application for the rule of law achieved.

The definition of the Rule of law by the UN secretary general is adopted in this study. The UN Secretary General defined the concept of rule of law as: "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

It can be argued that a system of 'Rule by Law' is in place in Oman. The Sultan is the head of the legislature, the executive and the judiciary. The Sultan also has the power to legislate laws, appoint ministers and the head of the Supreme Court. For this reason, the concept of the rule of law cannot be established fully in Oman. Nonetheless, the researcher argues that in order to establish rule of law in Oman, it is necessary to implement the changes gradually and without possible unrests. The researcher recommends addressing this issue as a long-term goal in the judicial reform process. It is beyond the scope of this paper to discuss the suitability of a monarchical or a liberal democracy system for Oman at the time being.

The definition of Legal culture by Friedman is adopted in the study. Friedman asserted that "by legal culture we mean the ideas, values, attitudes, and opinions people hold, regarding law and the legal system."[152] Friedman's conception of a legal culture considers legal systems as having three components: (1) structural, such as the courts; (2) substantive, such as what the judges say; (3) public attitudes or values, which involves decisions made by society on when, what and how legal institutions will be used.[153] Thus, law and societies interact and react to each other and legal reform cannot be established without considering the society and its culture.[154] The legal culture among Omani citizens is weak. This is due to the lack of familiarity of the rules and regulations concerning them or the inability to understand them. Defeat and accepting the problem is another reason. Many individuals waive their financial and civil claims as they prefer defeat and accepting the problem rather than going to court. In addition, the bureaucracy involved in the courts system push people away from going to them to avoid the sequential procedures. Moreover, the individual cannot benefit his full rights and claim for it if he/she is incapable of understanding the legal changes and developments. This is due to legal illiteracy, which requires legal awareness within the general culture.

The Culturalists view on legal transplantation is adopted. Culturalists view law as a product of culture, and it reflects the needs of the society. Therefore, transferred laws, in their opinion, are unlikely to exert the same behaviour in other societies. For Culturalists, legal systems are much more than mere rules, and has deeper underlying socio-political dynamics. Furthermore, Culturalists argue that law develops within itself and that modernisation must be achieved internally. They further argue that the norms and philosophy of the native society must be incorporated with the introduced foreign legal and political norms. The Middle ground theory is relevant to the study as well. The Middle Ground theory suggests that similar historical, legal, political, socio-cultural and legal-cultural experiences between nations can lead to a successful legal transplant.

There are various theories that provide answers to reasons for judicial reform. For this study, the Efficiency theory and the Development theories are adopted. In the Efficiency theory, judicial reform is explained with respect to introducing change in the personnel of the justice

[152] Friedman L., *Legal Culture and Social Development,* 4 Law and Society Review, 1969, p.31
[153] ibid
[154] ibid

system and the high-ranking officials of the judiciary. It also considers changing some mechanisms to avoid backlogs of cases, expedite the process for adjudication and to fight against corruption. The Development theories link economic growth and the urgent need of a clear and efficient legal framework for economic development with judicial reform efforts.

Finally, Lamberts theory on comparative law is adopted. For Lambert, Comparative Law is not a single scientific field, but contain within it two branches of science that differ in objectives and subject and only share the outer appearance in common and the use of the comparative method. For this, Lambert emphasised the need to distinguish between the two. The first is the science of legal phenomena. Its purpose is the disclosure and development of legal phenomena, whether in old legislations or modern ones, and whether they are civilised laws or uncivilised. Lambert called this 'Comparative History'. The second is the science that Lambert called 'Comparative Legislation', and this is an element of positive law. This field considers a set of rules that are already in place and have historical, social and political ties. Although the study does not examine the different legislations of other nations, it does, however, consider other countries judicial reform experiences. It also considers Shariah law and how it is interpreted in other Islamic countries. Lamberts view on comparative law will be helpful to understand this.

In this chapter, it has been argued that justice is an ambiguous concept. It can have different meanings even within the same society. Furthermore, the pursuit for justice and equality was in existence for a long time and within all societies. From old Mesopotamian texts to the Quran, almost all world religions; ancient and monolithic, called for justice and the fight of injustices within society. Since religion plays an enormous role in shaping the culture of a society, each society adopted a personal understanding to law inspired by religion, traditions and social norms. Therefore, the legal experience of each society is suitable to it and not necessary in other societies. It is argued that legal transplantation could take place and be successful in very rare circumstances. Although justice has a controversial definition, the concept of the Rule of Law is universally accepted and applied globally with a varying degree of adherence to it from one state to the other. The four main pillars of the Rule of Law form the backbone of this thesis. Each pillar is analysed and explored from chapters four to seven. The next chapter outlines the legal history and the development of the judiciary in Oman from the year 751 A.D until the present day.

Chapter 2

The History and Development of the Judiciary in Oman

2.0 Introduction

This chapter highlights the historical development of the judicial system in Oman. The first part gives a brief political history of Oman and the change of the state from an Imamate system of rule to a Monarchical Sultanate. It also outlines the historical development of the Ibadi sect and its introduction to Oman. It further discusses the Constitution of 1996 and the reason for adopting it then and not earlier. The second part gives a historical background of the Ibadi Imamate model for justice and its development throughout time. The first section outlines judicial affairs and judicial independence in the Imamate state. The second section describes how judicial immunity was protected. The third section outlines the rules for dispute resolution and the fourth section outlines the means for dispute resolution in the Imamate state.

The third part outlines the development of the judicial system post the 1970's. It was during the reign of His Majesty Sultan Qaboos bin Said that Oman witnessed the change towards a modern state and a state run by institutions. The first section highlights the judicial organisation in the Sultanate. The second section outlines the guarantees for judicial independence in the Omani legislations and the fourth section outlines the separation of powers in the Sultanate. The gradual change towards achieving a fully independent judiciary, in the modern sense, is outlined and the challenges that the judicial system faces today are also highlighted. A survey to measure the level of adherence to the rule of law in Oman was conducted and the results of the survey are put forward.

The survey is the first of a kind to be conducted in Oman. It involved 1000 participants from three main cities across the country: Muscat, Nizwa and Sohar. The methodology of the survey was inspired by the World Justice Project Rule of Law Index; however, Oman was not part of that study. The results give a quantified indicator to the level of adherence to the rule of law in Oman and could be compared easily with other states that are part of the WJP Rule of Law Index study.

2.1 A Brief Political History of Oman (*From an Imamate to a Sultanate*)

The Sultanate of Oman is located in the southeast coast of the Arabian Peninsula in west Asia. It is neighboured by the United Arab Emirate in the North West, Saudi Arabia in the west and Yemen in the south. It has a 3200 km coast line, and it controls parts of the Strait of Hormuz (alongside Iran) via the Musandam Peninsula enclave in the North. The area of Oman is 309,000 sqm and the population is around 4.6 million, 2.6 million Omanis and 2 million expatriates. The main source of government revenue is oil and gas. Other industries include agriculture, fisheries, mining and logistics. The main religion adopted is Islam, and the main doctrine of Islam followed is the Ibadi doctrine.

Ibadi literature describes Ibadism as a bird whose egg was laid in Madina, hatched in Basra and then flew to Oman. The origin of Ibadism is traced back to the battle of Siffin that took place in 657 A.D between Caliph Ali bin Abi Talib, and the governor of the Levant at that time Mu'awiyah bin Abi Sufyan. The reason for the war was that Mu'awiyah refused to accept the authority of Ali as Caliph. The war ended when Ali accepted the arbitration proposed by Mu'awiyah, and later became clear that this was a trick by Mu'awiyah's party to avoid defeat in the war. From the start of the war, a group within Ali's camp refused the arbitration proposed and supported Ali on his fight for authority. To show their protest and rejection to the arbitration, they withdrew from Ali's camp towards an area called Harura. This group was later called the *Muhakkimah* (arbitrators), as well as *Kharijite* (secessionists). During the arbitration, the group moved to an area called Nahrawan, and there they elected their first Imam Abdullah bin Wahb Al Rasibi. The group then started contacting Ali asking him to join their side in the fight against Mu'awiyah. Ali refused their calls and instead launched a war against them that resulted in their defeat and the death of Imam Al Rasibi. [155]

As a result of this war, four main Islamic political powers emerged in the arena. The first was the *Shi'a,* who were the supporters of Ali and were also known to be the Party of *Kufa* in Iraq. The second was the *Uthmaniyyah*, who were the supporters of Mu'awiyah and were also known as the Party of *Sham* (Levant). The third party was called the *Shukkak* (sceptical). This party was sceptical of the legitimacy of both Ali and Mu'awiyah. The final party was the *Muhakkimah* or the *Kharijite,* from whom Ibadis descended.[156]

[155] Jahlan, A, *Al Fikr Al Siyasi Ind Al Ibadiya*. Muscat, Maktabat ad-Damiri, 1991, p.29

[156] ibid

After the loss in the Nahrawan battle, the *Muhakkimah* moved to Basra where they reached a compromise with the Umayyads. They stayed in Basra for several years and managed to spread their ideologies among the people of Basra. They have been prosecuted and harassed by the Umayyads which led them to revolt against them. In 680 A.D, the leader of the movement at the time, Al Mirdas bin Udaya Al Tamimi was killed and Umran bin Hattan was chosen leader. After being imprisoned and heavily criticised by his group for giving concessions to the governor of Iraq at the time Al Hajjaj bin Yusuf Al Thaqafi, Umran left Basra with forty of his supporters to Oman. This marked the first presence of the doctrine in Oman and its spread later on. The first imamate to be established in Oman was not until the year 751 A.D. It was under Al Julanda bin Masuod that the first Imamate system was established in Oman. The topography of Oman with its high mountains and harsh deserts, acted as a natural defence line for the Imamate system and the Ibadi doctrine to develop and spread. For more than 1250 years, the Imamate system and the Ibadi doctrine was preserved and passed on from one generation to the other. [157]

Today, the Ibadi doctrine is followed by almost three million people, predominantly in Oman, and also parts of North (Libya, Tunisia and Algeria) and East Africa (Zanzibar) [158]. The Ibadi doctrine share a lot of common grounds with the other Islamic sects, mainly the *Shia't* and *Sunni* sects. Among the similarities the belief in the Quran as the word of God, accepting the Jews and Christian as 'People of the book', affirming the five main pillars of Islam, among other Islamic jurisprudential matters [159]. On the other hand, Ibadism differ on the topic of visual encounters with God [160]; unlike the *Shia't* and the *Sunni*, Ibadism argues that such encounters cannot occur. Moreover, Ibadism does not have a clergy and asks the human to use his mind for understanding the religious texts [161]. For the purposes of legal interpretation of the religious texts, the human is guided to seek assistance from a more knowledgeable source. This is what has gained the Ibadi sect a reputation of being liberal when compared to the other sects of Islam[162].

[157] Khleifat, A, *Al Tanzimat Al siyasiya wa Al Ijtimaiyya Ind Al Ibadiyya fi Murhalat Al Kitman*, Muscat, Ministry of National Heritage and Culture, p.70
[158] Online Source: https://www.economist.com/the-economist-explains/2018/12/18/who-are-the-ibadis
[159] Online Source: http://www.bbc.co.uk/religion/religions/islam/subdivisions/sunnishia_1.shtml
[160] ibid
[161] ibid
[162] Ghubash, Hussein, *Oman: The Islamic democratic tradition,* Oxon, 2006, p.4

The Omani Imamate system of state depended on seven basic foundations. These foundations are described as follows: 1) The principle of consensus and contracting, 2) The principle of the free election of the Imam, 3) The constitution, 4) The institutions of the Imamate (The Councils), 5) The principle of the independence of the law and equality before the law, 6) The Law of Zakat' (alms), 7) Abolition of the Army in peacetime.[163]

The Imamate system had other important characteristics as well. Firstly, the tribal structure of the Omani society. The tribe was considered to be the political institution responsible for ensuring the support of the people to the political system in place. The second characteristic was the issue of administrative and judicial independence of the regions that were subject to the central government of the Imamate. The exception to this was in supreme issues or issues that related to the state as a whole. Those principles mentioned illustrated the "public will" within the culture of the Omani society and its values. It further outlined the context of a national political culture for the Omani society.[164]

For state administration and the fulfilment of societal needs, the imamate system depended on the principle of consultation. The main objective of the principle is to unite the nation by acquiring the actual participation of the citizens. It also aims to achieve the consensus of the people.

The Ibadi imamate constitution was the first of its kind in the Islamic Arab world. The primary foundation of the constitution dates back to the 7th century. This constitution presented the general framework of the imamate and its institutions.[165]

The Imamate councils were established in the 7th century. Those councils included the Scholars Council, the Senate Council, the General Council and the traditional local councils in the cities and regions. Those councils were monitored by the supreme council of the land that was made of the scholars known as *'Ahl Al Hil wal Aqid'* (those who can make and break). This was a permanent council with legislative powers applicable to the whole state. Further, the Consultative Council assisted the Imam when practicing its authority. The council consisted of fifteen members and headed by the Imam. The members of the council

[163] ibid, p.7
[164] Wilkinson, John C., The Imamate tradition of Oman, (Cambridge, 2009), p.25.
[165] Ghubash, Hussein, *opt. cit.,* p.7.

consisted of ministers or advisors. The Imam was not able to make a decision unless the council was consulted first.[166]

Every region had an independent Consultative Council similar to the one of the Imam. The members of those councils consisted of the heads of tribes representing the local authority. It was also considered to be the legal representative of the tribe if conflicts arose. Those councils had the role of helping the mayor and the judge in their duties and could have legislative power at times as well.

The institutions of the imamate proved to be unified, flexible and efficient. This was the case despite there being no identifiable or detailed constitutional framework organizing their functions. By time, those institutions found a model of a social life and set the necessary requirements for political participation. Finally, the institutions guaranteed the harmony between the leadership and the populace. It therefore ensured the legitimacy of the imam and the continuity of the political order: The imamate system. As a result of its existence and functions, those institutions formed one of the foundations of the Omani democracy.[167]

Notably, the Imamate system depended on the tribal structure of the Omani society. Despite it being an institution criticized heavily by Arab intellectuals, the tribe was the first institution where a political society expressed itself. The tribes in Oman accepted the principal of consensus and contract, the principal of consultation and free election of the Imam. The tribe was also the source of Arabic customs and norms.[168]

For more than a thousand years, the imamate system tried to express the ideal Caliphate state and presented a significant model of an Islamic state inspired by Shariah. Furthermore, the defined implementation of the principles of contract and consensus secured the separation of powers between the executive and the legislature.[169] Democracy appeared in Oman though the Ibadi sect, i.e. through religion. This type of democracy, expressed in the constitutional imamate system, was moderate and capable of guaranteeing the continuity of democracy and its gradual rooting in the culture.

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[166] Ghubash, Hussein, *opt. cit.,* p.8.
[167] Wilkinson, John C., *opt. cit.,* p.25.
[168] Ghubash, Hussein, *opt. cit.,* p.9.
[169] ibid

Throughout ancient and modern history, the strategic location of Oman forced its people to live with different historical burdens. The role of mediators that the Omani's played throughout ancient history, between the civilizations of Mesopotamia, Asia and Africa made Oman a target by the colonial powers. The colonial powers soon forced the Omanis to resist such attempts and to stop the Imperialistic challenges.[170]

The dawn of the 16th century marked the first line of communication between Oman and the European Imperial powers. During the 12th and 16th centuries, Oman was divided, weak, and the imamate system was not in place. The Portuguese saw in the geographic location of Oman an ideal hub for their strategies in the Indian Ocean and the East. The political instability in Oman and the absence of order made the control of Oman by the Portuguese an easy task that lasted for a century and a half.

The Ibadi ideology through the scholars and community leaders re-established the imamate system in the 17th century and the Ya'rubi Imamate (1624-1741) was introduced. This Imamate managed to end the Portuguese invasion and to liberate east Africa and to establish the Omani-African state.[171]

Throughout the 17th century, the gulf region encountered successive colonial waves, namely by the Dutch, French and British. The military and eco-political expansions required a long-term strategy for the colonial powers to adopt. This was in the form of an ideology that perceives the European presence in the area as a gain and necessity for them. It also perceives it as a message calling for the civilization and advancement of the colonised nations.[172]

Despite that the British not achieving their national identity, at that time yet, they were not able to understand the significance of the independence of other nations and its requirements. As a result, they did not acknowledge the values of the nations and did not respect it. According to the British, the gulf region was considered a third world and uncivilized and therefore does not deserve anything apart from controlling them.[173]

[170] Wilkinson, John C., *opt. cit.,* p.55.
[171] Wilkinson, John C., *opt. cit.,* p.58.
[172] Wilkinson, John C., *opt. cit.,* p.60.
[173] Ghubash, Hussein, *opt. cit.,* p.6.

It was in the middle of the 18th century that Oman experienced a crucial shift from the Imamate system to a sultanate (monarchical) system. This was assisted and supported by the British, as they saw in the monarchical system and the Sultan a safer ally for their interests in the region.

At the start of the 19th century, Britain managed to control the shipping lines to the Indian Ocean and the Gulf. It also controlled the ports of India and East Africa, and as a result abolished the Omani-African state. These developments affected Oman significantly, initiating a period of breakdown and instability. In order to maintain its interests in India and East Africa, Britain had to control the Gulf region. Bearing this in mind, the colonial interests became a priority in the region after the discovery of oil at the beginning of the 20th century.[174]

The Ibadi movement was the only power in the region that was capable of standing against the British imperial expansion. The Omani public-will coiled around the ibadi movement, which provided a constant historical alternative when problems arose for the power struggle. Therefore, serious attempts were made presented by the revolution of Azzan bin Qais (1869-1871) and the revolution of Al-Kharusi (1913-1920) to reform the situation in the state.

Britain managed to defeat the first revolution and contain the second by signing the Seeb Treaty in 1920, which divided the country into two different states: The Imamate of Oman in the interior and the Sultanate of Muscat on the coast. Despite the treaty being approved by the British and thus establishing the independence of the Imamate government, Britain was planning to isolate the imamate and abolish it later. In 1954, Sultan Said bin Taimor, with the assistance of the British, launched a war against the Imamate of Oman and its Imam Ghalib bin Ali Al Hinai. The war was launched in ordered to secure the lands of the Imamate to the Sultan and to ensure that the oil reserves are controlled by him. The war ended in 1959 and Imam Ghalib bin Ali Al Hinai was in exile in Egypt first, and then Saudi Arabia. This marked the end of the Imamate system and the birth of a new reign under Sultan Qaboos in 1970.

[174] Wilkinson, John C., *opt. cit.,* p.112.

2.1.1 Oman Under Sultan Qaboos bin Said and the 1996 Constitution

Constitutions are usually made after a historical incident takes place in a state, such as a revolution (in France), after independence from a colonial power (The United States) or after a civil war. However, the constitution in Oman was introduced at a random time. It would have been more logical if the Sultan introduced it immediately after assuming power to start a new era for the country that had faced tyranny and civil war in the past or after defeating the Marxist movement in Dhofar. The Sultan, however, thought that it was not necessary to introduce one at that time.

It was only twenty-six years later, on the 6th of November 1996, that the Sultan issued royal decree 101/96 promulgating the Basic Statute of the state. Many Arab countries issued such documents as early as the 19th century. Oman, however, did not have any experience with written constitutions.[175] This section analyses the reasons for the Sultan not introducing a constitution in 1970. It then analyses the reasons for adopting it in 1996. Further, an analysis of the process of the making of the constitution is presented.

The shift from a medieval and isolated country to a modern state of institutions was initiated by Sultan Qaboos bin Said in 1970. The transformation at the early starts focused on social and economic affairs. The Sultan refused popular political participation and concentrated all the powers in his hands. When interviewed in 1970, Qaboos stated that he has no objection to the idea of a constitution and establishing a Constitutional Monarchy; however, it was not the right time yet.[176] He also stated that it would be a big mistake, as people didn't know what a vote is, and based on this drafting a constitution at that time would be like building a dome without foundations and having a Parliament would be a big show for the outer world without any benefit for the country.[177]

It can be understood that the Sultan was not convinced that the Omani people were ready to participate in the political process. He saw that introducing a constitution at that time would not be of real value. The Sultan assumed that modernization required unrestrained power to the modernizer, whereas democracy made it easy for traditional elements to stop reform. He

[175] Nathan J. Brown, 2002, Constitutions in a non-constitutional world: Arab Basic Laws and the Prospects for Accountable Government, (Albany: SUNY Press), p.1.
[176] Abdel Razzaq Takriti, *Monsoon Revolution: Republicans, Sultans, and Empires in Oman, 1965-1976* (Oxford University Press, 2013).p286.
[177] Kutschera, Chris, *Oman: The Death of the Last Feudal Arab State*, Washington Post, 1970

saw drafting a constitution and establishing a parliament as too radical a step for the Omanis to deal with. After the introduction of the 1996 constitution, the Sultan explained the reasons for the delay as to avoid a political chaos and that political change had to be introduced gradually. Further, he stated that the level of education had to reach a certain point in order for people to have the awareness necessary.[178]

One of the justifications made by the Sultan in relation to not adopting a constitution in 1970 was the lack of education. Before 1970, most Omanis were not able to read or write and were only taught the basics of religion and language. A limited number of people had the opportunity to go to secondary school and very few could travel abroad to obtain a university degree. The reason for this was the lack of schools in Oman before 1970. There were only three boys-only schools in the entire country and only the elite and privileged were given permission to educate their children. This was due to the tyranny of Sultan Said bin Taimur who told his British advisors at the time that Britain lost India because they educated the people.[179]

Sultan Qaboos believed that since the people were not educated enough; the constitution would have been of no significance. It is true that a politically well-informed population is more likely to benefit from a constitution and increase its effectiveness; however, a less educated population will not undermine the constitution if it is followed by the government.

Introducing a constitution at that time might have helped the development of the country faster and might have raised the political awareness of the people by enabling them to be involved in the national debate and to know their rights and duties. [180] The following statistics give a better view to the situation[181]:

[178] Judith Miller, *"Creating Modern Oman: An Interview with Sultan Qabus*," *Foreign Affairs*, 76:3 (1997), p 4.
[179] *The Sultan of Oman: Middle East Peacemaker*, Article from the UK Time, Feb 23, 2019
[180] Ghubash, Hussein, *opt. cit.,* p.338.
[181] National Centre for Statistics and Information, Oman, website: www.ncsi.gov.om

Development indicator	1970	1990	2010	2019
Total population	**901,000**	**1,625,000**	**2,773,000**	**4,672,296**
GDP (million Omani Rial)	**104**	**4,493**	**22,635**	**28,039**
Schools	**3**	**779**	**1040**	**1761**
Higher education (Students enrolled)	**-**	**6,888**	**96,478**	**150,000**
Infant mortality (in every 1000)	**118**	**29**	**10**	**9**
Life expectancy at birth (years)	**49.3**	**66.5**	**75.7**	**77**
Civil service employees	**1750**	**84,000**	**114,206**	**155,761**

Table 2-1: ***Development indicator of Oman between the years 1970-2019*** [182]

The table above may provide a justification to the Sultan's view. However, the political situation in Oman before 1970 proves that the lack of formal education does not mean that the Omanis were not politically aware or active. The 20th century witnessed political movements by Sayyid Tariq bin Taimur (Sultan Qaboos Uncle and the Prime Minister between 1970-1972) to form a modern constitutional monarchy and by the Marxist movement in Southern Oman to form a Marxist state. Further, the Imamate state in Northern Oman raised the issue of the Imamate of Oman to the United Nations to recognise it as an independent state.

The researcher argues that the justification made by the Sultan regarding the readiness of the Omanis to have a constitution is weak. The incidents and movements that occurred in Oman in the 20th century are clear indicators that the Omani citizens were politically aware and active.

[182] National Centre for Statistics and Information, Oman, website: www.ncsi.gov.om

Another justification made by the Sultan was that it was dangerous to involve people politically without them being aware of the political process. It can be observed that the Sultan linked elections and a parliamentary system with introducing a constitution. However, many saw such association as unnecessary, since most Arab countries at that time had constitutions but not parliaments.[183]

Democratic institutions that are newly established could lead to a political chaos in certain countries; however, a constitution does not have to be democratic. According to some, the Arabic constitutional experience is based on separating constitutionalism from democracy.[184] A constitution could be defined as the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it. Adopting a parliamentary system and political participation may or may not be included in a constitution. Therefore, the justification of the delay is not reasonable, as it is not necessary to link the adoption of the constitution with introducing parliamentary elections.

Moreover, Sultan Qaboos feared the increase of influence by the traditional components of the Omani society if a constitution was to be introduced and political participation to be taking place. This might have affected his vision of modernizing Oman. Tribal politics dominated the Omani political scene at that time. As a result, choosing members and establishing a representative body would heavily rely on tribal leaders.[185]

As a result, the Sultan did not want to seek an active political participation from tribal Sheiks, as they could be an obstacle to his vision of modernizing the country. However, he appointed them as ministers to his cabinet to execute his orders under his supervision. Such a step was made to secure their alliance. The tribal leaders have a lot of influence over their tribes, and as a result, the Sultan was not ready to have them in a parliament representing an independent power.[186] Introducing new ideas to a conservative society like Oman in the 1970's was a challenge to the Sultan. Nonetheless, he managed to implement those ideas and shift Oman to a modern state. The next part outlines the historical development of the justice system in Oman, starting from the Imamate State of 751 A.D until today.

[183] Nathan J. Brown., *opt. cit.,* p.19.
[184]Nathan J. Brown., *opt. cit.,* p.19.
[185] FCO 8/2454, Letter from the British Embassy in Oman to the Right Honourable James Callaghan, MP on 12 February 1975, p 13.
[186] Ibid.

2.2 The History and Development of the Judiciary in Oman (*The Omani Ibadi Model*)*

Upon the establishment of the Imamate system in Oman in 751 A.D, efforts were focused on the organisation of the powers of the state; including the judiciary. The independence of the judiciary was established gradually alongside the other imamate institutions. However, there is a lack of data and information on how the justice system was liked and administered. The only available data are a few legal texts and treaties issued from the Imams to the judges and are found in jurisprudence and history books. Nonetheless, it was possible to explore and understand the justice system at that period of time and how it was administered, using such references. The literature used is limited to the most significant and notable texts available.

The sources examined do not reflect a fully functional and independent judiciary system as we know it today. It however, expresses clearly that a judicial system was followed, which derives its rules and procedures from the Islamic Shariah.[187] The system contains within it the process of appointing judges, monitory and supervisory methods of interpretations and the sources they use, the salary of the judges, adjudication procedures, and the courtrooms and the judges' offices.[188] Those elements are the foundation for establishing judicial institutions. Despite the fall of the imamate system during parts of history, the judicial institution was not affected and remained intact. This was due to a common understanding of the importance of justice in securing people's rights and property.

The Omani Imamate sought to spread justice among the citizens by appointing well qualified judges which were chosen carefully from among the best scholars and jurors of society. Despite that there are no legal frameworks or administrative procedures to help administer judicial affairs similar as found today, the judicial institution of that time proved coherent, flexible and efficient. It further created a platform for judicial literature that was used for centuries and was stored in Omani History and Heritage books. It contains the principles, the rules, the methodology and the cases that draw a jurisprudential matter inspired by Prophet Mohammed's judgements and of other notable Muslim judges.[189]

[187] Al Siyabi, Salim, *Oman Abr Al Tareekh,* Oman, Ministry of Heirtage and Culture, 1984, p.192-193
[188] ibid
[189] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p. 67-73
* It is important to note that due to the lack of Omani primary sources addressing the judiciary specifically, most of the information obtained comes from History, Literature and Islamic Jurisprudence Omani texts. Most of the developments mentioned in those texts lack exact dates. Most of the developments are highlighted by reference to the era of the Head of State or Dynasty at that time.

Al Julanda bin Masoud, the first Imam of Oman, paid special attention to the methods and processes for judicial appointment. According to Nur Al Din Al Salmi, *"judges during the rule of Imam Al Julanda were appointed based on their trustworthiness, knowledge, understanding and piousness. Further, judges should be known for their good deeds and should come from good houses of the society. They should not have the traits of dishonesty, distrust and bad behaviour".*[190]

The quote above contains the core characteristics that a judge should have in order to be appointed in the current judicial systems. The Imam only appointed judges known for their trustworthiness, which is referred to as 'good reputation' today. Second, the Imam appoints people of knowledge that is also a requirement in modern day systems. Finally, the quote combined knowledge, trust, understanding and piousness in one sentence, which indicated that those traits should be available on the judge simultaneously. Therefore, this text could be referred to as the document that enshrined the rules and the basis for judicial appointment in Oman historically. Hence, Imam Al Julanda sets forth the first administered justice and delegated the responsibility to the trusted people known for their knowledge and good reputation. Judge Hilal bin Atia' Al Khurasani was one of the notable judges appointed by the Imam.

2.2.1 Judges Affairs and their Judicial Independence

a) Judicial Appointment

The appointment of judges by the Imam did not interfere with his role as an adjudicator, as the Imam was also a judge and was able to delegate this power to others. The term '*qadi*' refers to any one person adjudicating between two conflicting parties. The judge can be a sultan, a vice sultan, governor (*wali*), or anyone appointed for this position. The Sultan/Imam adjudicated between people and delegated this power to people they chose and sent them to the different cities around the country. Moreover, some judges also carried the work of governors in the cities that they were appointed to.

Assigning the functions of a governor and a judge to one person was not a new thing in the Omani judicial institution.[191] It was a continuation of what was practiced during the times of

[190] Al Salmi, Nur Al Din, *Tuhfat Al Ayan bi Seerat Ahl Oman,* Cairo, Matbaat Al Shabab, 1350 H.J
[191] ibid

the well-advised Caliphas. Calipha Omar assigned the functions of governor and judge to Sharhabeel bin Hasana when he was appointed to the Levan. In Oman, Imam Salim bin Rashid Al Kharusi and Imam Mohammed bin Abdullah Al Khalili appointed Abu Zayd Al Riyami as a governor and judge to the city of Bahla. Similarly, Judge Salim bin Adeem Al Rawahy held such a post.[192]

The sources available to the researcher did not explain a specific method for judicial appointments in the Omani judicial institution. However, the resources available concluded that there are three methods through which a judge or a governor is appointed. The first is by direct choice of the imam. The second is by following the advice of the Council of scholars (*Ahl Al Hal Wal Aqid*). Finally, appointment can be done through the nomination by the council of scholars for the cities that are far away from the centre of the imamate. In all three methods, the person appointed should carry the following traits: good behaviour, knowledgeable, and should have a familiarity of societal affairs with an understanding of the norms and customs of the people that he is sent to.[193]

b) Judicial Appointment Covenants and Specifying their Qualitative & Spatial Jurisdiction

Qualitative jurisdiction refers to the indication of the court's jurisdiction based on the nature of the legal questions arising, regardless of its value. The legislature often adopts this criterion to indicate the courts that have exceptional jurisdiction or to indicate the jurisdiction of specialised court formations. Spatial jurisdiction refers to the share of one court from among the courts of a particular class of jurisdiction.[194]

Omani Imams depended on a system of issuing judicial appointment covenants for appointing judges in the format proposed by the scholar Bin Obydin in his book 'Jawahir Al Aathar'. *"I/ we appoint you to be a rightful judge/ just judge/ an honourable judge/ an obedient judge to God".*[195]

[192] ibid
[193] Ghubash, H. Oman: al-Dimokratiya al-Islamiya wa al-Tarikh al-Siyasi al-hadith. Beirut, Dar al Jadid, 1997.
[194] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p.81.
[195] Ibn Obydin, Mohammed, *Jawahir Al Aathar,* Muscat, Ministry of Heritage and Culture, 1985.

The Imam indicates the qualitative and spatial jurisdiction in the covenant of the appointed judge. An example is the covenant issued by Imam Mohammed Al Khalili to the judge Said bin Ahmed, in which he stated: *"to enforce obligatory expenses, and to divorce a couple if the man refused to spend for his wife, with the request of the wife for divorce, and to enforce the marriage of a woman who does not have a legal guardian"*.[196] In a different covenant issued by Imam Al Khalili to the judge Sufyan Al Rashdi, the spatial jurisdiction was indicated. It stated: *"I appoint Sufyan Al Rashdi a judge to the tribe of Bani bu Hasan and all the people under their command".* The covenant also indicated the qualitative jurisdiction: *"I delegate to him the power to punish offenders, each according to the crime he/she commits"*.[197]

The two examples of the covenants stated above shows the difference in indicating the qualitative and spatial jurisdictions given to a judge. There is no specific limit to what the judge's jurisdiction is in Islamic Shariah. Such limitations to a judge's jurisdiction could be made by the imam, according to the public benefit. The judge's qualitative jurisdiction is relative between the Imam and the judge. Such jurisdiction can be specified or could be a general mandate over a city.[198] When a judge's jurisdiction is a general mandate, then he hold similar rights to that of the Imam, except for capital punishment, heading the Friday prayer and collecting the alms for the poor. However, the Imam could delegate the judge to lead the Friday prayer and collect the alms in the city he presides in.[199]

The Imams kept cases of national security to themselves. An example is Imam Al Muhanna bin Jayfer, who ordered the imprisonment of a man called 'Waseem' for committing acts that undermined national security.[200] Such jurisdictions were also used by the Well-advised Caliphas. Later in Omani history, Sultan Turki and Sultan Faisal followed suit in adjudicating over national security cases.[201]

c) Singular Judge and Multi Judge System

In the Imamate state of Oman, the judiciary followed a one-judge system, i.e. one judge adjudicating the case in front of him. Nonetheless, a multi-judge system was adopted as well, particularly in tribal cases. Such cases were seen by the Imam as sensitive topics and were

[196] Al Khaili, M., *Al Fath Al Jaleel,* Damascus, Al Matbaa Al Omomiyyah, 1994, p.695-696.
[197] ibid
[198] Al Battashi, M., *Ghayat Al Mamul fi Elm Al Furo wal Asul,* Oman, Ministry of Heritage and Culture, 1984, p.7-8
[199] Al Khaili, M., *Al Fath Al Jaleel,* Damascus, Al Matbaa Al Omomiyyah, 1994, p.193
[200] Al Salmi, Nur Al Din, *Tuhfat Al Ayan bi Seerat Ahl Oman,* Cairo, Matbaat Al Shabab, 1350 H.J
[201] ibid

addressed by forming a specialised committee consisting of more than one judge to adjudicate the case. Moreover, a judge could be appointed to adjudicate cases in multiple cities. This was indicated in Imam Al Khalili covenant, which states: *"I appoint Saud bin Humaid bin Khalfan a judge to the tribe of Habs, Sinaw, the Al Sharji tribe, Al Khadra and Samad"*.[202]

d) **Role of Judges in Governance**

Among the things that the judges exercised was their participation in other civil society institutions and the emergence/growth of their role as inaugurators of Imams and the organisation of state affairs.

i) Role of Judges in appointing Imams and adopting Legislation

The Chief Justice acted as the most senior advisor to the Imam. He also participated with other judges and scholars in appointing Imams and in adopting new legislations that related to state affairs. Examples of judges whom appointed Imams include the appointment of Imam Al Salt bin Malik by judge Mohammed bin Mahboob bin Al Ruhail, Imam Al Muhanna bin Jaifer by judge Musa bin Ali, Imam Nasir bin Murshid by judge Khamees Al Shaqsi, and Imams Azzan bin Qais and Salim al Kharusi and Mohammed Al Khalili by judge Majid Al Abri.[203]

ii) Role of Judges in the Political Sphere

The Omani judges had a significant role in the political sphere. An example is the participation of Judge Said bin Nasser, Imam Salim Al Kharusi appointed judge, in the peace talks with the government of Muscat, which resulted in the signing of the famous Seeb Treaty. Moreover, some judges where given the task of leading the army. An example is Imam's Naser bin Murshid appointed judge, Khamees bin Said Al Shaqsi.[204]

2.2.2 Judicial Immunity and Judicial Independence

a) Prevention of Interference on the Judiciary

By exploring and analysing the Shariah texts, it is evident that many of those texts addressing justice emphasise the importance of judicial independence. Examples from the Quran include the following verses:

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[202] Al Khaili, M., *Al Fath Al Jaleel,* Damascus, Al Matbaa Al Omomiyyah, 1994, p.694
[203] Ghubash, H., *Oman: al-Dimokratiya al-Islamiya wa al-Tarikh al-Siyasi al-hadith*. Beirut, Dar al Jadid, 1997
[204] ibid

(16:90) Indeed, God orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded. [205]

(4:105) Indeed, We have revealed to you, [O Muhammad], the Book in truth so you may judge between the people by that which God has shown you. And do not be for the deceitful an advocate. [206]

(4:58) Indeed, God commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which God instructs you. Indeed, God is ever Hearing and Seeing. [207]

(*5:42) [They are] avid listeners to falsehood, devourers of [what is] unlawful. So if they come to you, [O Muhammad], judge between them or turn away from them. And if you turn away from them – never will they harm you at all. And if you judge, judge between them with justice. Indeed, God loves those who act justly.* [208]

The story of the Bedouin suing Imam Mohammed Al Khalili is a good example of judicial independence and constraints on government powers in the Omani judicial history.[209]

b) Judicial Independence Pillars

There are four pillars that supports judicial independence and strengthen it in the Imamate system of governance.

i) Good judge selection

Judicial immunity depends on the good selection of judges. The stricter the requirements and characteristics required to be nominated as a judge, the stronger is the judge's immunity, resulting in a more effective and efficient decision-making result. According to Omani

[205] The Holy Quran, Surat Al Nahl, (16:90)
[206] The Holy Quran, Surat Al Nisa, (4:105)
[207] Ibid, (4:58)
[208] The Holy Quran, Surat Al Ma'idah, (5:42)
[209] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p.91

judicial sources, there are five requirements that should be available on a person to be appointed a judge:[210]

1) To be well aware of the knowledge left behind by scholars
2) Consults people of opinion in the society
3) Not greedy
4) Patient on the opponents
5) Bearable by the Imams

In addition to the above requirements, the nominee should know the Quran by heart and knowledge of the Hadith. He also should be knowledgeable on the methods of interpretation. Finally, he should be moderate in his belief and thought.[211] Those requirements make it difficult for the Imam to expel judges without solid grounds. As a result, the judges' immunity and dignity is protected.

ii) The Non-Dismissal of the Judge

Another pillar for judicial independence in the non-dismissal of judges from their positions by the Imam's own will or due to the political changes in the state. The judge remains in his position even if the Imam is changed. Omani history and jurisprudence books mentioned examples of judges who remained in their positions as judges all their lives, even after the change of imams. Among those judges are: Judge Omar bin Mohammed Al Dhabi Judge for Imams' Al Salt bin Malik and Rashid bin Al Nadr and Azzan bin Tamim), Judge Majid bin Khamees Al Abri (Judge for Imams Salim bin Rashid Al Kharusi and Mohammed bin Abdullah Al Khalili).[212]

Omani scholars discussed the issue of the legality of the Imam to dismiss a judge based on his own discretion, just as he has the ability to dismiss anyone he appoints. The scholars agreed that the Imam cannot expel a judge without reasonable solid grounds to do so.[213]

Another issue that emerged leading to debate was the dismissal of a judge that served as a judge and mayor simultaneously. The imamate judicial system insured the continuation of the judge in his position, however, his duty as a mayor is terminated, unless he was reappointed as a mayor by the new Imam. An example of such occurrence in history was judge Majid bin Khamees al Abri, who was mayor of Bahla city under Imam Azzan bin Qais. After the death

[210] Al Salmi, Nur Al Din, *Tuhfat Al Ayan bi Seerat Ahl Oman,* Cairo, Matbaat Al Shabab, 1350 H.J
[211] Al Siyabi, S., *Huda Al Farooq,* Oman, Ministry of Heritage and Culture, 1983, p.27-28
[212] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p. 77-100
[213] Al Salmi, Nur Al Din, *Tuhfat Al Ayan bi Seerat Ahl Oman,* Cairo, Matbaat Al Shabab, 1350 H.J

of the Imam judge Majid left Bahla fort and terminated his duties as mayor, however, he remained as a judge until his death in the city.[214]

iii) The Judge's Salary

The third pillar for judicial independence is providing the salaries of the judges by the state and to ensure meeting the needs of the judges and their demands thus ensuring their neutrality to perform their duties honestly and justly.

The Omani Imamate judiciary provided the judges salaries from the State Treasury, either monthly or yearly. The salaries were determined by the Imam and based on the financial abilities of the state. The criteria for distributing the salaries of the judges included:[215]

1) The distance of the judge from his home town.
2) The nature of the topology of the place he is appointed to and the ease of getting to the place.
3) The social status of the judge, including the number of his family members and the number of guests visiting him and other financial commitments.

iv) The Separation of the Judiciary

The final and most important pillar for judicial independence is the separation of the judiciary from the executive. It is important to highlight that the Omani judicial institution in the past had judges holding the role of mayor and judge of certain cities simultaneously. Regardless, in the case of having a different mayor and an independent judge, then the judge has to ensure the non-interference and influence of the mayor on the judge's decisions.[216]

2.2.3 Rules of Dispute Resolution

The Omani judiciary followed the rules and principles set in the Quran and Sunnah in resolving disputes. If a judgement could not be found in both then the judge relies on the principle of scale or in the consensus of the scholars in the issue. If an answer could still not be reached, then the judge should interpret the resources in hand based on his own understanding of the laws and reach a conclusion to the problem.[217]

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[214] ibid
[215] ibid
[216] Al Khaili, M., *Al Fath Al Jaleel,* Damascus, Al Matbaa Al Omomiyyah, 1994, p.64
[217] Al Siyabi, S., *Huda Al Farooq,* Oman, Ministry of Heritage and Culture, 1983, p.43-50

During the Imamate time, there was no codification of the rulings that is a classification of the rulings in one book and published. The judge's own diligence is the method used to reach a ruling, and only after referring to the jurisprudential sources. Nonetheless, there were some judges and scholars that wrote their rulings and interpretations in history, jurisprudence and poetry books. Examples of such books include Jawahir Al Nidam by Imam Noor Al Din Al Salmi.

Moreover, Omani scholars agreed on the acceptance of copying rulings and interpretations from the different sects of Islam. They also agreed on accepting that the Imam could request the judge to rule by the laws of a certain sect for a specific case. Among the dispute resolution rules set in the Omani Imamate system are the following:[218]

a) The Judiciary is Free of Charge

Islamic jurisprudence considers fulfilling justice as a requirement ensured by the state. Furthermore, the judiciary should ensure that access to justice is free of charge and the costs associated in achieving it should be paid by the state. This was the case until the Abbasid dynasty reign, when judicial fees were introduced for the first time.

In the Imamate of Oman, access to justice was free of charge. It was not until the 20th century that some regional courts started imposing expenses for the issuance of some legal documents.

b) A Public Trial

Adjudication in Islam was always held in public, unless the circumstances of a case made it necessary to be private. During prophet Mohammed's time, the mosque was the chosen place to adjudicate disputes. In the Imamate of Oman, the trials where held in public, and the judge sits in either the mosque, the fort or the *Sablah* (the main living hall in the city/town), or any venue that the judge chooses.

c) Reconciliation

Although the state is responsible for ensuring and enforcing justice, it does not force parties to rely on the court to solve all disputes. It rather tries to find alternative dispute resolutions that are less time consuming and cheaper. In Islamic Shariah, reconciliation is defined as "an

[218] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p.106

agreement between the two conflicting parties, in which each party offers a compromise for part of their rights in conflict in order to reach a solution".[219]

Reconciliation was a constant and apparent practice in the Omani imamate judicial system.[220] Another feature of the Omani judiciary was the low number of cases raised to the courts. This was because most cases were resolved by reconciliation. People relied on reconciliation efforts initiated by the scholars and the head of tribes. Only when a resolution could not be reached that the conflicting parties raised their conflict to a judge.

The Quran encouraged reconciliation between conflicting parties. Examples from the Quran include the following versus:

(4:114) No good is there in much of their private conversation, except for those who enjoin charity or that which is right or conciliation between people. And whoever does that seeking means to the approval of God – then We are going to give him a great reward. [221]

(49:10) The believers are but brothers, so make settlement between your brothers. And fear God that you may receive mercy. [222]

d) Appointing a Lawyer

Some people prefer appointing a lawyer to defend her/him in court. Islamic scholars found no legal Islamic texts or otherwise that could halt such action. An example was the appointment of Ali bin Abi Talib for a lawyer to defend him in court. The justification for allowing legal representation in court was simply because some people could put arguments forward better than others when appealing for their rights.

The Omani imamate justice system accepted the appointment of lawyers by either the claimant or the defendant. The advocacy profession was organised differently from today, and the role was taken by members of the society who are known for their intelligence and

[219] Al Shaqsi, Khamees M., *Manhaj Al Talibeen Wa Balag Al Raghbeen,* vol. 9, p.69-72
[220] ibid
[221] The Holy Quran, Surat Al Nisa, (4:114)
[222] The Holy Quran, Surat Al Hujurat, (49:10)

good arguments. In order for the lawyer to be accepted to stand in front of a judge, a few requirements should be fulfilled:[223]

1) He/she must be a Muslim

2) Good behaviour and reputation

3) Has a good knowledge of the law

It is worth noting that Islam did not restrict the profession to males. Females too could act as lawyers, provided they fulfil the above-mentioned requirements.[224]

Finally, the lawyer's wages were agreed upon by direct agreement and the courts did not interfere on the amount of wages apart from few exceptions: 1) the client was underage or has mental incapacities, 2) if a dispute arises between the client and his lawyer on the amount of the wage after the case has been solved.[225]

2.2.4 Means for Dispute Resolution

The Omani judiciary followed in the footsteps of the prophet Mohammed and the well-advised Caliphas in determining the means for dispute resolution. In the early stages of the Imamate state of Oman, the judiciary did not have written rules on how to bring forward a claim or record the court hearings and procedures. This was all done orally, except in some cases that required material to be noted. Those cases usually included conflicts between tribes.

In the Imamate state, the judiciary could be described as a simple and not a complex one. The judge looks into the case facts and decisions are based on the oral arguments put forward in front of him by the conflicting parties. The judge then interprets the rules and laws and decides instantly, unless further evidence or witnesses hearing is required.

[223] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p. 112-113
[224] Al Siyabi, S., *Huda Al Farooq,* Oman, Ministry of Heritage and Culture, 1983, p.62
[225] ibid

Complexity and delays in adjudication only appeared in the last decades. This was a result of social, economic and political changes, particularly after the rapid expansion of mankind across the world. By time, the judiciary in Oman developed side by side with the rapid developments that the world faced and thrived to reach high levels of development in all sectors. This was evident in the following:

a) The Establishment of Courts

Omani history and jurisprudence books discussed the location of trials. It expressed it as the location of the judge's residence. Omani scholars emphasized the importance of having the court in a specific place at the centre of the city, and to be known to the people and which could be accessed easily.[226]

In the Imamate state, the location of the trial was usually the fort/castle, such as Nizwa Fort, Bahla Fort and Al Rustaq Fort. In the areas where castles/forts did not exist, the town hall was the venue for raising claims, such as Al Silf hall in Al Hamra city. Furthermore, mosques where also used as court rooms, such as Al Bayadah Mosque in al Rustaq city.

Scholars also discussed the way in which the judge should sit during a case hearing. They expressed it by saying that the judge should face Mecca and in an upright sitting position. They also discussed how the conflicting parties should sit. They indicated the necessity of having both parties sit in front of the judge. [227]

b) The Chief Justice

One of the features that outlines the development of the Imamate judicial institution is the existence of the position of a Chief Justice. Among notable judges that held this position were: Shiekh Amer bin Khamees Al Malki, Chief Justice of Imam Salim Al Kharusi, Abu Al Hasan bin Ahmed, Chief Justice of Imam Al Kahlil bin Shathan. The Chief Justice always sat with the Imam and adjudicated in complex cases.

c) The Judicial Advisory Committee

[226] Al Siyabi, S., *Huda Al Farooq,* Oman, Ministry of Heritage and Culture, 1983, p.36-38
[227] Al Kindi, Ahmed bin Abdullah, *Al Musannaf,* Oman, Ministry of Heritage and Culture, 1986, p.196-200

The judiciary in the imamate state witnessed a development in the form of the establishment of a jurisprudential advisory council to the judge. This council was found in any city that had a presiding judge and consisted of scholars and jurors whose duty was to support the judge in interpreting the rules and laws.[228] Such a role is now assumed by experts that are appointed and chosen by the state to help assist the judge.

d) The Appeal and Repeal Decisions

Islamic scholars worked hard to help judges reach correct decisions when adjudicating. Judges were given the task of ensuring justice, however judges are humans and can make mistakes. Therefore, Islamic jurisprudence allowed appealing and repealing judges decisions by a supreme authority, usually the Imam or the Chief Justice.

In the Imamate state, the Imam had the capacity to accept or repeal a decision. Furthermore, the Chief Justice had to look into decisions, even if the reason for an appeal was merely a non-satisfaction of the result by one party. Furthermore, the Chief Justice had the power to adjudicate over complex tribal cases.[229]

e) Codifying, Preserving and Drafting Decisions

During the early stages of Islam, the codification of judicial and jurisprudential cases was not significant. However, this has changed over time due to the necessity to do so after the expansion of the Islamic lands. The first Muslim judge to codify his decisions was judge Salim bin Antar, the judge of the Umayyad Calipha Moawiya in Egypt.[230]

According to the Omani scholar Ahmed bin Abdullah Al Kindi, the Imam should write down his judicial decisions and have witnesses witness the codification which is signed by both parties. Furthermore, the Imam could appoint someone trustworthy to write down the decisions and insert a state stamp on it.[231]

Finally, Omani judicial scholars emphasised the importance of codifying the judicial decisions. According to Imam Mohammed bin Mahboob, the decision template should

[228] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p.120-121
[229] ibid
[230] Al Kindi, Ahmed bin Abdullah, *Al Musannaf,* Oman, Ministry of Heritage and Culture, 1986*,* p.58-68
[231] ibid

consist of the following: The Basmalah, the person writing the decision, the judge to whom he is writing it for and the city in which the decision was made, the name of the witnesses, and the names of the conflicting parties. Finally, the final decision of the judge in the case.[232]

f) **Judicial Assistants**

During the early stages of the Imamate state, there was no need for appointing assistants for the judges, as most of the adjudication process was conducted orally as indeed, were the decisions. Furthermore, the adjudication process was conducted swiftly and without any complications or complexities. However, due to the social and political changes that occurred in the state, judicial assistants were required and thus appointed.

2.3 The History and Development of the Judiciary in Oman (*1970- Present*)

The 23rd of July 1970, the day Sultan Qaboos assumed power, is considered the beginning for modern renaissance in Oman for all sectors. Judicial administration was the priority; however, its modernisation was gradual based on the requirements of the cases and the requirements of the time.[233] To understand the historical development of the Judiciary in Oman from 1970, it is important to recognise the public policy used for development and modernisation. This policy is a policy of gradual steps to reach the goals set for development. The Sultanate also benefited from the experiences of other nations in matters of administration and legislation and adopted the experiences that were needed and compatible with the Omani culture.[234]

The Ministry of Justice was one of the first ministries to be established during the initial administrative organisation of the state. It had the responsibility of administering justice and developing it. Shariah Courts were the first courts to be established and were distributed in the different cities around Oman. Appeals from these courts were heard in the Court of Appeal in Muscat. The cases may further be appealed to the Grievance Committee. These courts did not have a law regulating the judicial proceedings nor did it have civil laws to rely

[232] Al Khaili, M., *Al Fath Al Jaleel,* Damascus, Al Matbaa Al Omomiyyah, 1994, p.63
[233] Al Rubi, O., *Qawa'id Al Ijra'at Al Madaniyyah wal Tandeem Al Qada'I fi Oman*, Cairo, Dar Al Nahda Al Arabiyyah, 2009, p. 17
[234] ibid

on. Judges relied on Islamic jurisprudence and on the decisions and circulars issued by the Minister for Justice.

Over time, the impact of modern civilisation appeared in the Oman society, and cases in front of the courts became more complex and needed to have procedural and administrative regulations. As a result, specialised committees and departments were established to deal with such cases. Local committees were formed to deal with land matters, lease disputes and maritime issues.

A Criminal Police Court was established by Royal Decree (7/74). This court was the nucleus of the Omani Penal law. The court was later developed by Royal Decree (25/84) and was renamed the 'Criminal Court'. The Committee for Commercial Dispute Settlement was established by Royal Decree in 1972 and was later developed to a Department by Royal Decree (79/81). The department was further developed and was renamed to the "Commercial Court' by Royal Decree (13/97).

These committees, departments and courts were not affiliated to a single institution. For example, the committees for land disputes were affiliated to the Ministry of Housing and the committees for lease disputes were affiliated to the Muscat Municipality. Shariah courts were affiliated to the Ministry of Justice and the Criminal court was monitored by the Advisor of the State for Criminal Affairs. Moreover, before modifying the department of Dispute Settlement into a court, the department was monitored by the Ministry of Trade and Industry and after some modification, it was supervised by the Ministry of Justice.

Efforts were also made to legislate the laws governing these institutions and administering them. Those laws were introduced gradually and based on the needs of the time. Such legislation included the Labour Law (34/73), Land Regulation Law (6/72), Commercial Registration Law (4/74), Commercial Company Law (4/74), Omani Penal Law (7/74), Commercial Law (55/90), Omani Civil Law (32/97), Civil Transactions Law (29/2013) and other legislations.

The law on Civil Transactions, which is a fundamental law in each state, was issued recently in Oman, in 2013. Furthermore, the laws on judicial proceedings were issued relatively late. For example, the Criminal Procedures law was issued in 1999 and before this date, judges relied on general judicial principles and a few administrative decrees for criminal procedures

in reaching their decisions. Royal Decree (25/84) highlighted few simple criminal procedures. Furthermore, the laws on commercial dispute procedures was issued by Royal Decree (32/84) and was amended few times before issuing the law for Civil and Commercial Procedures by Royal Decree (29/2002).

2.3.1 Judicial Organization in Oman

The issuance of the Basic Statute of the State, the constitution, by Royal Decree (101/96) moved Oman a step forward towards institution building and respect to the law. The constitution payed special attention to the judiciary and chapter six is dedicated to this. Article 59 of the constitution states: "*The rule of Law shall be the basis of governance in the State. The dignity of the judiciary, and the integrity and impartiality of the judges are a guarantee for the rights and freedoms".* Article 60 states: "*The judiciary shall be independent, its authority shall be exercised by the courts in their different types and hierarchies, and their judgements shall be rendered in accordance with the Law*". Article 62 states: *"The Law shall regulate the types and hierarchies of the courts and shall prescribe their functions and jurisdiction".* [235]

In accordance with the 1996 constitution, new legislations for judicial procedures were issued, marking the modern judicial organization for the Sultanate of Oman. Those legislations are as follows:

a) Judicial Authority Law (90/99)
b) The Law for the Committee of Settlement and Reconciliation (98/2005)
c) The Law for the Administrative Court (99/91)
d) Public Prosecution Law (99/92)
e) The Law for the State Security Court (21/2003)
f) The Law for the Conflicts in Jurisdiction and Authority (88/2008)
g) The Military Justice Law (110/2011)
h) The Constitutional Department
i) The Supreme Judicial Council (93/99)

[235] Oman Basic Statute of the State 1996, Official Gazette, Oman

(a) Judicial Authority Law (90/99)

The Judicial Authority law organised the courts on three levels, which are: The Supreme Court, The Court of Appeal and the Primary Court. The courts were assigned to consider all adjudications apart from administrative adjudications and any other adjudication excluded by a special provision. Article 8 of the Judicial Authority law states: *"With the exception of administrative disputes, the courts provided for in this law shall have jurisdiction to adjudicate upon civil and commercial actions, requests for arbitration, personal status actions, criminal, labour, tax and lease actions and other actions which are raised before them pursuant to law, save for that which is excepted by specific provision".*[236]

By the time the Judicial Authority law came into force, 40 primary courts were established in the different cities across Oman and 6 courts of appeal. In each court of appeal, a primary court was established alongside, consisting of three judges. In 2010, the total number of primary courts was increased to 44 and appeal courts to 13. The primary courts consisting of three judges specialising in dealing with financial cases regarding investment, banking and bankruptcy. They also deal with cases of substantial value that exceeds 70,000 Omani Riyals. It also acts as a court of appeal for decisions made by an execution judge. All cases are firstly considered by the primary court and may be appealed to the court of appeal and can finally be appealed to the Supreme Court.[237]

There are two exceptions to the general cases procedures. The first are criminal cases, which are first heard by the Criminal Department in the Court of Appeal and may be appealed to the Supreme Court. The second are marriage cases, also called *'Qadaya Al A'adl'* in Arabic. Such cases involve the female's guardian refraining the female from marrying the person she wants. Those cases are first heard by the Supreme Court and may be appealed before the Sultan. This is stipulated in the Amendments made to Article 2 of the Judicial Authority law and Article 273 of the law on Civil and Commercial Procedures by Royal Decree (55/2010).

All criminal disputes must be referred to the Public Prosecution first and cannot be referred directly to the Court. The only exception is when a civil servant refuses to carry on the judgement or judicial decision, and in that case, the claimant can file a case against the civil servant in the Primary court. Moreover, all civil disputes must be referred to the Primary

[236] Judicial Authority Law (90/99), Official Gazette, Oman
[237] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012

court first. Some cases are an exception to this rule, such as cases on land disputes. Such cases must first be referred to the Ministry of Housing.[238]

(b) The Law for the Committee of Settlement and Reconciliation

The law for the Committee of Settlement and Reconciliation was issued due to lengthy cases taken from filing to adjudication, and also because of the loopholes found within the laws by lawyers themselves to stall and buy time. This caused the litigation process to be slow and resolving conflicts were delayed. The law for the Committee of Settlement and Reconciliation was issued to deliver the rights of the claimants in a simple and quick manner. The most important features of this alternative way to judicial dispute settlement are as follows:[239]

1) The Committee of Settlement and Reconciliation does not have to comply with the Regulations set forth in the law for Civil and Commercial Procedures or the Attorney's law.
2) The legislator relieved the requests made to the committee from fees completely.
3) The law allows the claimants, even if they were not lawyers or legal practitioners, to file their cases directly to the committee.
4) The law did not require the same contents to be present in the declarations and notifications between adversaries like the law for Civil and Commercial Procedures request.
5) The law required the committee to complete the adjudication within 60 days, whether it had been settled or not.
6) If the case has been settled, then the decision will be given an executive authority and cannot be appealed against.

(c) The Law for the Administrative Court (99/91)

Article 67 of the constitution states: *"The Law shall regulate the settlement of administrative disputes through a panel or a special court whose regulation and the manner of exercising its functions shall be prescribed by the Law".*[240] The judicial system in Oman is a dual system. The administrative justice is independent from the normal justice and assigned with the

[238] ibid
[239] Official website of the Ministry of Justice, Sultanate of Oman, Online Source: https://moj.gov.om/index.aspx
[240] Oman Basic Statute of the State 1996, Official Gazette, Oman

responsibility of looking into administrative disputes using the law organising its functions and powers. This law was later amended by Royal Decree (3/2009), which unlimited the types of administrative cases the court can hear. The Administrative court is formed of a chairman, a vice chairman, a sufficient number of consultants, assistant advisors and assistant judges.[241]

The court consists of a first instance division or more, plus an appeal division in Muscat. A Royal Decree may allow and is based on recommendations made by the Supreme Judicial Council, the establishment of first instance and appeal divisions outside of Muscat. A first instance division was established in the cities of Sohar and Salalah, and the court was under the supervision of the Minister for The Royal Court.[242]

(d) Public Prosecution Law (99/92)

Article 64 of the constitution states: *"The Public Prosecution shall conduct criminal proceedings on behalf of Society. It shall supervise the affairs of criminal investigation and ensure the implementation of criminal laws, prosecution of offenders, and enforcement of judgements. The Law shall organise the Public Prosecution, regulate its jurisdiction, and specify the conditions and guarantees for those who exercise its functions. Public security authorities may by virtue of a law be exceptionally entrusted with conducting criminal proceedings in cases of misdemeanours and in accordance with the conditions prescribed by the Law".* [243]

The Public Prosecution is responsible for filing public criminal cases and its work was supervised by the Inspector General for Police and Customs. In matters pertaining the employees of the Public Prosecution, all employees are subject to the regulations of the Administrative Council outlined in the Judicial Authority law.

(e) The Law for the State Security Court

The State Security Court was an independent judicial institution, based in Muscat. The court's function is to adjudicate cases concerning state security and was formed of one or more departments for each crime or felony. The court did not continue and was cancelled by Royal Decree (102/2010) and has no presence since its cancelation.

[241] Oman Administrative Court Law, Royal Decree (99/91), Official Gazette, Oman
[242] ibid
[243] Oman Basic Statute of the State 1996, Official Gazette, Oman

(f) The Law for the Conflicts in Jurisdiction and Authority

Article 68 of the constitution states: "The Law shall regulate the procedure for the settlement of conflict of jurisdiction between judicial bodies and cases of conflict of judgements". [244]Article 10 of the Judicial Authority law outlined the process for adjudicating conflicts in matters of jurisdiction and authority. The law also outlined the members of the department. Article 10 of the Judicial Authority law states: "*The supreme court shall, as necessary, form a panel consisting of the president of the supreme court, and the five most senior of his deputies or the most senior of the judges of the court, to which shall be joined the president of the administrative court, his deputy and the most senior three counsellors of the court, such panel to have jurisdiction to decide cases of conflict of positive and negative jurisdiction between each of the courts provided for in this law and the administrative court and other courts. It shall also have jurisdiction to determine the judgment to be enforced in the case of conflicting judgments.*

In the event of the absence of any of the president or the members, or where an impediment subsists in relation to him, his place shall be taken by whoever who is next after him in either court.

The president of the supreme court shall preside over the panel, and in the event of his absence, or of an impediment subsisting in relation to him, his place shall be taken by the most senior of its members, and its judgments shall be rendered by a majority of at least seven members". [245]

When conflicts over jurisdiction and authority appeared in the Omani judicial arena, the law for the Conflict on Jurisdiction and Authority was issued by Royal Decree (88/2008).

(g) The Military Justice Law

The Military justice is specialised in hearing military crimes committed by the members of the armed forces and the security forces. Article 62 of the constitution states: *".... The jurisdiction of the military courts shall be exclusively confined to military offences committed*

[244] ibid
[245] Judicial Authority Law (90/99), Official Gazette, Oman

by members of the armed and security forces. Their jurisdiction shall not be extended to others except in the case of martial law and within the limits prescribed by the Law". [246]

The law also outlined the organisation of the Military Courts and organised them on three levels: The Supreme Military Court, The Military Court of Appeal and the Military Primary Court. Section four of the Military Justice law (110/2011) organised the administrative grievances on three levels. The first is the Administrative Judicial Department to be established in the Office of the Supreme Commander of the Armed Forces and linked to the Head of the Military Justice. It is formed of a Head and four members and specialises in adjudicating disputes put forward by the Committee for Administrative Grievances. The second is the Committee for Administrative Grievances, established in every unit and reports to the Head of that unit. It is formed of a Head and two members and deals with applications filed to review decisions made by the Sub-Committee for Administrative Grievances. The third is the Sub-Committee for Administrative Grievances that is formed of a Head and two members. [247]

The Grievance Committees specialise in looking at requests and grievances presented by military personnel in the following administrative issues:[248]

1) Orders and decisions relating to salaries, pensions, bonuses and the like and any financial benefits.
2) Orders and decisions relating to rank degrading, release from duty and retirement.
3) Orders and decisions relating to compensation for occupational diseases and work-related injuries.

Finally, the Minister for the Royal Office has the administrative right to monitor and supervise all members of the military justice system. The law was amended by Royal Decree (21/2014), repealing section 4 of the 2011 law and consequentially, repealing item 9,10 and 11 of Article 1. This resulted in the cancelation of the section relating to Administrative Grievances and its procedures. The Decree also amended Article 30 of the law by shifting the power of appointing judges from the normal judiciary to the Military judiciary when necessary. The new amendment shifted this power from the hands of the Minister for Justice to the hands of the Judicial Administrative Council.[249]

[246] Oman Basic Statute of the State 1996, Official Gazette, Oman
[247] Oman Military Justice law, Royal Decree (110/2011), Official Gazette, Oman
[248] ibid
[249] ibid

(h) The Constitutional Department

Article 11 of the Judicial Authority law states: *"The panel provided for in article 10 shall be the judicial body having jurisdiction to determine disputes relating to the extent of the conformity of laws and regulations with the Basic Statute of the State and their not being in conflict with the provisions thereof. A Sultani decree shall be promulgated stating its competences and the procedures that it follows".* [250]

This department is to be formed by the same members forming the Department of Conflicts in Jurisdiction and Authority, however, its constitutional functions has not been activated and there was no Royal Decree issued to outline its powers and functions. There is still an open debate in Oman as to whether to activate this department or to establish an independent Constitutional Court.[251]

2.4 The Guarantees for Judicial Independence in the Omani Legislation

Judicial Independence is the concept that requires all judicial decisions to be neutral, impartial and not to be subject to influence from the other branches of government (Legislature and Executive), or to influences resulting from private or political interests.

Judicial independence is not only achieved through court adjudications to disputes but is also achieved through guaranteeing the impartiality of judges and insuring that they do not deviate from achieving justice. Judicial Independence can be represented by guaranteeing the integrity of the judges and their ability to issue decisions and rulings in accordance with the law and without being influenced by an external interest or awe. It can also be achieved by guaranteeing the independence of the judiciary from the other branches of government.

2.4.1 Guarantees for the Impartiality and Neutrality of the Judge

To maintain the judge's impartiality and neutrality, the judge must have a strong personality and must be morally immune from corruption or outside pressures.[252] The Calipha Omar said once to a mayor he appointed: "*Treat people equally in your council, in front of you and when applying justice, so that the rich will not lust for your injustice and the poor will not*

[250] Judicial Authority Law (90/99), Official Gazette, Oman
[251] Valeri, Marc, *Oman: Politics and Society in the Qaboos State,* London: Hurst & Company, 2017.
[252] Al Salmi, Nur Al Din, *Tuhfat Al Ayan bi Seerat Ahl Oman,* Cairo, Matbaat Al Shabab, 1350 H.J

despair from seeking justice through you".[253] Article 59 of the constitution states: *"The rule of Law shall be the basis of governance in the State. The dignity of the judiciary, and the integrity and impartiality of the judges are a guarantee for the rights and freedoms".* [254]

Since judges are humans influenced by emotions and outer pressures, it is essential to have a set of requirements and regulations for those seeking a career in the justice sector. The requirements should be based on intellectuality and moral characteristics. It is also essential to have a system that can assess the judge's work performance and monitor his social and moral behaviour which could influence his judicial duties.

The Judicial Authority law outlines the mechanisms to be used when appointing individuals in the judicial system, the job assessment methods for judges and the methods to be used for questioning them. The law also outlined the rights and duties of the judges, which results in forming a balance between the necessity of having assessment and monitory regulations and the guarantees set to insure the independence of the judge from any outer pressures. The law also denied judges from practicing any job that might question his integrity or that is in conflict with his duties. Article 51 of the Judicial Authority law states: "*A judge shall be prohibited from undertaking any commercial activity. It shall also be prohibited for him to do any act not consonant with the independence and honour of the judiciary. It shall be permissible for the administrative affairs council to prohibit a judge from doing any act, the doing of which it considers would be in conflict with the duties of the position and the proper performance thereof, as well as the independence and honour of the judiciary*".[255] Article 52 of the same law states: "*… it shall be prohibited for a judge to be engaged in political work*." [256]Article 53 states: "*It shall not be permissible for a judge to hear any action in which he or any of his relatives by blood or marriage to the fourth degree has a personal interest; direct or indirect. This shall also not be permissible for him if he has a relationship with any of the parties thereto which is incompatible with his impartiality. It shall also not be permissible for him to give advice to any of the parties in any action, even if it is not before him, or to express an opinion therein, and the judge shall forfeit his competence to hear the action if he violates this prohibition".* [257]

[253] ibid
[254] Oman Basic Statute of the State 1996, Official Gazette, Oman
[255] Judicial Authority Law (90/99), Official Gazette, Oman
[256] ibid
[257] ibid

The Judicial Authority law outlines in its sixth chapter the process of judicial review. Article 62 states: *"A department for judicial review is to be established in the Ministry of Justice, to be formed of a head delegated from between the judges of the Supreme court and a sufficient number of members delegated from between judges of the Supreme court and the Court of Appeal. This delegation is for one year capable of renewal by the Minister for Justice and after the approval of the Administrative Affairs Council. The Minister for Justice issues the judicial review schedule after the approval of the Council. Judges should be informed of everything filed in their confidential files, whether it comments or other paperwork".* [258]

Based on the above, the administrative formation for judicial review consists of judges chosen from between the Supreme Court and the Court of Appeal. The law also required the approval of the Administrative Council to whoever is to be chosen to the administration. This guarantees the non-interference by non-judges in the judicial process. The law further implies that judges should be informed of everything filed in their confidential files. The judge was also given the right for grievance to any decision that might affect his job status. According to article 68 of the Judicial Authority law, the right for grievance can be pursued at the administrative affairs council. Moreover, the Judicial Authority law organised the mechanism for questioning judges and the methods for appealing the outcome of such questioning.[259]

2.4.2 Judicial Independence and the Separation of Powers

Moral self-immunity alone is not enough to ensure the impartiality and neutrality of the judge, no matter how honourable, strong and trustworthy the judge might be. There must be some effective regulatory conditions present in order to enhance and protect this neutrality and impartiality. Therefore, judicial independence is a requirement for ensuring neutrality needed to achieve justice.

The state must establish a set of rules guaranteeing the independence of the judiciary and protecting the judges from any influences that might affect their duties. The Omani legislations outlined a number of guarantees to ensure judicial independence. Article 60 of the constitution states: *"The judiciary shall be independent, its authority shall be exercised by the courts in their different types and hierarchies, and their judgements shall be rendered in accordance with the Law".*[260] Furthermore, the duties of the judges have been outlined by

[258] ibid
[259] Al Rubi, O., *Qawa'id Al Ijra'at Al Madaniyyah wal Tandeem Al Qada'I fi Oman*, Cairo, Dar Al Nahda Al Arabiyyah, 2009, p. 25-45
[260] Oman Basic Statute of the State 1996, Official Gazette, Oman

the Judicial Authority law, the Administrative Court law and the Public Prosecution law from the start date of his duties until their retirement. Moreover, judges can only be dismissed from duty in certain cases indicated by law and can only be enforced by a Royal Decree.

Judges and members of the Public Prosecution are judicially immune and cannot be put under arrest unless the judge was caught in a criminal act or by getting an approval from the Administrative Council to continue with such action. Article 71 of the constitution states: *"Judgements shall be rendered and enforced in the name of His Majesty the Sultan. Refusal or obstruction of the enforcement of these judgements by concerned public officials is a crime punishable by Law. The judgement beneficiary has the right in this case to file a criminal action directly to the competent court".*[261] Furthermore, to achieve efficiency in the work of courts and to look at the needs of the judges, the Judicial Authority law ordered the establishment of the Administrative Affairs Council. Article 16 of the Judicial Authority law states: *"The judges shall have an administrative affairs council presided over by the president of the supreme court and having as members each of: The three most senior deputy Presidents of the supreme court, the Public Prosecutor, the most senior president of an Appeal Court and the most senior president of a Primary Court".* [262]

Finally, the establishment of the Supreme Judicial Council that sits alongside the Administrative Affairs council and the Administrative court marks the guidelines for the judicial organisation of the state. The Supreme Judicial Council was established by Royal Decree 93/99 and is formed of the Sultan as its head and the membership consisting of: The Minister for Justice (vice-chairman), the Inspector General for Police and Customs, the Head of the Supreme Court, the Head of the Administrative Court, the Public Prosecutor, the most senior vice-president of the Supreme court, the Head of the Shariah Court department at the Supreme Court, the vice-president of the Administrative court and the most senior Head of a court of Appeal. The most significant functions of the council are to draw the public policy for the judiciary and to ensure its independence and development. [263]

2.4.3 Towards Achieving a Full Judicial Independence

There is no doubt that the guarantees mentioned earlier were not sufficient to achieve full judicial independence. The law gave non-judicial bodies financial and administrative control

[261] ibid
[262] Judicial Authority Law (90/99), Official Gazette, Oman
[263] Al Rubi, O., *Qawa'id Al Ijra'at Al Madaniyyah wal Tandeem Al Qada'I fi Oman*, Cairo, Dar Al Nahda Al Arabiyyah, 2009, p. 50-52

and positions within the Judiciary. It can be argued that all the administrative matters regarding judges were handled by the Administrative Affairs Council before going to the Minister for Justice and therefore, the powers of the Minister are restricted. Furthermore, it can also be argued that all decisions made by the Minister for Justice on functional affairs of judges is restricted by an approval process from the Administrative Affairs Council, as indicated in Article 17 of the Judicial Authority law.

The suspicion surrounding the courts' financial and administrative ties to the Ministry of Justice, the supervision of the Inspector General for Police and Custom over the Public Prosecution and the supervision of the Minister for the Royal Court over the Administrative Court, all undermine judicial independence in Oman.

The judiciary in Oman has witnessed a remarkable development towards achieving a full judicial independence. This was highlighted by the issuance of Royal Decree (25/2011) establishing the independence of the Public Prosecution financially and administratively. The Public Prosecutor assumed the roles of the Inspector General for Police and Customs outlined in the Public Prosecution law. In 2012, Royal Decree 10/2012 was issued dealing with judicial administration and to which a full judicial independence was achieved. The law moved the jurisdiction over the courts, the Department for Judicial Review and the employees working in those institutions alongside the financial benefits allocated to them from the Ministry of Justice to the Administrative Affairs Council mentioned in the Judicial Authority law. The Head of the Council was given the competencies and powers previously given to the Minister for Justice. Article 6 of the same Decree further shifted the competencies and powers of the Minister for the Royal Court over the Administrative court to the Head of the Administrative Court.

As a result, the judiciary in Oman became fully independent from any other legislative or executive body. The Supreme Judicial Council has been reformed by Royal Decree 9/2012. The council is formed of the Sultan and the membership of:[264]

1) The Head of the Supreme Court (Vice-President)
2) The Head of the Administrative Court
3) The Public Prosecutor

[264] Royal Decree 9/2012, Official Gazette, Oman

4) The most senior Vice-President of the Supreme Court
5) The Head of the Shariah Court department in the Supreme Court
6) The Vice-President of the Administrative Court
7) The most senior Head of a Court of Appeal

Through this historical background and the stages of development that the Omani judiciary has encountered, it is clear that the Omani government directs its policies towards modernisation and gradual development across all sectors, and most importantly, the development of the judiciary. The Sultanate is still continuing in taking careful and calculated steps to reach the finest means of modernisation and development. Although the Omani renaissance started late in comparison with other Arabic and Islamic countries, its judicial system has reached a good level of development and impartiality. This, however, does not mean that efforts should stop in seeking further development of the judiciary and increasing its overall efficiency.

2.5 The Survey

2.5.1 Methodology

The methodology of the survey conducted was inspired by the World Justice Project (WJP) Rule of Law Index.[265] The study conducted by the WJP was a new quantitative assessment tool designed to give a numerical indication to the level of adherence to the Rule of Law in practice, in the country where the study is conducted.[266]

The framework designed by the WJP Index is derived from the theoretical work on the nature of the Rule of Law, and on the idea that the law imposes restrictions on the exercise of power by either the government or private interests. Moreover, the framework explores the different ingredients that the Rule of Law seeks to achieve in societies that thrive to adhere to the concept and work in improving it. This conceptual framework was designed by Mark David Agrast, and it is considered to be the backbone of the WJP Index.[267]

The framework is organised around eight main factors: 1) Constraints on government powers, 2) Absence of corruption, 3) Order and Security, 4) Fundamental Rights, 5) Open

[265] Online Source: https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017–2018/methodology
[266] ibid
[267] ibid

Government, 6) Effective Regulatory Enforcement, 7) Access to civil justice, 8) Effective Criminal Justice System. These factors are further divided into 52 sub-factors. Informal justice has been excluded by the researcher, as it is not included in the aggregate score by the WJP. This will make cross-country comparison more accurate, as the same data sources are used.[268]

The framework is used to estimate numerical scores for the factors and the sub-factors set for a group of 113 countries.[269] Oman was not part of the study of the WJP, and the researcher added Oman to the group of countries in the Index. The numerical estimates are built from two types of data sources, collected by the researcher in Oman: 1) a general population poll conducted by the researcher and distributed anonymously to people in three major cities in Oman, 2) qualified respondent questionnaires directed to in-country practitioners, academics, doctors and experts in the fields of civil and criminal justice, labour and health law. [270]
There are eight factors making the Index. Each factor is explained below:

- **Factor 1: Constraints on Government Powers**

The first factor measures the extent to which those who govern are subject to the law. It comprises the institutional and constitutional means by which the power and the government officials are limited and those who violate it being held accountable under the law. It also includes non-governmental checks, such as freedom of press and the engagement of civil society organisations in the political life. [271]

The first sub-factor (1.1) measures the effective constraints on government powers by the legislature. Sub-factors (1.2) and (1.3) address how effective the institutional checks on government powers are by the judiciary and the independent Auditing Institutions and agencies. Sub-factor (1.4) measures the effectiveness of sanctions for misconduct of government officers in all branches of government. Sub-factor (1.5) puts forward the notion of non-governmental checks on government powers, including freedom of the media and the engagement of civil society organisations. Finally, sub-factor (1.6) concerns the extent to which the transition of power occurs in accordance to the law. In this regard, the sub-factors

[268] ibid
[269] ibid
[270] *See **Appendix A (I-V)** for Survey Questionnaires*
[271] Online Source: https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017–2018/methodology

do not address the issue as to whether the transition of power is done by democratic means but focuses on whether the transition is conducted in accordance to the law. [272]

- **Factor 2: Absence of Corruption**

The second factor measures absence of corruption. This is usually defined as using public power for personal gain. Corruption is a fundamental element to any assessment of the rule of law, as it indicates the adherence of government officials to the law and to whether they are fulfilling their duties correctly. The study considers three forms of corruption: bribery, improper influence by public or private interests and the misappropriation of public funds or other resources. The forms of corruption are examined across the executive branch, the judiciary, the legislature and the police and military.[273]

- **Factor 3: Open Government:**

Open government provides better access, participation and collaboration between the government and its citizens. It also promotes the concept of accountability. Factor 3 addresses open government and considers four basic elements: Publicised laws and the availability of government data of official information, administrative proceedings that are open for public participation and the availability and efficiency of the complaints mechanism on the work performance of government institutions. [274]

The first element relates to the clarity, publicity and stability of the laws in the country. The laws should be phrased in a clear language that could be understood by all. This will insure that the people recognise their rights and duties. The second element addresses the degree of availability of government information and the level of ease to obtain these from the government institutions. The third element measures the level of civic participation in the decision-making process. Finally, the fourth element addresses the availability and efficiency of the complaints mechanisms by the public and private sector in the performance of the government institutions.[275]

[272] ibid
[273] ibid
[274] ibid
[275] ibid

- **Factor 4: Fundamental Rights:**

The fourth factor measures the protection of fundamental human rights. Human rights could be divided into three main categories: civil and political rights, social, economic and cultural rights, and environmental and developmental rights. These fundamental rights are enshrined in the universal declaration of human rights and are the cornerstone of this factor.[276]

The factor encompasses adherence to the following rights: equal treatment and the absence of discrimination, right to life and security, respect of due process of law, freedom of expression, freedom of religion, right to privacy, freedom of association and the protection of labour rights.[277]

- **Factor 5: Order and Security:**

The fifth factor measures how well the society ensures the security of persons and property. The factor includes three dimensions: absence of crime, particularly conventional crime, absence of civil conflict and political violence, including terrorism or armed conflict, and absence of violent redress, i.e., people taking justice into their own hands.[278]

- **Factor 6: Regulatory Enforcement:**

The sixth factor measures the fairness and effectiveness in enforcing government regulations. The focus of this factor is to measure how well regulations are implemented and enforced. Regulations include environmental, labour and business-related fields. The factor consists of the following sub-factors: effective regulatory enforcement, no improper influence by public officials or private interests, no unreasonable delay of public enforcement of government regulations, respect to due process of law, and no expropriation without adequate compensation by the government. [279]

- **Factor 7: Access to Civil Justice:**

Access to justice is central to the rule of law. The seventh factor focuses on civil justice, and measures whether ordinary people could resolve their disputes in formal institutions of justice in a peaceful and effective manner, including the other accepted means and norms.[280]

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[276] ibid
[277] ibid
[278] ibid
[279] ibid
[280] ibid

The factor measures the accessibility and affordability of the justice institutions. It also measures the adherence to non-discrimination in the judicial system. Also, absence of corruption and the improper influence by the government is addressed. Furthermore, absence of unreasonable delay in court proceedings and the level of effective enforcement of judicial decisions is addressed in sub-factors (7.5) and (7.6) respectively. Finally, impartial and effective Alternative Dispute Resolutions is measured in subfactor (7.7). [281]

- **Factor 8: Effective Criminal Justice System**

Factor eight deals with the criminal justice system. Effective criminal justice systems are capable of investigating and adjudicating crimes effectively and impartially and without undermining the rights of the suspects or victims. The entire system is assessed, including: the police, lawyers, prosecutors, judges and prison officers.[282]

The sub-factors include: effective investigation, timely and effective adjudication, effective correctional system, absence of discrimination, absence of corruption, absence of improper government influence and respected due process of law.[283]

2.5.2 Constructing Indicators of the Rule of Law

a) Data

This section uses the framework set in the previous section to estimate numerical scores for the situation of the rule of law in Oman. These estimates are built using two data sources collected by the researcher in Oman: a general population poll, and a qualified respondent's questionnaire.

According to the world justice project, there are two reasons for using two different data sources. The first is to compliment the data provided by the experts with that of the general public. The second reason is to validate the findings by providing different perspectives on the same issue. This will also help reduce possible biases on certain issues. The questions were designed to target the smaller concepts that make up the factors and sub-factors of the index. The survey contains both experience and perception-based questions.[284]

[281] ibid
[282] ibid
[283] ibid
[284] ibid

I) The General Population Poll (GPP)

The first data source is the GPP. The questions were designed to provide information on the experiences and perceptions of people concerning their dealings with the government, the police and the courts. It also asks questions on the openness and accountability of the state, the level of corruption and the magnitude of common crimes in society. The survey contains 48 perception-based questions and 10 experience-based questions.[285] A sample of 950 respondents from three major Omani cities participated in the study. The cities were: Muscat, Nizwa and Sohar.

The respondents were chosen in random and the method of surveying was by inviting participants to conduct the survey in their free time and later collected by the researcher. The sample included students, Government employees, teachers, lawyers, entrepreneurs and doctors. All ethical regulations where are abided by and all permits to conduct the survey were issued prior to the start of the survey. [286]

II) Qualified Respondent Questionnaires (QRQ)

The second source of the data is the QRQ. These surveys where used to compliment the GPP Data with the expert opinions on different dimensions of the rule of law. There were 4 questionnaires targeting 50 experts in the fields of civil and commercial Law, criminal justice, labour, and public health. Respondents were law professors, attorneys, lawyers and medical doctors. All respondents were chosen randomly.

b) Estimating Country Score

The scores from the GPP and the QRQ are used to finalise the score of the country. At the start, every question is assigned a variable from the subfactors of the two main sources of data. Once organised, the questionnaires items are then quantified so that all values fall between 0 and 1. The average of each variable is then taken from the expert and lay man surveys. The overall score is calculated by taking the average of all factors.[287]

[285] ibid
[286] *See **Appendix B** for permission obtained to conduct the Survey*
[287] ibid

2.5.3 Methodological Considerations

a) Validity of Data Collection

An important methodological issue in collecting primary data is to ensure that questions actually measure what they are supposed to measure. There are several challenges related to this. The first is the questionnaire design. The survey was translated from English to Arabic by the researcher. The content of the questions was modified to suit the current system in Oman. The questions modifications were also done by the WJP to suit the systems in the countries that were part of the study.

The second challenge is that some questions might be construed as sensitive and threatening to the government. It is also possible that some people might not answer truthfully either for the fear of sanction or because of concerns of his/her self-image. To address the first challenge, a permit from the National Centre for Information and Statistics has been obtained and the questions have been examined and approved. The second challenge has been addressed by asking the respondents to fill the survey in their free time and then submit it in a collection point in sealed box. The anonymity of the respondents has been ensured as no names and signatures are written.

b) Validity in Building Indicators

The second methodological approach is to ensure that the indicators actually measure what they are supposed to measure. There are four issues around this. The first is recognising that no single question could address all dimensions of a subfactor. To overcome this, several variables with each reflecting different aspects of a particular concept, to give an approximation to the values of those concepts. For example, subfactor 6.2 measures whether government regulations are enforced without bribery or improper influence. Due to the large variety of government regulations in different sectors, the survey includes a series of 25 questions tackling areas in health, education, environment and labour affairs. This gave a more comprehensive idea to the situation. The second is including the scores of the experts in the different fields and sectors of the state. The rule of law is a complex principle, and it is necessary to have the opinions of a variety of people and from different ethnicities, social class and level of education. The third is to ensure that the final scores are realistic. To overcome this, the results were cross-examined with third party sources primarily, the United Nations Reports, Amnesty International reports, freedom house reports and the World bank. Overall, very few discrepancies have been found. Finally, the component indicators are

subject to uncertainty, including missing data sample errors, etc. To overcome this, the researcher relied on the justifications and reasoning's made by the WJP in (Saisana, M and Saltelli, A). [288]

2.5.4 Limitations

Among the limitations of the survey is that it does not indicate the causes of the issues under analysis. The results should be used alongside analytical and theoretical tools to establish causation and reform initiatives. This is what the researcher's study aims to achieve. Another limitation is that the concept of the rule of law is defined differently from one country to the other. Nonetheless, the spirit of justice is the same across the world and the 4 basic pillars of the rule of law are accepted globally.

Furthermore, the GPP was conducted in three major cities only. The reason for this is to ease the logistical effort, including the distribution and collection. Moreover, the three cities chosen were the most highly populated cities in Oman. Future surveys can include other cities in Oman. Finally, the survey results were a product of rigorous data collection and entry. It was conducted solely by the researcher. Errors in data entry might occurred, however, the researcher tried his best to ensure that no errors to be found.

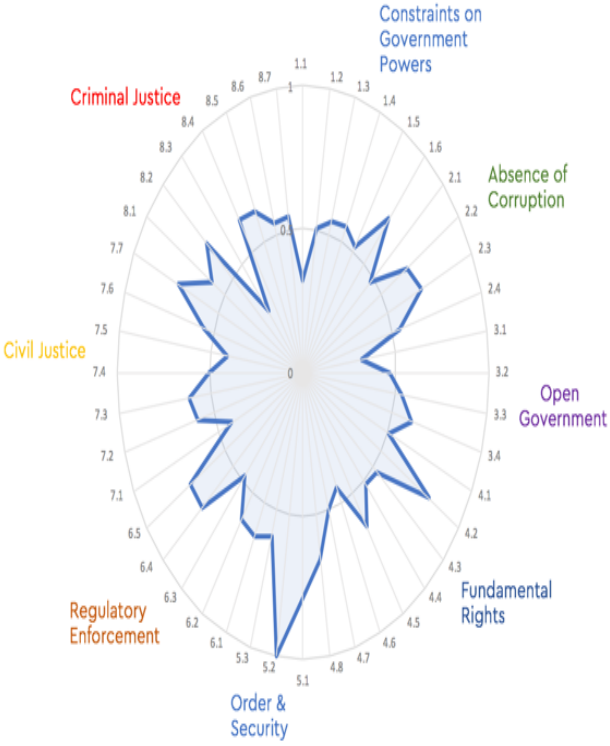
[288] ibid

Oman

Region: Middle East and North Africa
Income Group: High

Overall Score	Regional Rank	Global Rank
0.59	3/8	43/114

	Factor Score	Regional Rank	Income Rank	Global Rank
Constraints on Government Powers	0.53	5/8	35/36	65/114
Absence of Corruption	0.60	3/8	32/36	40/114
Open Government	0.50	2/8	32/36	55/114
Fundamental Rights	0.58	1/8	34/36	57/114
Order and Security	0.80	2/8	22/36	27/114
Regulatory Enforcement	0.63	2/8	31/36	25/114
Civil Justice	0.55	3/8	34/36	53/114
Criminal Justice	0.56	3/8	30/36	35/114



Constraints on Government Powers

1.1 Limits by legislature	0.32
1.2 Limits by judiciary	0.51
1.3 Independent auditing	0.55
1.4 Sanctions for official misconduct	0.56
1.5 Non-governmental checks	0.52
1.6 Lawful transition of power	0.71

Absence of Corruption

2.1 In the executive branch	0.48
2.2 In the judiciary	0.67
2.3 In the police/military	0.70
2.4 In the legislature	0.54

Open Government

3.1 Publicized laws & gov't data	0.32
3.2 Right to information	0.47
3.3 Civic participation	0.54
3.4 Complaint mechanisms	0.61

Fundamental Rights

4.1 No discrimination	0.51
4.2 Right to life & security	0.81
4.3 Due process of law	0.53
4.4 Freedom of expression	0.52
4.5 Freedom of religion	0.64
4.6 Right to privacy	0.44
4.7 Freedom of association	0.50
4.8 Labor rights	0.66

Order and Security

5.1 Absence of crime	0.79
5.2 Absence of civil conflict	1.00
5.3 Absence of violent redress	0.60

Regulatory Enforcement

6.1 Effective regulatory enforcement	0.63
6.2 No improper influence	0.61
6.3 No unreasonable delay	0.48
6.4 Respect for due process	0.72
6.5 No expropriation w/out adequate compensation	0.72

Civil Justice

7.1 Accessibility & affordability	0.42
7.2 No discrimination	0.59
7.3 No corruption	0.62
7.4 No improper gov't influence	0.51
7.5 No unreasonable delay	0.41
7.6 Effective enforcement	0.56
7.7 Impartial & effective ADRs	0.74

Criminal Justice

8.1 Effective investigations	0.58
8.2 Timely & effective adjudication	0.69
8.3 Effective correctional system	0.28
8.4 No discrimination	0.63
8.5 No corruption	0.62
8.6 No improper gov't influence	0.54
8.7 Due process of law	0.55

2.6 Summary of Survey Findings

1- Perception of government accountability

The results of the survey show a high perception of impunity in Oman. Around 41% of the respondents think that the high-ranking government officer caught for corruption would not be prosecuted and punished. Furthermore, the perception of government accountability varies across the different cities in Oman. The respondents in Muscat reported the most positive perception of accountability and in Sohar the least positive. When compared to other MENA countries, perceptions of accountability in Oman are among the bottom three in rank, which is mainly due to the nature of the political system in Oman being a monarchy.

2- Corruption Across Institutions

Omanis believe that corruption is not widely spread among the authorities. Less than 20% of the respondents think that judges, doctors, police and government officials engage in corrupt practices. Judges are perceived to be the least corrupt, followed by doctors and police respectively.

3- Bribery Victimization

Bribery occurs in Oman but in a very small scale. Most forms of bribery reported include speeding up the process to issue lands or in other public service sector institutions. There is also a perception that the police engage in such corrupt actions, however, this is only true on very rare occasions.

4- Fundamental Rights

Omanis have a moderate view on political and media freedoms in the country. Moreover, they have a positive view on religious freedoms and labour rights. Right to life and security scored the highest in the factor, while the right to privacy scored very low. This requires an urgent attention to the issue, as the right to privacy is a main fundamental human right.

5- Crime Victimisation

Crime rates in Oman are very low. On average, less than 10% of respondents reported that their household experienced a burglary, armed robbery, murder, or blackmail. The majority of respondents perceived the country to be very safe and the crime rate very low.

6- Criminal Justice

Effective correctional institutions were cited as the most serious problem facing the criminal justice system in Oman. The lack of proper programmes for prisoners and the availability of proper correctional institutions is perceived negatively. The criminal adjudication process is perceived as good alongside the criminal investigation process. Police conduct, and the respect of the laws is also perceived well.

7- Access to civil justice

Around 60% of the respondents reported facing a legal problem. Accessibility and affordability of the justice system is perceived very negatively, alongside the unreasonable delay to adjudicate and implement decisions. On the other hand, impartiality and the absence of corruption is perceived positively. There is however a perception of improper government influences on the work of the judiciary.

8- Legal Awareness

Omanis have a very low knowledge of the laws and regulations. There is a negative perception on the availability of government data and campaigns on legal issues and methods of dispute settlement.

2.6.1 Conclusion and Recommendations of the Survey Findings

From the scores recorded, it is observed that the situation of the adherence to the rule of law in Oman is moderate. Attention must be focused on four main factors, namely: restraints on government powers, absence of corruption, civil and criminal justice systems. To reach a more realistic plan, the researcher divided the goals into short, medium and longer-term

goals. The reasons for this are due to the nature of the Omani political system, giving more legislative powers to the parliament and constraining the powers of the Sultan is not applicable to Oman at the time being. It is beyond the scope of this research to discuss the matter.

a) Short-term Goals

Factors 3, 7 and 8 are classified as short-term goals that the judiciary should focus on to enhance. Access to courts and other dispute resolution agencies are perceived negatively and expensive. Furthermore, the judiciary is perceived as slow in adjudicating cases. It can be concluded that there is a problem in the administration of the judiciary. This is due to giving judges administrative tasks that they do not have the experience in performing. Specialised personnel of administrators should be appointed to enhance the efficiency of the justice institutions. Furthermore, there is a perception of government influence on the judicial work. It is important that the government becomes more transparent in its communication with the judiciary. Also, the impartiality of the judge should be ensured.

Finally, the Legal awareness of citizens should be addressed urgently. Although all the laws are publicised and clear, people are not even aware of the basic rights and duties. Most citizens are not aware of the dispute resolution mechanisms available in the country. Moreover, there is a lack of events and campaigns addressing legal issues. Right to information should be improved and all government data should be published. Although the judiciary is perceived as impartial and corruption is minimal in it, that does not mean that the judiciary is efficient. The quality of the judges appointed should be reviewed and methods of selection and promotion should be addressed. At the current stage promotion is based on seniority, which can undermine the quality of the work performed by judges. Some judges might underperform knowing that the they can be promoted regardless of their performance. Furthermore, judicial review should be more effective. A well-established annual plan to assess the judicial performance should be set with an independent institution undertaking this task should be established.

b) Medium-term Goals

Factors two, four and six are classified as medium-term goals to be addressed. Corruption in the executive branch is perceived as high, and government audit institutions should be more efficient in performing its duties. Moreover, many citizens perceive members of parliament to be involved in corruption. This takes the form of using their positions as members of Parliament to gain private interests. Furthermore, the basic fundamental rights of citizens should be addressed. Ensuring the absence of discrimination in practice should be focused upon and the reduced. Furthermore, freedom of expression and association should be better regulated, and the police should raise the level of awareness to the people on the laws regulating those rights. Finally, the right of privacy should be respected by the authorities as far as national security is concerned.

The final factor under this classification is regards the proper and efficient implementation of government decisions. There is the negative perception that the implementation of such regulations faces unreasonable delay. This can be due to a high level of bureaucracy and the difficult communication processes between the different institutions of the state.

c) Long-term Goals

Factors one and five are classified as long-term goals. Constraints on government powers by the legislature are very low in Oman due to the nature of the political system. Oman is a Monarchy, with the Sultan holding most legislative powers. It is beyond the scope of the study to discuss this matter; however, Oman is progressing towards an indigenous form of democracy. Civil society organisations should be allowed to participate in the political stage. Non-governmental checks should be introduced to enhance the performance of the government institutions. Finally, proper accountability measures should be enforced, and offenders should be punished. A Constitutional court should be considered as an option to act as inspector on the performance of the executive and legislature.

Oman is perceived as a very safe country, with violence and crime rates low. However, there is a somehow negative perception on the absence of violent redress. This can be associated to the unreasonable delays when adjudicating cases and the affordability and accessibility of the dispute resolution institutions.

Factor	Short- term goal	Medium-term goal	Long-term goal
Constrains on Government Powers	-	-	√
Absence of Corruption	-	√	-
Open Government	√	-	-
Fundamental Rights	-	√	-
Order and Security	-	-	√
Regulatory Enforcement	-	√	-
Access to civil justice	√	-	-
Access to criminal justice	√	-	-

Table 2-2: Factors that needs reform and their classifications as either short, medium or long-term objectives.

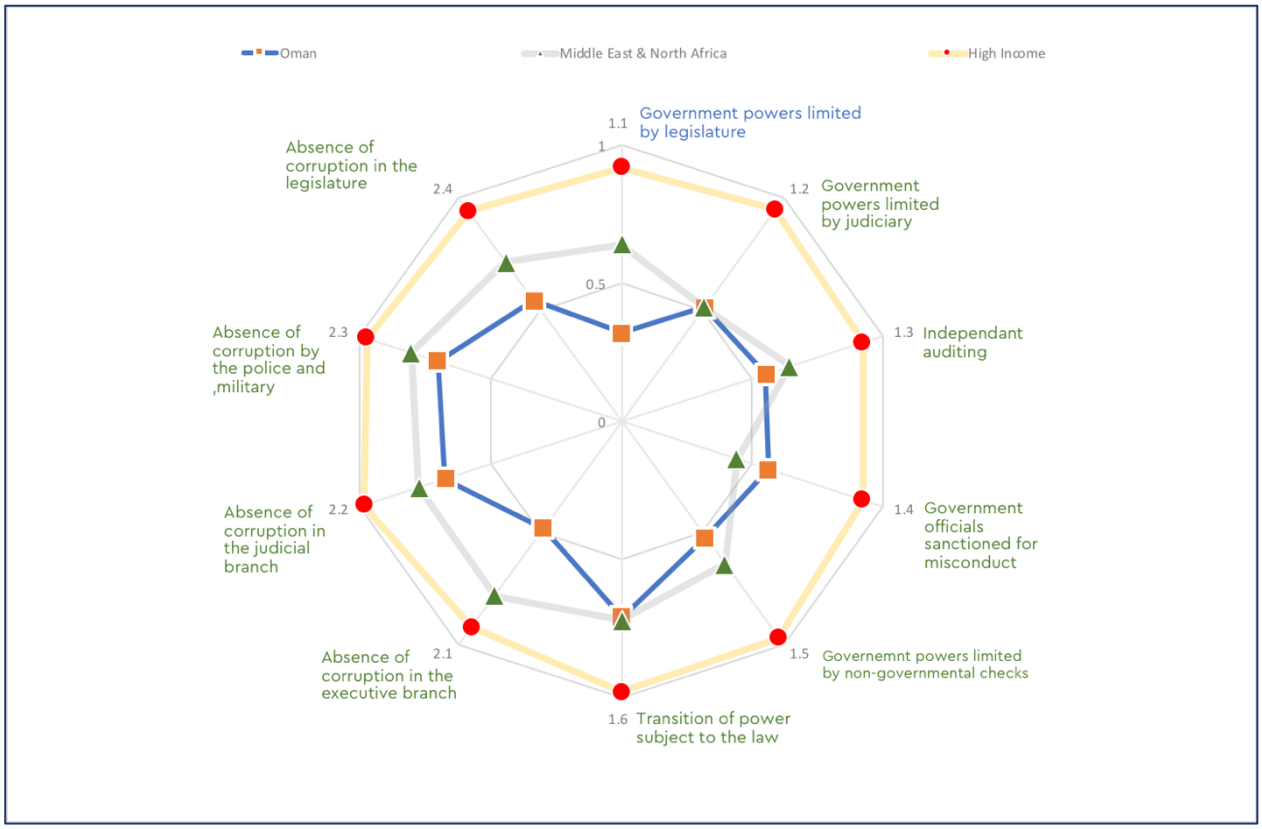


Figure 2-2: *Constraints on Government Powers situation in: Oman, MENA Region and High-Income Group Countries*

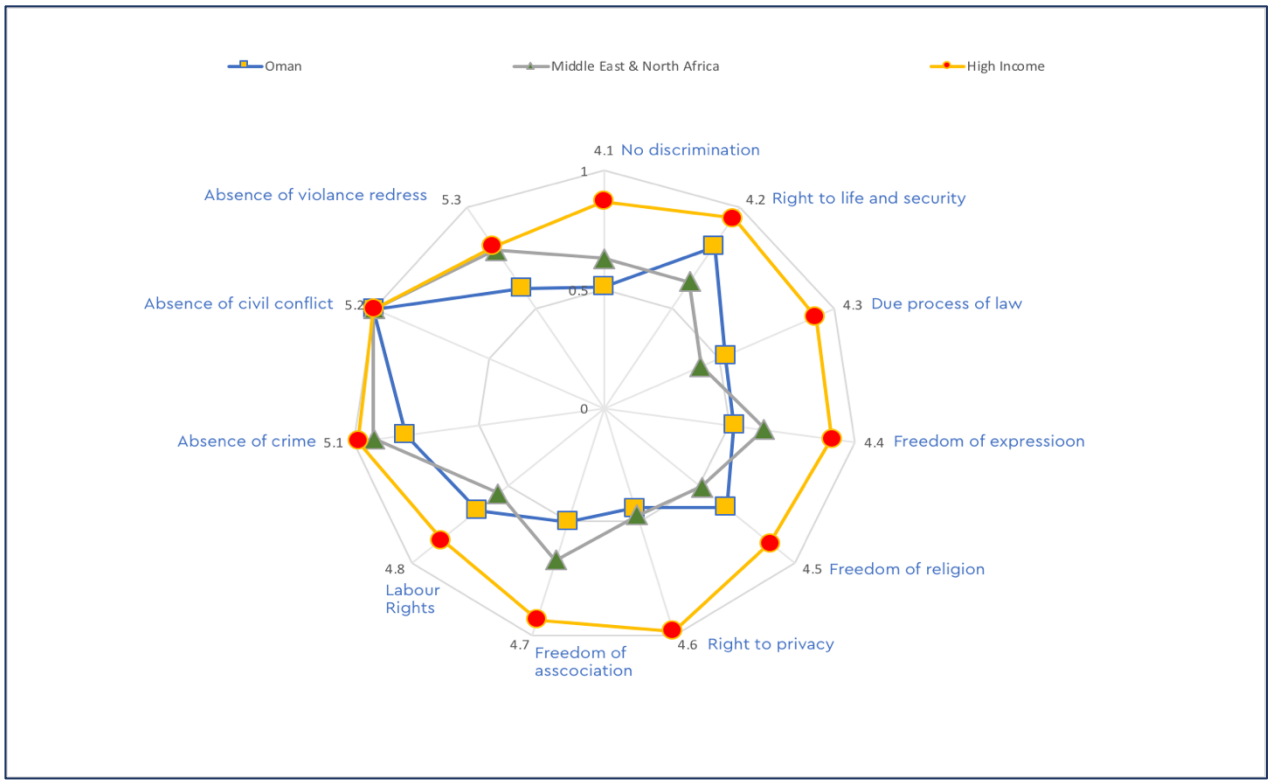


Figure 2-3: *Security and Fundamental Rights situation in: Oman, MENA Region and High-Income Group Countries*

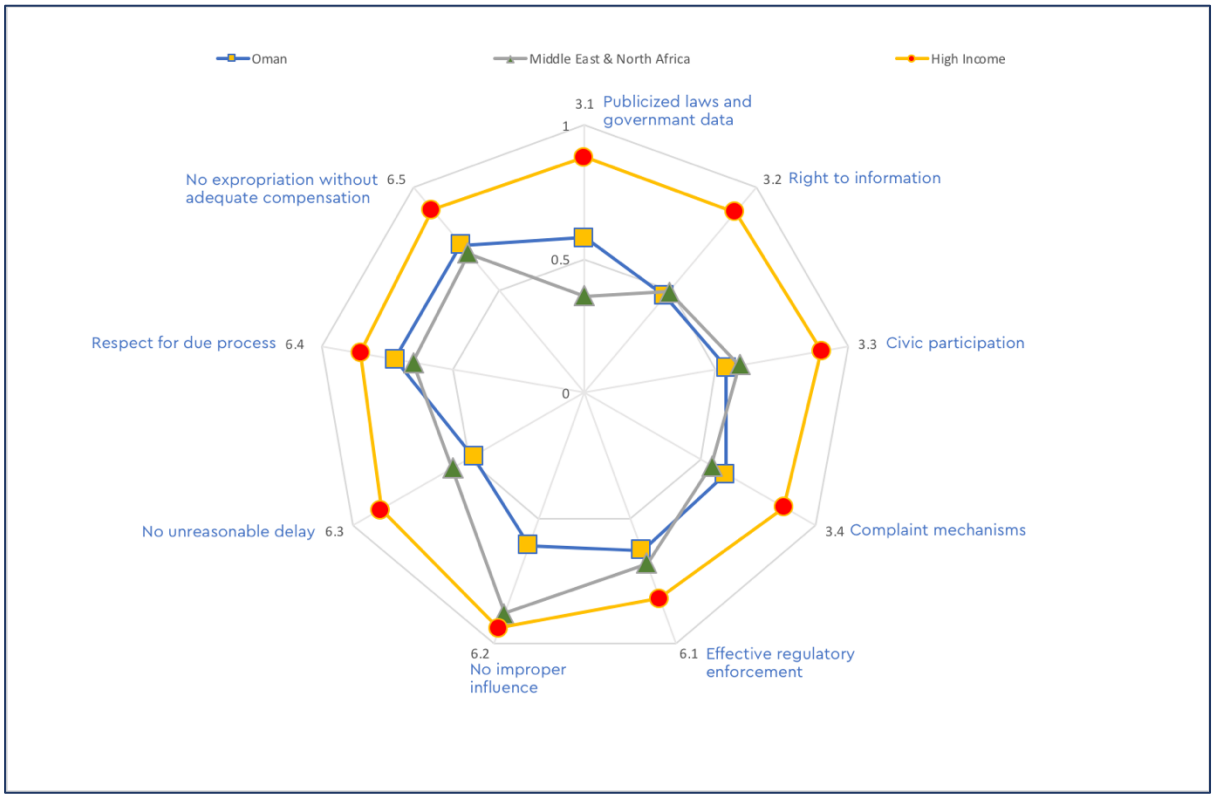


Figure 2-4: *Open Government and Regulatory Enforcement situation in: Oman, MENA Region and High-Income Group Countries*

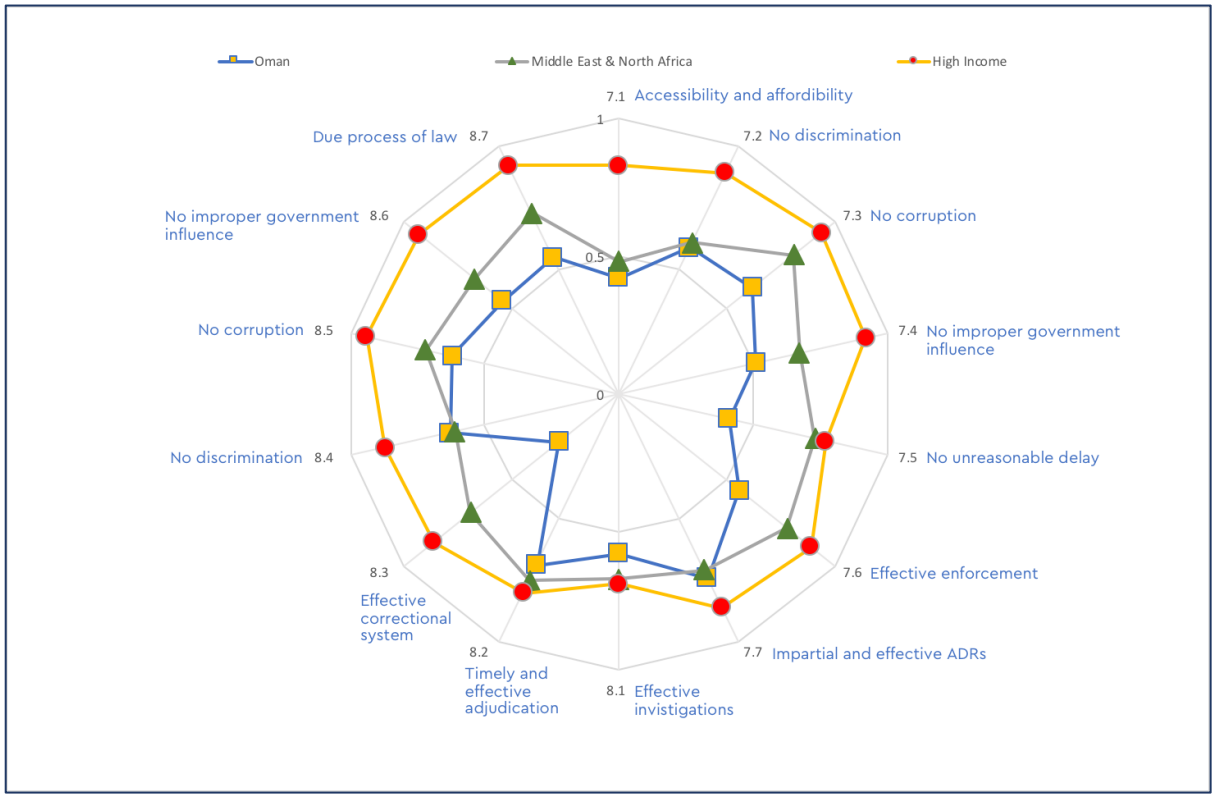


Figure 2-5: *Access to Civil and Criminal Justice situation in: Oman, MENA Region and High-Income Group Countries*

2.7 Conclusion

In conclusion, this chapter started by giving a brief political history of Oman and the change of the state from an Imamate system of rule to a Monarchical Sultanate. It also outlined the historical development of the Ibadi sect and its introduction to Oman. It further discussed the Constitution of 1996 and the reason for adopting it then and not earlier. The next part gave a brief history of the development of the judicial system in the early stages of the Imamate state until the mid 20th century. Judicial appointment, judges' salaries alongside the rights and duties of the judge were explained. Furthermore, preserving the impartiality of the judge and the independence of the judiciary were discussed. Although the system dates back more than 1250 years, the judicial experience that is inherit in Oman could be reincarcerated and modified to fit the 21st century understanding of justice. This has been established under the reign of HM Sultan Qaboos bin Said. The judiciary in Oman witnessed a rapid development from 1970, and parts of the imamate system experiences were adopted in the development efforts.

The second part of the chapter explained the development of the Omani justice system post 1970. It was in 1970 that Sultan Qaboos bin Said assumed power and transformed Oman from a medieval state into a modern state made of institutions. The judiciary was paid special attention, and the resources needed to ensure justice was provided. The first part of the second section outlined the judicial organisation in Oman currently. The second part explained the guarantees found in the Omani legislations to ensure the independence of the judiciary.

The third part of the chapter explained the methodology used for the survey that was conducted in Oman. The survey was an attempt to quantify the situation of the adherence to the rule of law in Oman. The survey was designed by the World Justice project in the form of a Rule of Law Index, which includes 113 countries. Oman was not part of the study, and the researcher added the scores of Oman to compare it with the other countries in the region and worldwide. Oman was ranked 43 globally and 3rd in the Middle East and North Africa region. The Index consists of eight factors which includes: Constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice. Each factor was explained and the scores of Oman explained.

When compared to other countries in the MENA region, Oman ranked 5th from 8 other countries in the region in the factor of restraints in government power. The reason for such low ranking is due to the nature of the political system in Oman, and with Oman being a Monarchy, the Sultan has the final say in all matters. It is beyond the scope of this study to discuss the suitability of having a monarchy in Oman and whether it should be changed into a constitutional monarchy. Other subfactors should be addressed such as: increasing the efficiency of the audit institutions in Oman and allowing non-governmental checks on the public and private sector. This will ensure accountability and enhance the performance of the institutions of the state. Oman was ranked 4th in the factors of: Absence of corruption, access to civil justice and access to criminal justice. It was ranked 2nd in the factors order and security and regulatory enforcement. Finally, Oman ranked 1st in the region in the factor of Fundamental rights. Although Oman is ranked 1st under this factor, it is not a positive indication fully. Oman is ranked 57th globally, and the region in general is ranked in bottom middle part of the ranking. Attention should be paid to enhance the protection of the fundamental rights of the citizen, as it is an important pillar of the Rule of law.

The chapter concluded by organising the reform proposals for Oman into short, medium and long-term goals. The short-term goals included the following factors: Open government, Access to civil justice and Access to criminal justice. The medium-term goals included: Absence of corruption, Fundamental rights and Regulatory enforcement. Finally, the long-term goals included: constraints on government powers and order and security. The reason for such classification is to introduce the reform efforts gradually and based on importance. The scores helped identify the key areas that need attention.

Since the study was the first of its kind to be conducted in Oman, it lacked the comparison that the Rule of Law Index had on the annual progress of countries that were part of the research. Nonetheless, future research or survey endeavours to measure the adherence of the rule of Law in Oman could be conducted and compared. This was an attempt by the researcher to give an overview to the situation of the Rule of Law in Oman, especially since the 2040 vision of the Sultanate has the rule of law as a primary area for development. Oman moved slowly towards achieving justice and building the modern institutions that help serves it. However, Reforming the judiciary and enhancing the situation of the rule of law in Oman should be considered.

In this chapter, the judicial history and development of the justice institutions from the year 751 A.D until the present day has been outlined. Up until 1970, Oman followed an indigenous justice doctrine, inspired by the Ibadi sect. The system was efficient and effective and had practices inherited by generations. Experiences and the organisation of the justice institution of the Imamate state could be modernised to suit the 21st-century without undermining the social, political, and cultural peculiarity of the Omani society. Methods of judicial appointment and judicial review could be learnt from and adopted. The committee known as '*Ahl Al hil Wal Aqid'* (the people who can make and break) acted as the Constitutional Court. The researcher urges the necessity for establishing a Constitutional Court in Oman. Finally, accountability was practised in the highest form in the Imamate state. Ensuring government accountability is a key pillar for the concept of the Rule of Law. More efforts should be made to fight corruption and enhance the efficiency and effectiveness of the State Audit authority.

After discussing the different theories of Justice and the Rule of Law; and outlining the judicial history and development in Oman and the challenges facing it, the next chapter starts the analysis the rule of law situation in Oman. The first pillar for the rule of law, Government bound by the law, and the areas that need reform in Oman to better enhance the adherence to this pillar are discussed and examined.

Chapter 3

The Concept of 'Government Bound by the Law'

3.0 Introduction

The first pillar of the concept of the rule of law is that the 'Government is bound by the law'. This chapter examines that notion, tries to identify the weaknesses in the current government accountability system in Oman, and proposes reform recommendations to improve the current accountability system in place.

To reach a conclusion and a set of recommendations to the above stated objectives, the chapter is divided into 10 parts. The first part introduces the concept and its historical development. The second part outlines the definitions of the concept. The third and fourth parts respectively examines accountability in Christianity and Islam. The development of accountability in Islam and the term '*Hisba*' is explored and examples of its application are mentioned. The principles of accountability are discussed in the fifth part, and the sixth part outlines the components of accountability. The seventh part discusses the different types of accountability. The eighth part explores accountability from an international perspective. Different types of conventions and declarations regarding accountability, transparency, open government and the fight against corruption are discussed. US government accountability office is given as an example. The ninth part discusses the historical and current situation of the concept in Oman. Weaknesses and areas for reform are identified. The final part draws a conclusion and sets forward recommendations to the Omani government regarding the concept of the government bound by the law and accountability.

3.1 The History and Development of the Concept

The principle of accountability is an old principal dating back to the time of early human communities. The idea of accountability dates back to 3000 BC, where the position of accountant was created and was required to submit a performance assessment report.[289] Moreover, laws were enacted and delegated to the administrative authority the duty of investigating violations. The codes of Hammurabi contained a law that sentenced to death anyone caught stealing. In ancient Egypt, the code of Horemheb contained procedures against

[289] Salvador Carmona, Mahmoud Ezzamel, *"Accounting and accountability in ancient civilizations: Mesopotamia and ancient Egypt"*, Accounting, Auditing & Accountability Journal, Vol. 20 Issue: 2, 2007, p.177-209

bribery. Finally, in his book *"Politics"*, Aristotle stated that in order to protect the Treasury from theft by fraud, the funds should be spent publicly under the eyes and ears of the citizens. He also stated the need to have a copy of the expenditures and revenues in different places.[290]

John Locke used the concept of accountability when calling for the social contract theory.[291] This theory requires the government to be bound by the law. This was further confirmed by Bentham[292], James Mills[293] and Karl Marx[294]. Marx presented a model for a communist state that included holding the government accountable for its actions through a representative democracy that is not restricted. For Marx, the society should participate in the accountability process at local and national levels.[295]

Despite the importance of Marx's point on parliamentary accountability, it is not enough to make governments work for the benefit of citizens. Elections alone are not enough, even if citizens are able to hold governments responsible for their actions by punishing them. Therefore, accountability mechanisms should not be purely vertical, i.e. the relation between MPs and citizens, but also horizontal, i.e. the responsibility of the different organs of the state to one another.[296] Parliament must play an active role in deliberation and policy formulation. On the other hand, the executive must be able to control the bureaucracy and the inflation of the government system. There must be institutions independent of other government bodies that provide citizens with the necessary information to develop the assessment methods on government efficiency and not only results. Citizens should also have institutional tools to reward and punish governments for their results in various areas.[297]

In any political entity, the abuse of power is a fatal process to democracy. When personal gain is the motive behind running the post, the democratic process becomes a struggle for power and positions rather than striving for efficient and effective policies. Political power becomes an important issue and the competent forces will resort to doing anything in order to

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[290] ibid
[291] Locke, John, 1689, *Two Treatises of Government*, P. Laslett (ed.), Cambridge: Cambridge University Press, 1988.
[292] Crimmins, James E., *"Jeremy Bentham",* The Stanford Encyclopedia of Philosophy (Summer 2018 Edition), Edward N. Zalta (ed.)
[293] Ball, Terence, *"James Mill"*, The Stanford Encyclopedia of Philosophy (Winter 2018 Edition), Edward N. Zalta (ed.)
[294] Dwivedi, O.P., William Graf, and J. Nef. *"Marxist Contributions to The Theory of The Administrative State."* The Indian Journal of Political Science 46, no. 1 (1985): 1-17. http://www.jstor.org/stable/41855146.
[295] ibid
[296] Kameme, Webster, *The Vertical and Horizontal Accountibility in the Malawi Parliamentary System*, PhD Thesis, University of Hull, 2015, p.20-22
[297] ibid

win it. This undermines the essence of the democratic process that is based on free and fair elections. The remedy to this is to have a free media capable of detecting the misuse of power, a society willing to monitor the political action and the conduct of government officials. An independent legal system that enables the prosecution and punishment of officials violating the law/power is also necessary. This includes identifying and defining the power and authorities of the current government institutions, especially that of the executive authority.

Furthermore, accountability requires an effective civil society that not only strengthens accountability but also enhances the representation and vitality of the democratic process. This is to allow independent institutions to examine and curb state authority and promote the legitimacy of democracy by providing new means of expressing political interests, increase political awareness, effectiveness and confidence of citizens and create new political programmes that insure a positive competition.[298]

Elected government officials must be legally accountable for their actions before independent courts. Not elected government officials are accountable to their minister who is accountable to Parliament. Parliament must have the power to ratify and monitor legislation and government performance. In addition, the government is financially responsible for disbursing public funds for purposes approved by the legislature and at the lowest costs possible.

In order to hold the government and its officials responsible, there must be separation of powers. The existence of independent officials capable of restraining one another lead to protecting the citizens from any government abuse of power and insures the rule of law.

[298] Kaldor, M., *Civil Society and Accountability*, Carfax Publishing, Journal of Human Development, Vol. 4, No. 1, 2003

3.2 The Definition of the Concept

The literature shows multiple definitions for the concept of accountability. Gronlund defined the term as the willingness to accept the blame for failure or the acceptance of praise for achievements and successes. It also includes a description and explanation for the reasons leading to that, and what should be done to correct any mistakes.[299] Hammond defined it as a method that allowed civil servants and institutions to bear responsibility for their performance, which reassures those dealing with them that things are being done in the public interest and in accordance with the desired goals. It is also based on maximising good practices and limiting bad practices. Finally, all issues should be dealt with justly and equally.[300]

Joseph Jabbra defined accountability as an expression of civil servants' responsibility for their actions, and based on this, the civil service is responsible for the performance of the behaviour and actions at work.[301] John Carver views accountability as an accumulative responsibility. Every individual inside the administrative institution is responsible for his actions. Furthermore, individuals with a higher level of authority are responsible for their actions and the actions of those who are lower in rank who works for them. John Carver stated that all managers should be held accountable for their personal actions and the actions of their team that they supervise. Starling indicated that accountability is answering questions addressed to the civil servants and institutions regarding an unaccepted behaviour by those questioned and that which contradicts with the laws and regulations. This requires providing justifications and reasoning for the actions of the institutions/civil servants. It also requires close institutions/civil servants to be held responsible for their actions and the consequences that are a result of them.[302]

The concept of accountability is linked to the process of judicial reform.[303] Accountability, when applied in an orderly manner, relieves the institution from the dimensions of patronage and typeset towards integrity and efficiency according to the rules of merit and equal opportunities. Administrative accountability directs a purposeful message of reform,

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[299] Gronlund, L., *Co-operative Commonwealth*, Harvard University Press, 2013
[300] Hammond, L.d. *Teachers College Record*, Volume 91, Number 1, Fall 1989. New York: Teachers College, Columbia University: 59–67.
[301] Jabbra, J. G. and Dwivedi, 0. P. (eds.), *Public Service Accountability: A Comparative Perspective*, Kumarian Press, Hartford, CT, 1989
[302] Kearns, Kevin P. *"The Strategic Management of Accountability in Non-profit Organizations: An Analytical Framework."* Public Administration Review 54, no. 2 (1994): 185-92. doi:10.2307/976528.
[303] Carothers, Thomas, *The Rule of Law Revival*, Issue 2, (2014).

evaluation and enhances the effectiveness of the employees. Disciplinary laws define the duties and sanctions and aims at reforming the employees, evaluating them and raising their productivity levels.[304]

Accountability is a set of processes and methods whereby it is used to verify that things are going the way planned and to the maximum extent possible. Accountability is therefore not an interrogation or trial; but it is intended to verify that the performance is within the framework set by the targets in accordance with the agreed criteria to raise the standards of the institution to a high level of efficiency and effectiveness.[305]

Accountability is a means of resisting corruption and administrative delinquency. This sense of accountability among the civil servants prevents them from using their powers for personnel benefits. The sense of the possibility of disclosure to the public their violations prevent abuse of power. Bowen identified the main steps for achieving institutional accountability.[306] The first is identifying the goals and its hierarchal importance. The second is to set the measure of four outputs. The third is the comparison and meeting the outputs with the objectives and judging the degree of the achieved goals. Finally, measuring the costs and judging the productivity to an acceptable minimum in performance.

As for the benefits of administrative accountability, it includes directing institutional capabilities towards the goals set, organising individuals based on the strategy set by the institution, identifying failures at work during any decline in performance, the knowledge of employees with the expected results, shifting the focus of the employees towards their tasks, identifying the role of each employee in the institution and improving the methods used when conducting tasks.[307]

A key element of the concept of accountability is what Gronlund refers to, the commitment to responsibilities and acceptance of accountability, determining the output standards, assessment of outputs through standards, assessing rewards and punishment for actions and identifying the responsibility party[308]. On the other hand, Plumptre summarised the reasons for administrative accountability failure. He stated that the reasons for failures is the lack of

[304] ibid
[305] Adelman, Sammy. *"Accountability and Administrative Law in South Africa's Transition to Democracy."* Journal of Law and Society, vol. 21, no. 3, 1994, pp. 317–328
[306] Bowen, H., *Evaluating institutions for accountability*. San Francisco: Jossey-Bass, 1974
[307] ibid
[308] Gronlund, L., *Co-operative Commonwealth*, Harvard University Press, 2013

clarity of roles and responsibilities, unpredictable performance expectations, lack of feedback, the non-use of follow-ups, bonuses and sanctions, lack of resources, lack of sufficient and continuous performance records, weaker planning and training, absence of job descriptions, the non-activation of administrative accountability systems and the neglect of personal differences between employees.[309]

The entrenchment of accountability means that the Administration in the state works to achieve the goals of the society, and its institutions will feel responsible towards its citizens. The citizens in turn know and appreciate the importance of the efforts made by the state agencies to serve them.[310]

The importance of accountability is demonstrated by its association with the values of transparency and democracy.[311] Also, by the commitment to perform public policies correctly and appropriately through proper and acceptable clarification of responsibilities for work outcomes. This means that the responsibilities should be clear and defined as an agreed contract containing specific criteria. It is also a method to improve the environment in the institution by providing trust between the employees and their employers and between the employees among themselves. Accountability effectively supports the design and implementation of policies.[312]

Moreover, the availability of transparency leads to strengthening and activating the right of citizens and stakeholders to hold accountable those responsible for their various decisions and actions. Transparency is part of accountability that prevents from government mistakes and prevents corruption, especially administrative and financial corruption. The presence of accountability supports the practice of accountability by the citizens on the public administration through Parliament, the media, etc., and helps to achieve the objectives of auditing.

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[309] Plumptre, T. and Graham, J., *Governance and good governance*. Ottawa: Institute on Governance, 1999
[310] Blind, P.K., *Accountability in Public Service Delivery: A Multidisciplinary Review of the Concept*. Paper Prepared for the Expert Group Meeting Engaging Citizens to Enhance Public Sector Accountability and Prevent Corruption in the Delivery of Public Services, Vienna, 2011
[311] Hollyer, James R., B. Peter Rosendorff, and James Raymond Vreeland. *"Democracy and Transparency."* The Journal of Politics73, no. 4 (2011).
[312] Coburn, C. E., Hill, H. C., & Spillane, J. P., *Alignment and Accountability in Policy Design and Implementation: The Common Core State Standards and Implementation Research*. Educational Researcher, 45(4),2016, p.243–251.

3.3 Accountability in Christianity

The Bible reveals that God expects accountability on a regular basis. God confronted Adam and Eve after eating from the forbidden tree and asked for the justification of their actions. This was followed up with a punishment from God. (Genesis 3:1– 24).[313] Moreover, when Cane murdered his brother Abel, he was required to face the Lord. (Genesis 4: 1–16)[314]. David who committed adultery with Uriah's wife was confronted by prophet Nathan. (Samuel 11:1– 12:23).[315] Further, Ananias and Sapphira, who lied to the Holy Spirit and Peter, were asked for reasons for their actions and were judged for it. (Acts 5:1-12).[316]

Accountability in Christianity can be found in the Messiah's parabolic teachings on stewardship; which is the biblical word for accountability. Those parables engage accountability on everyone and that God will hold everyone accountable for his/her actions and lifestyle in the life hereafter. The bible indicates that when exercising biblical stewardship, Christians must be faithful in little things (Luke 16:10)[317], are to seek God and Kingdom and his Righteousness first (Matt 6:33)[318], and as servants should be particularly concerned about the welfare of others.

The life of Samuel was a typical example of public accountability.[319] In his speech before retiring from public duty, Samuel said: "Let me ask this, Have I ever taken anyone's ox or donkey or forced you to give me anything? Have I ever hurt anyone or taken a bribe to give an unfair decision? Answer me as the Lord and his chosen king can hear you. And if I have done any of these things, I will give it all back. "No," the Israelites answered. "You have never cheated us in any way!" (Samuel 12:3-4).[320] Samuel challenged the people publicly to testify against his administration in the event of any mismanagement or corrupt practices, but the people could not find any fault in him.[321]

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[313] Online Source: http://www.vatican.va/archive/bible/genesis/documents/bible_genesis_en.html
[314] ibid
[315] Online Source: http://www.usccb.org/bible/2samuel/11
[316] Online Source: https://biblia.com/bible/Acts5
[317] Online Source: https://biblia.com/bible/Luke16.10
[318] Online Source: https://biblia.com/bible/hcsb/Matthew%206.33
[319] Michael Adeleke Ogunewu, Abiodun Adesegun, *Biblical Teachings on Accountability: A Challenge to Christian Politicians and Public Office-Holders*, AAMM, Vol. 4, 27, 2011
[320] Online Source: https://biblia.com/bible/2Samuel12
[321] ibid

3.4 Accountability in Islam

Accountability in Islam is often referred to as "*Hisba*". The system originated during the early starts of the call for Islam. Prophet Muhammad took charge of Hisba himself, where he enjoined the good and forbid the evil. In the Quran, verse (7:157) states: *"...who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden and the shackles which were upon them..."*.[322] The role was carried out by the prophet's companions during his lifetime, by the Caliphates after that, and then became an Islamic institution alongside the judiciary, the grievances committees and other institutions.[323]

Prophet Mohammed personally called for preventing cheating, which is seen as a form of accountability or *Hisba*. In addition, the Prophet appointed Said bin Al Aa's bin Umayyah as the market inspector of Mecca and Abdullah bin Said bin Asbaha bin Al A'as the market inspector of Medina. This indicates that the Prophet delegated the power of *Hisba* to a trusted person to propagate virtue and prohibit evil.[324]

Moreover, the Well-advised Caliphas' were interested and concerned about accountability (*Hisba*). The Calipha conducted the concept either personally or by delegating the authority to someone he saw fit to carry out that duty. The Calipha Omar took the initiative himself and was roaming and supervising the market. He also checked the scales and insured that public order was in place. He also appointed mayors and market inspectors in the different Islamic cities.[325]

[322] The Holy Quran, Surat Al A'raf, (7:157)
[323] Ibn Hisham, *Al Seerah Al Nabawiyyah,* Beirut, Dar Al Ma'rifa, 1990.
[324] ibid
[325] ibid

3.3.1 Accountability in the Quran

There are many verses in the Quran that indicates accountability and encourage its practice. Among those verses are the following:

- "And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful." (3:104) [326]

- "You are the best nation produced [as an example] for mankind. You enjoin what is right and forbid what is wrong and believe in God. If only the People of the Scripture had believed, it would have been better for them. Among them are believers, but most of them are defiantly disobedient." (3:110) [327]

- "…who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden and the shackles which were upon them…" (7:157) [328]

- "The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give zakah and obey God and His Messenger. Those - God will have mercy upon them. Indeed, God is Exalted in Might and Wise." (9:71) [329]

- "[And they are] those who, if We give them authority in the land, establish prayer and give Zakah and engage what is right and forbid what is wrong. And to God belongs the outcome of [all] matters." (22:41) [330]

[326] The Holy Quran, Surat Al Imran, (3:104)
[327] The Holy Quran, Surat Al Imran, (3:110)
[328] The Holy Quran, Surat Al A'raf, (7:157)
[329] The Holy Quran, Surat Al Tawbah, (9:71)
[330] The Holy Quran, Surat Al Haj, (22:41)

3.3.2 Accountability in the Sunnah

There are many sayings of the Prophet that indicates *Hisba*. Among those Hadiths are the following:

- The Prophet said, "Beware! Avoid sitting on the roads (ways)." The people said, "There is no way out of it as these are our sitting places where we have talks." The Prophet said, "If you must sit there, then observe the rights of the way." They asked, "What are the rights of the way?" He said, "They are the lowering of your gazes (on seeing what is illegal to look at), refraining from harming people, returning greetings, advocating good and forbidding evil."[331]

- The Prophet said, "By Him in Whose Hand my life is, you either enjoin good and forbid evil, or God will certainly soon send His punishment to you. Then you will make supplication and it will not be accepted".[332]

- The Prophet said, "Whoever amongst you sees an evil, he must change it with his hand; if he is unable to do so, then with his tongue; and if he is unable to do so, then with his heart; and that is the weakest form of Faith".[333]

3.3.3 The Purposes of *Hisba* in Islam

The most significant purposes for Hisba in Islam can be summarized in the following:[334]

a) It achieves the interests of the people and prevents evil and harm on them.

b) It provides monitoring in all areas and on all individuals.

c) It is a system that achieves reform, development and prosperity.

d) It is a system that achieves justice in the society.

[331] Al Asqalani, Ibn Hajar, *Fat'h Al Bari fe Sharh Sahih Al Bukhari,* Riyadh, Dar Al Salam, 2006
[332] ibid
[333] ibid
[334] Al Mawardi, *Al Ahkam Al Sultaniyyah,* Cairo, Dar Al Hadith, 2008

3.4.3 Principles of *Hisba* in Islam

According to Muslim scholars, the principles of *Hisba* can be summarized in the following:[335]

a) The existence of violation.

b) The violation should have occurred immediately. If the violation took place a while ago, then the right to hold the person accountable is dropped.

c) The violation should be apparent to the investigator without spying on the individual.

d) The violation must be confirmed legally.

e) The punishment should be equal to the violation committed.

3.5 Modern Principles of Accountability

The principles of accountability vary in the literature. Among the principles are the following:

a) The clarity of the rules of the system and the consequences for violations: employees should be aware of the rules required to comply with, and the consequences for violating them.[336]

b) The direct implementation of sanctions: find a direct link between the offence and the punishment. This does not mean that the punishment should be implemented immediately without investigating the violation and the reasons for it.[337]

c) The equal application for the punishment: the employees should believe in the fairness of the application of the sanctions and accept it without complacency. The

[335] ibid
[336] Markowski, Radoslaw. *"Political Accountability and Institutional Design in New Democracies."* International Journal of Sociology36, no. 2 (2006), p. 45-75
[337] Winkler, Adam. *"Just Sanctions."* Human Rights Quarterly 21, no. 1 (1999), p.133-155. http://www.jstor.org/stable/762739.

sanctions should be predicted that, i.e. there must be a clear warning for a specific violation and the type of punishment for those committing it.[338]

d) The equality and the homogeneity in the type of sanctions: the employees should understand that the punishment is not linked to the violator, but to the type of the violation. Those who commit the same violations should be punished equally and without any bias.[339]

According to the World Justice Project, there are six sub factors that for **Factor One** in the Rule of Law Index report, namely, *Constraints on Government Powers*. The sub factors are the following:[340]

a) Government powers are effectively limited by the legislature.
b) Government powers are effectively limited by the judiciary.
c) Government powers are effectively limited by an independent auditing and review institution.
d) Government officials are sanctioned for misconduct.
e) Government powers are subject to non-governmental checks.
f) Transition of power is subject to the law.

3.6 Modern Components of Accountability:

In view of the increase in public awareness and the influence of the rapid changes in communication and information technologies, accountability constituted a valuable principle and tool to improve the efficiency of the administrative system. Public administration accountability formed the basis for understanding the system of governance.

Accountability is linked to the responsiveness of the public administration to the demands of the citizens and the institutions of political democracy, such as: the parliament, the courts and

[338] Kelly, Erin I. *"Desert and Fairness in Criminal Justice."* Philosophical Topics 40, no. 1 (2012), p.63-77. http://www.jstor.org/stable/43154617.
[339] Ferraz, Claudio, and Frederico Finan. *"Electoral Accountability and Corruption: Evidence from the Audits of Local Governments."* The American Economic Review 101, no. 4 (2011), p.1274-1311. http://www.jstor.org/stable/23045899
[340] Online Source: https://worldjusticeproject.org

the civil society institutions. In order to enhance and increase the efficiency and effectiveness of the administrative system, Smither identified the following components:[341]

I. Sources of Accountability: it includes everyone who carries out the task of accountability, whether it was an individual, an organisational unit or a specialised institution. [342]

II. Objectives of Accountability: it includes what the process of accountability aims to achieve. It also includes the reasons for holding someone accountable. The objectives for accountability can be summarized in the following:[343]

a) *Accountability as a form of Monitoring and Control:* Accountability forms one of the mechanisms used for performance control; to ensure a good use of power and prevent its abuse.

b) *Accountability as a form of Guarantee:* Accountability is a means of guaranteeing the citizens, the legislators, and the heads of the institutions that the laws are properly abided by those practicing power in the public administration whilst performing their tasks. It also guarantees that the exploitation of resources is prioritised.

c) *Accountability as a process for Continuous Improvement:* Accountability encourages the improvement of programmes and policies performances by reporting on and learning from what works and what not.

III. Criteria for Accountability: This element identifies the materials needed to be present in order to compare it with the violations detected. These criteria can be defined by a law, a system, policies or regulations, which can be obtained from various sources. Programme/Performance budgets can be considered criteria on which performance can be

[341] London, M., Smither, J. W., & Adsit, D. J., *Accountability: The Achilles' Heel of Multisource Feedback*. Group & Organization Management, *22*(2), 1997, p.162–184.
[342] Greiling, Dorathea, and Katharina Spraul. *"Accountability and the Challenges of Information Disclosure."* Public Administration Quarterly 34, no. 3 (2010), p. 338-77
[343] Finn, Paul. *"Public Trust and Public Accountability."* The Australian Quarterly 65, no. 2 (1993): 50-59. doi:10.2307/20635720

measured. Furthermore, commitment to the law and regulations is another criterion for accountability.[344]

IV. **Forces of Accountability:** It includes the motivation for activating the sources of accountability. The motivational sources can be internal and external. In a personal/internal level it includes conscience, the desire to avoid blame or achieve praise, trying to avoid obstacles to the fulfilment of the tasks and duties, and the pursuit of self-realisation or gaining the respect of others. In an external level, the sources stem from inside the system that includes the legislations, regulations, and administrative policies.[345]

V. **Mechanisms for Accountability:** It includes the ways in which officials are held accountable, to which the forces of accountability are activated. In developed and democratic countries, the structure of accountability rests on providing information by the person under investigation to the person investigating him. Providing such information gives the investigator that chance to look at it and enhance his position and capability to conduct the accountability process correctly. It finally also provides transparency at work.[346]

The mechanisms for accountability and determining the methods on how to use it depends on the nature of the accountability conducted. Each form of accountability has a mechanism that suits it. The mechanisms are related to the strength and sovereignty of the investigator over the person being investigated and the strength of their relationship. The mechanisms include:[347]

a) Official External Mechanisms, such as: parliamentary questioning and the control exercised by the executive and the judiciary.
b) None- Official External Mechanisms, such as: public meetings, pressure groups, public opinion polls and media criticism.
c) Official Internal Mechanisms, such as: codes of conduct, laws and regulations that defines responsibility and the distribution of power, and performance audits.

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[344] Goodhart, Michael. *"Democratic Accountability in Global Politics: Norms, Not Agents."* The Journal of Politics 73, no. 1 ,(2011), p.45-60.
[345] Dubnick, Melvin. *"Accountability and the Promise of Performance: In Search of the Mechanisms."* Public Performance & Management Review 28, no. 3 (2005): p. 376-417. http://www.jstor.org/stable/3381159
[346] Davies, A., *Accountability: a public law analysis of government by contract*. Oxford: Oxford University Press, 2007
[347] ibid

d) None Official Internal Mechanisms, and it includes their commitment to the organisational culture, professional ethics and peer pressure.

3.7 Types of Accountability

According to Wolfe, there are four types of accountability: Legal accountability, Financial accountability, Ethical accountability, and Public policy and Performance accountability. Despite the multiple and different types of accountability, it has to be viewed positively. Accountability is no longer limited to identifying the violations and those responsible for them and punishing them only. It also should be viewed as a tool for raising administrative performance. This does not mean that we should abandon the traditional role of accountability, but rather renew its role and expand its definition and scope. Again, this is achieved by viewing it as the concept and tool for enhancing performance and a process that aims to achieve what is best for the public good.[348]

3.8 Accountability in the International Stage

The world has always been concerned with combating and confronting administrative corruption through the establishment of governmental and non-governmental organisations and bodies.

In 1992, the European Council established a multi-disciplinary committee to combat corruption. In 1993, the first non-governmental organisation meant to fight corruption was established (Transparency International). In 1996, the European union adopted the protocol on the treatment of Global corruption. In 1997, a UN declaration against corruption and bribery in international transactions was issued. Finally, in 1998, the International Monetary Fund (IMF) and the World Bank declared that fighting corruption as one of their criteria for good economic management.

The efforts of the UN in the fight against corruption led to the adoption of resolution number 4/58 at the UN general assembly on the 3rd of October 2003. It rectified the International

[348] Bergsteiner, H., *Accountability theory meets accountability practice*. Bingley: Emerald, 2012

Convention on the fight against corruption and the designation of the 9th December as the International Day for the fight against corruption. The resolution also encouraged the international community and the economic integration organisations to adopt the convention. The convention was open for signing on the 10th of December 2003 in Mexico, and came into force on the 14th of December 2005, becoming the first International Convention specialising in the combat of corruption.

Transparency today became a public right with no restrictions. It has been stated in many international conventions and resolutions, importantly are the following:

I. *The Universal Declaration of Human Rights (1948):* Article 19 of the declaration states that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".[349]

II. *The International Convention on Civil and Political Rights (1966):* Article 19 of the Convention states that: [350]

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or morals".

[349] Online Source: http://www.un.org/en/universal-declaration-human-rights/
[350] Online Source: https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

III. *Report of the UN Commission for Human Rights (1998):* In 1993, the UN Commission for Human Rights established the office of the special rapporteur for the right of freedom of expression and opinion. In 1998, the annual report of the special rapporteur stated that the right to request information and obtaining it and publishing it forces states to secure access to information.[351]

IV. *Rules of Transparency in the Report of the UN* rapporteur *for the Right of Opinion and Freedom of Expression (2000):* The report on the freedom of opinion and expression (Paragraph 43, 63/2000/ E/CN. 4) adopted the set of legal principles on transparency. Those principles are as follows:[352]

1) Absolute disclosure of information: All information is subject to disclosure, except in specific cases that are exempted by law.

2) The obligation to publish information: Establish a positive obligation on public bodies to publish on basic information and not only do so upon request. Public bodies should publish at a minimum, the following categories of information:

a) Administrative information on the workings of the public institution, including costs, objectives, audited accounts, rules, achievements, etc. This is especially important when it comes to institutions that provide services to citizens directly.

b) Information about any request, complaint or direct action that citizens might see is in relation to the public institution.

c) Guidance on procedure is on which individuals can participate in public policy and bill drafting projects.

d) The types of information that institutions keep and the cases in which they are considered to be kept.

[351] Online Source: https://www.ohchr.org/EN/HRBodies/CHR/54/Documents/E.1998.23_EN.pdf
[352] *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, United Nations*, E/CN.4/2000/63, p.1

e) The content of any decision or a policy that might affect the people and present the reasons for the decision. Furthermore, the background of the important materials used to formulate the decisions should be presented too.

3) Promoting Government openness: the commitment of governments to promote the policy of openness and transparency. This can be achieved by taking all the necessary measures in the field of public education and media. Moreover, by revising all legislation that hinders openness. Finally, raising the awareness of the people about the basic obligations of the Freedom of information and the right to access information and other data.

4) Specifying the exceptions to the Freedom of information explicitly.

5) Procedures to facilitate access to information: information request should be processed in an expeditious manner or in an appropriate manner. Citizens should also be allowed to conduct and individual review to any refusals. The process of giving information upon request is determined on three levels: within the public institution, through independent administrative institutions and through the courts. Where necessary, legislations should guarantee the receipt of information fully by those who are illiterate or are foreigners to the language of the text or those who are disabled (e.g. blind).

6) Expenses: the expenses for obtaining the information should not be high to an extent that prevents people from applying.

7) Open public meetings: the meetings of the institutions should be made public to know the work done by the institution and to participate in the decision-making.

8) The precedence of disclosure: the laws that contradict with the principle of absolute disclosure of information must be amended or repealed.

9) The protection of the informant: there must be a legal protection assigned to any individual reporting a violation.

V. *Accountability and Transparency in the UN Convention on the fight against corruption (2005):* The close link between transparency and accountability on the one hand and development and the fight of corruption on the other, many nations around the world are moving towards the establishment of systems and mechanisms for accountability and transparency much deeper and with a greater impact on the public policies of those nations. This was represented in the UN Convention for the fight against corruption. The purpose of

this convention is to promote integrity and good governance. Among the important principles mentioned are the following:[353]

1) Specific systems should be adopted in appointing and promoting civil servants. Those systems should be efficient, transparent and objective. It also should use merit based and equitable criteria in the appointment/promotion procedures. The systems should also not prevent states from continuing or adopting certain legitimate measures (corrective measures) in favour of vulnerable groups.

2) State parties shall, considering the fundamental principles of their domestic law, consider such measures as may be necessary to adopt and implement regulations for individuals performing certain public functions. This includes the publication of their assets/income and to circulate such declarations where appropriate, and to take legislative measures to criminalise the illicit enrichment of an official or an increase in his/her assets far beyond the amount of his income when performing his/her duties and without justifiable/legal reasons. The convention also empowers state institutions, such as the courts or other administrative institutions, to gain access to financial, bank and commercial records and cannot be refused on the grounds of banking secrecy.

3) Member states should adopt systems and measures requiring civil servants to inform the relevant authorities of any acts of corruption occurring at the workplace. Furthermore, states should also adopt measures protecting the informant.

4) Adopt the necessary systems and measures that requires the civil servant to declare the following to the relevant authorities:

a) Any business or investment that may constitute a conflict of interest with their functions as civil servants.

b) Gifts or benefits they receive as they perform their duties and functions as civil servants.

c) Implement disciplinary measures on civil servants that violate such measures.

[353] Online Source: https://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf

3.8.1 The United States of America's Government Accountability Office

As a result of its pre-occupation with the growing public debt from the First World War, the US Congress sought to obtain more information on government expenditures and to subject such expenditures to greater control. The Budget and Accounting Act of 1921 required the president to establish an annual federal budget and to establish an office within Congress (Government accountability office) to discuss the expenditure of federal funds.[354]

In its early years, the office primarily monitored documents, audited staff, inspected documented papers for payments and procurement of the agency under inspection. After the Second World War, the office began to conduct more comprehensive financial control and auditing. This is facilitated for the study of the efficiency of the economy and government processes.[355]

During the 1960s, the mission of the office was to "support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. The office provides Congress with timely information that is objective, fact-based, nonpartisan, non-ideological, fair, and balanced".[356]

The main functions of the office can be summarised in the following points:[357]

- auditing agency operations to determine whether federal funds are being spent efficiently and effectively;
- investigating allegations of illegal and improper activities;
- reporting on how well government programmes and policies are meeting their objectives;
- performing policy analysis and outlining options for congressional consideration; and
- issuing legal decisions and opinions, such as bid protest rulings and reports on agency rules.

[354] Online Source: https://www.gao.gov
[355] ibid
[356] ibid
[357] ibid

3.9 Accountability in Oman

Financial auditing began in 1970, by establishing an audit department at the directorate general of finance. Its roles were limited to auditing bonds before the exchange. The audit department then became independent from the director-general of finance in accordance with the Royal decree number 6/74 on the 12th of February 1974. The Department became under the responsibility of the Royal Court Affairs and was given the task to financially audit the government administrative institutions and to address the issues presented to it. In 1975, the Department started announcing its reports and it also started to train civil servants to improve their performance.

In 1975, the administrative law of the state was promulgated by Royal decree number 26/75, and the audit department was still the responsibility of the Royal Court Affairs until the promulgation of Royal decree number 24/81. The decree approved the organisation and structure of the Royal Court Affairs and the department was changed into a directorate-general of financial auditing until 1983. The directorate-general was attached directly to the office of the Minister for Royal Court Affairs by Royal decree 65/83.

The first law regulating the audit of the state's accounts was issued on the 10th of March 1985, by Royal decree 36/85. It included the objectives, terms of reference and responsibilities of the directorate-general, the entities subject to its control, and the annual and periodic reviews issued by it. The naming of the General directorate of auditing was changed by Royal decree 81/89, to the general secretariat for auditing. Royal decree 129/91 was issued, further amending the name of the institution to the State audit institution and became fully independent financially and administratively. A new state audit law was issued by Royal decree 55/2000 and the adoption of the new organisational structure of the institution by Royal decree 56/2000. Finally, Royal decree 111/2011 was issued, expanding the role, actions and responsibilities and empowering it with the necessary authority.

The objectives of the institution can be summarized in the following:[358]

- To protect State public funds and ensure the adequacy of the traditional and automated internal control systems, the integrity of financial transactions, accounting entries, and abidance to the laws and regulations on the financial systems and personnel.
- To expose the financial violations by the auditees.

[358] Online Source: http://www.sai.gov.om/

- To indicate the deficiencies or shortcomings in the applicable laws, regulations, and systems related to the financial and personnel aspects and propose rectification thereof.
- To evaluate the performance of the auditees and ensure they use the resources economically, efficiently and effectively.

According to the state audit law, the roles and responsibilities of the institution are:[359]

- Legal and accounting financial audit.
- Administrative audit.
- Performance audit and following up plan implementation.
- Audit of the resolutions issued on financial violations.

Further, the powers granted to the institution to perform its duties are:[360]

- Audit the accounts in terms of revenues, expenditure, settlements, bonds, and registers.
- Verify the financial dispositions and accounting entries.
- Review the decisions on personnel and after-service entitlements.
- Review the works of warehouses, workshops, laboratories, farms and the like.
- Review the advances, loans, investments and credit facilities.
- Review the closing accounts of the auditees and the State final account.
- Follow up the implementation of the development projects, assess the administrative and economic performance of various units, and verify the use of resources economically, efficiently and effectively.

Another form of accountability in Oman is that practiced by Parliament (The State Council and the Consultative Council). Article 58 bis22 of the 1996 Constitution protects MPs from liability when expressing their opinions or giving statements before the council, provided that they fall within the scope of the competences of the council.[361] Article 58bis 25 States the need to insure internal regulations of both accountants. The regulations must prescribe the procedures for performing duties, requisitioning procedures and disciplinary measures on MPs.[362] Article 58bis 31 guarantees that all sessions of the Councils must be public.[363] Further, article 58bis

[359] State Audit law issued by Royal Decree (111/2011), Official Gazette, Oman
[360] ibid
[361] Oman Basic Statute of the State 1996, Official Gazette, Oman
[362] ibid
[363] ibid

35 States that draft laws prepared by the government should be referred to both councils for review.[364]

Moreover, article 58bis 40 states that: *"Draft development plans and the Annual Budget of the State shall be referred by the Council of Ministers to Majlis Al Shura for discussion and to make recommendations thereon within a maximum period of one month from date of referral and then the same shall be referred to Majlis Al Dawla for discussion and recommendations within a maximum period of fifteen days from the date of referral. The Chairman of Majlis Al Dawla shall return the same along with the recommendations of the two Majlis to the Council of Ministers. The Council of Ministers shall inform the two Majlis of the recommendations that were not adopted in this respect along with the reasons therefore".*[365] Article 58bis 42 states that: *"The State Financial and Administrative Audit Institution shall send a copy of its annual report to Majlis Al Shura and Majlis Al Dawla".* [366]Article 58bis 43 states that: *"Upon a request signed by at least fifteen members of Majlis Al Shura, any of the Services Ministers may be subject to interpellation on matters related to them exceeding their competences in violation of the Law. The Majlis shall discuss the same and submit its findings in this regard to His Majesty the Sultan".* [367]Article 58bis 44 states that: *"The Services Ministers shall provide an annual report to Majlis Al Shura on the implementation stages of the projects related to their Ministries. The Majlis may invite any of them to provide a statement on some matters within the competences of his Ministry, and to discuss the same with him".* [368]

Based on the survey conducted, constraints by the legislature on government powers scored the least (0.31) in the factor. Although the Consultative Council is elected, the powers granted to it are limited, and barely legislate on service related legislations. On the other hand, the highest scores in the factor was the availability of clear legal mechanisms to the lawful transition of power. Article 6 of the Omani constitution did provide it and the public is aware of this article. The remaining subfactors scored similarly with the average of (0.51). Independent and effective auditing scored (0.55), which requires an urgent move to enhance its role and make it more effective. Further, sanctions of high officials and other government officials scored (0.56), which also requires an urgent need of review and investigation.

[364] ibid
[365] ibid
[366] ibid
[367] ibid
[368] ibid

Oman is in the bottom three in the region in rank, placed on 5th/8. This is an issue that requires urgent action to understand the main reasons for such a perception or maybe defects in the system. Although the institutions responsible for government oversight and accountability are in place, the efficiency and effectiveness in performing their duties should be reviewed.

3.9.1 Challenges Facing Accountability in Oman

The main challenges facing the proper application of the concept of government bound by the law in Oman can be summarized in the following:

1) Article 58bis 43 of the constitution restricts the questioning to ministers of services without the others, which indicates the dominance of the executive power over the legislature. This causes a barrier for the council in performing its monitoring and accountability functions on the government. Moreover, the article has expanded the quorum for the provision of questioning by at least 15 members, which is a large number of compared to that of other nation states parliaments. Such provisions narrow the scope of the use of questioning, given the important roles played by those being questioned.

2) The Omani legislator gave the minister questioned the possibility of responding in writing to the interrogation, and without his/her presence in the council. This is one of the greatest obstacles in the council's exercise of oversight through the interrogation method. The government has always used the written response option to reply to the interrogation questions and the other accountability measures.

3) The Omani Constitution, although granting the Consultative Council the right to question ministers of services, has not yet decided on the political responsibilities of the Council. The Constitution placed the political responsibility in the hands of the Sultan.

4) The Omani legislator's decision to add the special provisions of Oman council in the constitution issued by Royal decree 99/2011, is in question. It would have been preferable to amend the Oman Council law issued by Royal decree 86/97. This makes any changes to the article of the law much easier compared to changes that should be done to articles of the Constitution.

5) The culture in Oman views investigation in a negative way. This may cause sensitivities and biases.

6) The State Audit Institutions' authority is limited to certain ministries. Areas such as defence is not part of the jurisdiction of the institution. This is despite the majority of the Government expenditure is in that sector.

7) Reports made by the Institution are not published. This severely undermines the concept of accountability and transparency.

8) The Institution reports to the Sultan and not to Parliament. Parliament is only given an annual report on the work done by the institution.

9) Functions of the Institution are not implemented fully. This is due to the new experience undergone by the institution and lack of qualified personnel.

10) There are no mechanisms to measure the performance of the institution. As a result, increasing efficiency and effectiveness becomes harder to achieve.

11) The Head off the State Audit Institution and the Head of the Consultative Council are directly related. Further, the Head of the Intelligence and the Head of the Public Prosecution are directly related. This contradicts with the concept of separation of powers.

3.10 Conclusion and Recommendations

This chapter explored the first pillar of the Rule of law, which is government bound by the law. The first section gave a brief history of the concept and its development. The second section outlined the different definitions of the concept. The chapter then outlined the concept in Christian theology followed by the concept in the Islamic theology. References from the Quran are highlighted, and examples from the life of the Prophet and the well-advised Caliphas after him are outlined.

The fifth section outlined the modern principles to the concept of accountability. It then gave a brief summary to the modern components of accountability. The seventh section outlined the types of accountability. The US government accountability office role is summarized to give the decision-makers an idea of how a well-functioning state audit institution is run. Finally, the chapter ends by giving an outline of the concept in Oman. The challenges facing ensuring accessibility across all sectors of the state are listed in the end.

Among the challenges facing this issue is Article 58bis 43 of the constitution. This article restricts the questioning of the service ministers without the others. Furthermore, the constitution gave the ministers the ability to respond in writing to the questions without the need to be present at the council. Moreover, reports made by the government audit authority are not published, and they report directly to HM the Sultan and not Parliament. In addition, the authority is not experienced enough and lacks human resource capability.

Based on the results of the survey conducted, Oman scored (0.53) overall in the factor 'Constraints on Government Powers'. Regionally, Oman ranked 5th out of 8, 35th out of 36 in income rank group and 65th globally. The lowest scoring subfactor for Oman where limits by the legislature on the executive. This however, is due to the nature of the Political system in Oman being a Monarchy. Limits by the judiciary are also perceived negatively by the respondents of the survey. Again, this is due to the Sultan being the head of the Judicial council. Moreover, the non-existence of a constitutional court might cause such checks by the judiciary on the executive ineffective.

Furthermore, the role played by the State Audit Authority scored an average of (0.55). The authority has been recently established and lacks the experience and effectiveness while performing its tasks. Developing the authority and focusing the efforts in enhancing the human capabilities available to ensure the better efficiency and effectiveness of the institution is necessary. Respondents also perceived that high-ranking government officials are rarely

prosecuted and punished for misconduct or using their positions for private gain. A strict accountability measures should be in place, and more transparency in the investigations conducted should be ensured. Moreover, non-governmental checks on the performance of the government institutions is important. This subfactor is among the least average scored by Oman under this factor. Lack of civil society organisations in Oman and the lack of legal awareness and of politics in general among the people is a reason explaining such a score. It is important that the government allow the participation of citizens in the decision-making process and to also allow the establishment of civil society organisations. This could lead to enhancing the performance of the government institutions and ensures accountability.

Finally, the last subfactor indicates the level of lawfulness in the transition of power in Oman. According to Article 6 of the Omani constitution: The Royal Family Council shall, within three days of the throne falling vacant, determine the successor to the throne. If the Royal Family Council does not agree on a choice of a Sultan for the Country, the Defence Council together with the Chairman of *Majlis Al Dawla*, the Chairman of *Majlis Al Shura*, and the Chairman of the Supreme Court along with two of his most senior deputies, shall instate the person designated by His Majesty the Sultan in his letter to the Royal Family Council. The sub-factor is not concerned whether the transition is democratic or not, but whether there is a peaceful and legal transition of power available. As a result, the score of the subfactor was considerably positive (0.71).

The researcher classified this pillar as a long-term goal to be addressed by the decision makers in Oman. The reason is that the system of governance is difficult to change at the time being. Furthermore, the country is very stable and secure due to its political system in place and there is no urgent need to change the system for the time being. Despite the classification of this pillar as a long-term goal, it is proposed that the government audit authority receives urgent attention to enhance its capability and ensure a more effective role played by it when performing its tasks. Furthermore, civil society organisations participation should be allowed and encouraged. Finally, a constitutional court would be a solution to better ensure accountability in the executive and legislature. It has also been noted that there are certain government positions shared by siblings, which can undermine the concept of accountability. The next chapter analyses the second pillar of the Rule of Law: ‘Equality before the law’.

Chapter 4

The Concept of 'Equality Before the Law'

4.0 Introduction

The second pillar of the concept of the rule of law is the concept of 'Equality before the law'. This chapter examines this notion, tries to identify the weaknesses in the current judicial system in Oman, and proposes reform recommendations to improve the situation of the concept in the Omani judiciary.

To reach a conclusion and a set of recommendations to the above stated objective, the chapter is divided into six parts. The first part outlines the definition of the concept. The second and third parts respectively examines the methods to ensure the right to litigation, and the ways in which the concept of equality before the law could be violated. The fourth part examines the concept from the viewpoint of Islam. The situation of the concept in Oman and how it is perceived by the general public is outlined in the fifth part. Conclusion and recommendations on how to improve the situation of the concept in Oman are drawn together at the end of the chapter.

4.1 The Definition of the Concept Equality before the law

Equality before the law means the equality between all people in protecting their legitimate rights and give every person the right to go to court to protect his/her rights and push away harm against him/her. This right is inherited to all people, whether a citizen or an expatriate. It is also inherited to all people without any discrimination based on colour, race gender, religion or language, as everyone is equal in front of the law.[369]

4.1.1 Equality before the Law End-goals

For the concept of Equality before the law to be established, three main objectives should be fulfilled. The first is the unification of the judiciary, the second is equality before the legislation and sanctions implemented and finally, the delivery of justice free of charge.[370] Each of those objectives will be discussed in detail below.

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[369] Gowder, Paul. *"The Rule of Law and Equality."* Law and Philosophy 32, no. 5 (2013): 565-618

[370] Dr. Khater, Talat, *Al Qada Al Adil Kadamanah lil Adala Al Ijtimaeyyah,* Al Mansoorah, Dar Al Fikr Wal Qanoon, 2016, p. 137.

(a) The Unification of the Judiciary

The unification of the judiciary implies that the adjudication process should be applied in a similar manner to all the people living in the state, in front of the same judges and without any discrimination between the people standing in front of them.

The unification of the judiciary requires the non-existence of special courts or the exemption of certain individuals based on their tribal affiliations or social class. An example of such courts was found in France prior to the French revolution. During that time, special courts for the nobles and aristocrats and other high social classes were formed to adjudicate their disputes and were discriminatory towards the other French social classes. This caused serious injustices and the concept of equality before the law was undermined. The unification of the judiciary further requires that all the adjudication procedures should be applied comparably to all people without any discrimination.[371]

This definition for the unification of the judiciary does not contradict with the dual- justice system, i.e. the existence of Administrative Courts alongside the Normal Courts, found in many countries today. The first deals with adjudicating administrative conflicts and disciplinary hearings, and the second adjudicates in criminal, civil and personal affairs cases.[372] A dual justice system does not interfere with the unification of the judiciary required to establish equality before the law, but to the contrary. The existence of an administrative justice specialising in adjudicating conflicts between the administration and the employees protects the individuals from any abuse of power by the administration. It is also an important factor in establishing the equality between the two parties when dealing with such conflicts, by repealing the administrative decisions that were illegal.[373]

The unification of the judiciary may be established in a common law justice system, such as the systems in the United Kingdom and other common law jurisdictions. The unification can also be established in civil law systems. Such systems can also be found in France[374], Belgium[375] and found in Oman[376] as well.

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[371] Ibid p.138
[372] Clark, David S. *"Civil and Administrative Courts and Procedure."* The American Journal of Comparative Law 38,1990, p.181-206
[373] Dr. Abdullah, Abdul Ghani, *Mabda Al Musawa Amam Al Qada wa Kafalat haq Al Taqadi,* Cairo, Munshaat Al Maarif, 1983, p. 20.
[374] Elliott, C., Vernon, C. and Jeanpierre, E., *French legal system*. Harlow, England: Pearson/Longman, 2006
[375] Scott, S, *"A Comparison between Belgian, Dutch and South African Law Dealing with Pledge and Execution Measures."* The Comparative and International Law Journal of Southern Africa 43, no. 1, 2010, p. 93-117
[376] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p. 77-100

(b) Equality before the Legislations and Sanctions Implemented

The second objective for the concept of Equality before the law to be established is the importance of establishing equality between all those who stand in front of the courts and the equality in applying the laws of the land. Furthermore, the sanctions should be applied evenly to all perpetrators. The judge should apply the sanctions to all defendants according to the crimes they committed, regardless of the defendants' social class or tribal affiliation and that the punishment is received by the perpetrator him/herself.[377]

The objective regarding sanctions has two areas worth mentioning. The first is represented in the unity of the sanctions implemented via the laws of the land applied. The second is found in the concept of the individualisation of punishment.[378] On one hand, the punishment ruled on the defendants should be the same, i.e. the judge should apply the same law to all regardless of the individual's social status or tribal affiliation.[379] The concept of the individualisation of the punishment is a guarantee for personal freedoms, in which the citizen does not take blame for a crime committed by someone else. This concept leads to the punishment of the true perpetrator of a crime for him/her to learn from the mistakes done and for others to learn from them as well. Both areas when achieved will eventually lead to the concept of equality before the legislation and sanctions implemented be established.[380]

(c) The Delivery of Justice Free of Charge

For Equality before the law to be established, access to justice should be free of charge. Despite this being a natural consequence to the concept, it is still, however, a theoretical issue.[381] If justice itself is complimentary, methods to access the justice system is not. From a practical viewpoint, the economic situation of each individual dictates his/her capability to access the judiciary to resolve their conflict. This requires legal and lawyering expenses that may exceed a person's financial budget. As a result, economic factors can be a burden towards achieving a real equality before the law.[382]

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[377] Myers, Martha A. *"Economic Inequality and Discrimination in Sentencing."* Social Forces 65, no. 3,1987, p.746-766

[378] Dr. Abdullah, Abdul Ghani, *Mabda Al Musawa Amam Al Qada wa Kafalat haq Al Taqadi,* Cairo, Munshaat Al Maarif, 1983, p. 20.

[379] ibid

[380] ibid

[381] Held, Frieda. *"Legal Aid for The Poor."* The Public Health Journal 13, no. 1 (1922), p. 34-38

[382] ibid

For this reason, many nations organized methods of presenting judicial assistance to those in need seeking justice in front of the justice institutions.[383] Other nations supported the establishment of organisations that offer legal assistance to individuals in need.[384] The adoption of a system for judicial assistance is an implementation of the concept of a judiciary free of charge. Such support can be found in Oman and has been indicated in Article 23 of the 1996 constitution, which states: *"…The Law shall define the circumstances where the presence of a lawyer on behalf of the accused is required, and shall ensure, for those who are financially unable, the means to seek judicial redress and defend their rights."* [385]

4.2 Ensuring the Right to Litigate and the Independence of the Judiciary

The right to litigate is a natural right for every person. Any person whom his/her rights have been violated has the right to access justice to respond to such violation and get his/her rights back. Natural rights are inherent to a person, and such rights are extracted from Natural law.[386] Without the right to litigate, people cannot guarantee their rights or respond to any violation to their rights.

Another important concept is that of the independence of the judiciary. It implies the full independence of the judiciary from the Legislature and the Executive. Such independence is that implied by the concept of Separation of Powers.[387] As a result, the judges will be fully independent and carry their work without any external pressures from the other powers of the state. Furthermore, the Executive should not be able to interfere with the judicial matters and cannot take away any powers delegated to it. It also cannot deny courts from hearing specific cases or request it to hear specific ones.[388]

Moreover, the Legislature should not issue laws that prohibit the judiciary from adjudicating specific cases or deny it the right to adjudicate specific people. Such legislation interfering with the courts function is a violation to the judiciary's powers. This is because the judiciary, on the one hand, is part of the three main powers of a state. On the other hand, it is a violation

[383] George, James P. *"Access to Justice, Costs, and Legal Aid."* The American Journal of Comparative Law 54 (2006), p. 293-315
[384] ibid
[385] Oman Basic Statute of the State 1996, Official Gazette, Oman
[386] Murphy, Mark C., *Natural Law in Jurisprudence & Politics*, Cambridge: Cambridge University Press, 2006
[387] Masterman, R., *The Separation of Powers in the Contemporary Constitution*. Cambridge University Press, 2010
[388] ibid

to the right to litigate that is enshrined in most of the constitutions of the world today. This led to the violation of the concept of Equality before the law.[389]

4.3 The Violations to the Principal of Equality before the Law and the Expropriation of the Right to Litigate

Although the concept of Equality before the Law is clear, the results achieved through it have been identified and the protection of the right to litigate is legally enforced, the concept, nevertheless, suffered violations in the past and is still suffering due to violations by the powers of the state and the expropriation of the right to litigate.

Many legislators around the world in the past interfered with the right to litigation and undermined the essence of equality between the litigators. This was done by using different methods and tools to achieve different interests, whether political, economic or interests for power.[390]

4.3.1 Methods to Expropriate the Right to Litigation

There are many forms that have been used to expropriate the right to litigation, either partially or fully. The following are four examples that have been used to achieve that and it includes: Expropriation through Customary legislation and the Emergency law, Expropriation through revolutionary decisions, Expropriation through legislation preventing the right to litigate and Expropriation through the concept of Acts of Sovereignty.[391] Each of those four methods are discussed below.

(a) Expropriation through Customary Law and the Emergency Law

Expropriation through customary law that is implemented in states of emergency can be done by preventing appeals, to the different hierarchies of the judiciary, on decisions and acts made by the authority implementing those customary laws.[392] Such legislations allows customary law authorities to act and take the necessary measures to combat the state of

[389] ibid
[390] Dr. Abdullah, Abdul Ghani, *Mabda Al Musawa Amam Al Qada wa Kafalat haq Al Taqadi,* Cairo, Munshaat Al Maarif, 1983, p. 25.
[391] Ibid p. 28-35
[392] ibid

emergency without any restrictions or take any responsibility to the possible consequences that might affect the interests of many individuals and institutions.

(b) Expropriation through Revolutionary & Coup Decisions

Many revolutions and coups around the world resorted to expropriate the right to litigation against its enemies or opposition, or on whom it suspects to be an opponent to its principles.[393] This is done to protect it and guarantee the success of its objectives. Such expropriation usually occurs during the first period of a revolution or coup and is referred to it as the 'Transitional Stage'.[394] At this stage, the revolution or coup abolishes the foundations of the old system and implants the foundation of the new order.

Many revolutions and coups resort to the expropriation of the right to litigation on a faction of people or to the entire citizens in other cases to implement its legislations and decisions. This result to a complete violation to the concept of Equality before the law.[395]

(c) Expropriation through Legislations Preventing the Right to Litigate

Expropriation through legislations may occur by preventing access to justice to those affected and whom are a party to the dispute. On other instances, such legislations secure decisions made by the government and deny the right to challenge it in court. Such legislations block the right to appeal through voiding the appeals and denying the request to suspend the implementation of any decisions made. Some governments can go even further by expropriating the right to litigate completely through judicial review procedures.[396]

(d) Expropriation through the Concept of the Act of Sovereignty

The concept of the Act of Sovereignty is a very dangerous method to expropriate the right to litigation and is still practiced in many countries around the world today.[397] It is usually referred to as 'governmental tasks' to distinguish it from the administrative tasks that is audited by the judiciary.[398] Such tasks include the organisation of the relationship between the Government and the Parliament, the special tasks for the relations between the

[393] Dr. Khatir, Talat, *Istiqlal Al Qada wa haq al Insan fil Logu ila Qada Mostaqil,* Al Mansoorah, Dar al Fikr wal Qanoon, 2014, p.35-55
[394] ibid
[395] ibid
[396] ibid
[397] ibid
[398] ibid

government and other foreign states and institutions, issues regarding war, and finally, tasks regarding internal security.[399]

Many governments expanded the implementation of Acts of Sovereignty, especially with regards to acts of internal security. This resulted in a serious breach of personal rights and freedoms and a breach to the right of litigation. Therefore, the concept of equality became undermined in such states.[400] This concept has an extended application regarding the right to litigate. No appeal, regardless of its shape or type, can be filed to any act or decision related to Acts of Sovereignty.

4.4 Equality Before the Law in Islam

After exploring the concept of equality before the law and the methods of expropriation in general, this part focuses on the concept of equality before the law in Islam. To assess the compatibility of Islam and the concept of equality before the law within it with the universal understanding of the concept, it is necessary to analyse the foundations of the concept, and the sources that the concept evolved from with that to Islam. This section focuses on the sources of equality before the law in Islam, the unity of the judiciary and its independence, the unanimity of the law implemented and equality in punishment and finally, equality in the treatment of the litigants.

4.4.1 Sources of Equality Before the Law in Islam

The sources of equality before the law in Islam can be found in the Quran, the Hadith and speeches and letters sent by the Caliphas to the governors around the Islamic Empire. The Quran, in verse (4:58) states: *"Indeed, God commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which God instructs you. Indeed, God is ever Hearing and Seeing".*[401] And in verse (4:135) it states: *"O you who have believed, be persistently standing firm in justice, witnesses for God, even if it be against yourselves or parents and relatives. Whether one is rich or poor, God is more worthy of both. So follow not [personal] inclination, lest you not be just. And if you distort [your testimony] or refuse [to give it], then indeed God is ever, with what you do,*

[399] ibid
[400] ibid
[401] The Holy Quran, Surat Al Nisa, (4:58)

Acquainted".[402] Further, verse (5:8) from the Quran states: *"O you who have believed, be persistently standing firm for God, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear God; indeed, God is Acquainted with what you do"*.[403]

Prophet Mohammed emphasised the importance of equality before the law and that disrespect to it may lead to the destruction of nations. Prophet Mohammed once said: "Those whom were before you were doomed, as if a noble among them stole was left unpunished and when the weak among them steal was punished, May God bear witness, if Fatima my daughter steal, I will punish her."[404] Prophet Mohammed also said: "Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to Hell; and a man who gives judgment for people when he is ignorant will go to Hell".[405]

According to Abu Dawood and Abdullah bin Al Zubair, two notable companions of the Prophet, described how the Prophet would adjudicate between two litigants. The Prophet insured the presence of both litigants in front of the court and no hearing started without the presence of both. The Prophet also warned not to adjudicate when a judge is angry; fearing that the judge might give an unfair judgement.[406]

Abu Baker, the first Calipha, emphasised his willingness to follow the Prophet's footsteps in his inaugural speech after being elected Calipha. He said: "… The weak among you is deemed strong by me, until I return to them that which is rightfully theirs, if God wills. And the strong among you is deemed weak by me, until I take from them what is rightfully (someone else's), if God wills…".[407] Omar bin Al Khattab, the second Calipha, shared a similar view to that of Abu Baker regarding justice. Justice under Omar and his dedication to serve it and implement equality was the reason that made him a role model to follow by those seeking to achieve justice and equality. Omar wrote to many judges and governors around the Islamic Caliphate of that time. He advised them on the methods and the organisation of

[402] Ibid (4:135)
[403] The Holy Quran, Surat Al Ma'idah, (5:8)
[404] Al Asqalani, Ibn Hajar, *Fat'h Al Bari fe Sharh Sahih Al Bukhari,* Riyadh, Dar Al Salam, 2006, Hadith no. 1770
[405] Al Albani, M., *Sahih Al Albani*, Book 24, Hadith 3566
[406] Al Saadi, J., *Qamoos Al Shariah Al Hawi,* Ministry of Heritage and Culture, Oman, 1983
[407] Al Dhahabi, M., *Siyar A'alam Al Nobala'a,* vol.1, Beirut, Moassast Al Risalah, 1982, p.80-85

justice and the way to achieve justice and equality between the people. The most notable letter was that sent to Abu Musa Al Asha'ari, in which he wrote:

"In the Name of God, the Most Gracious, the Most Merciful.

From the slave of God, the son of al Khattab, Amirul Muminin, to 'Abdullah Ibn Qays (Abu Musa al Ash'ari), peace be upon you.

Judging (the judicial system) is a confirmed obligation and a way to be followed. Try to understand when cases are presented to you, for there is no use in a person presenting his case if it is not understood. Treat people equally when you address them so that no noble man will hope that you side him unfairly and no weak man will despair of your justice. The burden of proof rests with the plaintiff and the oath is required of one who denies it. It is permissible to make a deal between Muslims, except a deal that permits something that is forbidden or forbids something that is permitted.

If you passed a judgement yesterday then examined it further in your mind and are guided to a different conclusion, then that should not prevent you from returning to the truth, for truth is eternal, and returning to the truth is better than persisting in falsehood. Examine carefully each issue which you are unsure about, where there is no text in the Qur'an and Sunnah, and try to find a similar case, draw analogies and see which is more likely to be pleasing to God and closest to the truth.

Whoever claims that someone owes him some dues, set a time limit for him to produce his evidence. If he provides evidence, then restore his rights to him; otherwise ask him to drop his claim. That is better so as to eliminate any doubt.

The Muslims are basically of good character, except one who has been lashed as a hadd punishment or who is known for bearing false witness. God is in charge of what is hidden in people's hearts. Judgement must be based on evidence and oaths.

Beware of becoming impatient, because judging in accordance with the truth bring a great reward from God and stores a great deal of reward (in the Hereafter). Whoever has a good intention and checks himself, God will be sufficient for him (and he need not worry about people), but whoever shows an attitude to people which God knows is not his true attitude, God will expose him. Think of the reward of God in this world and the Hereafter. And peace

(be upon you)". [408]

Ali bin Abi Talib, the fourth Calipha, also emphasised on equality and justice. In a letter sent to Al Ashtar Al Noka'i, Ali wrote: "Maintain justice in administration and impose it on your own self and seek the consent of the people, for, the discontent of the masses sterilises the contentment of the privileged few and the discontent of the few loses itself in the contentment of the many. Remember the privileged few will not rally round you in moments of difficulty: they will try to side-track justice, they will ask for more than what they deserve and will show no gratitude for favours done to them. They will feel restive in the face of trials and will offer no regret for their shortcomings. It is the common man who is the strength of the State and Religion. It is he who fights the enemy. So, live in close contact with the masses and be mindful of their welfare."[409]

4.4.2 The Unity & Independence of the judiciary in Islam

Justice in Islam means the resolution of disputes that occur between people using legitimate legislations. During the time of Prophet Mohammed, he himself was adjudicating disputes in Madinah, representing as a result, the only obligatory judicial authority. This resulted in serving the Unity of the Judiciary. This, however, was possible due to the small size of the Islamic territories and the small number of cases brought forward for adjudication. After the expansion of the Islamic state, Prophet Mohammed sent governors to the different regions to administer and adjudicate disputes. He sent Muad bin Jabal to Yemen and Otab bin Osaid to Mecca to adjudicate between people.[410]

After the death of Prophet Mohammed and during the times of the Well- Advised Caliphas, the judiciary remained part of the rulers' authority. The Caliphas were themselves adjudicating disputes or delegating this role to someone trustworthy. An example is when Abu Baker delegated the power to adjudicate to Omar bin Al Khattab.[411] Nonetheless, due to the expansion of the Islamic Caliphate, it was impossible to combine state administration and justice to the hands of one person. This resulted in Omar separating the role of the Caliphate as an adjudicator and delegating that power to independent judges. The other Caliphas followed a similar approach.[412] Criminal cases and punishment decisions were, however,

[408] ibid
[409] ibid
[410] ibid
[411] ibid
[412] ibid

remained cases to be heard by the Calipha or the governor. The responsibilities of the judges during the early times of Islam were limited to the resolution of disputes and later expanded to include cases of those whom were held in contempt for insanity, wills and endowments. It further expanded to include deciding punishments and criminal cases that used to be the sole responsibility of the Calipha or governor.[413]

According to the Ibadi sect, for a judge to be appointed he should have the following characteristics: A male, a sound mind and opinion, free (not a slave), Muslim in faith, healthy hearing and sight, fair and knowledge of Islamic jurisprudence.[414]

Judges used to use mosques as a location to resolve disputes between litigants. The Calipha Othman bin Affan was the first Islamic leader to install an institution for the judiciary. Later, a general custom emerged in which no decision by a judge would be official unless it was issued by this institution.[415]

During the Abbasid reign, the occupation of the 'Judge of Judges' was initiated, and he was located in the capital of the Islamic Caliphate. He was responsible for appointing judges in other cities under the Abbasid jurisdictions. Another system of importance is the governance of grievances, which combines the characteristics of the judiciary and the executive at the same time. The system of grievances was best described by Al Mawardi.[416]

The governor for grievances was responsible for investigating the violations made by the mayors and governors on the citizens and any corruption by the employees responsible for collecting the alms. The governor for grievances was also responsible for looking into complaints filed by employees for unpaid wages. Finally, he was also responsible for the supervision of implementing court decisions that the judiciary could not enforce.[417]

The system for impeaching judges was not a sophisticated field in law. The Calipha, the governor or the judge of judges were responsible for appointing and impeaching judges without any restraints to that power. Nonetheless, the concept of separation of powers was to

[413] ibid
[414] Al Siyabi, S., *Huda Al Farooq,* Oman, Ministry of Heritage and Culture, 1983
[415] ibid
[416] Al Mawardi, *Al Ahkam Al Sultaniyyah,* Cairo, Dar Al Hadith, 2008
[417] ibid

a certain extent, respected in the Islamic caliphate, despite it not being a full separation of powers.[418]

Control over the three powers of the state was concentrated on the hands of the ruler. This was the case since the time of Prophet Mohammed and the Caliphas after him. Regardless, the three powers were distinguished from one another. The institution known as 'the people who can make and break' (*ahl al hil wal aqid*) during that time was responsible for state administration and legislations. Moreover, the people responsible for governance were not associated to the above-mentioned institution but were independent and had no legislative powers. Finally, the judges were independent and had no association to the other two institutions. Judges had no role in state administration. Justice councils were outside the jurisdiction of the executive, as the judge was seen as applying the law of God and that his position is not on behalf of the Calipha but on behalf of God.[419] Furthermore, the Calipha had no authority to interfere with the work of the judge, although he was responsible for appointing them. The Calipha could also be standing in front of the judge in case of a dispute, whether the dispute was between him and a Muslim or a Non-Muslim.

The incident involving Omar bin Al Khattab, the second Calipha, with a Jewish citizen of the Medina is a good illustration for that. The incident occurred with Omar losing a sword and saw it in the possession of the Jewish man later on. The Jewish man claimed ownership to the sword. Nonetheless, Omar did not use force to retrieve the sword but rather asked the Jewish man to accompany him to the judge to adjudicate between them. While standing in front of the judge, the judge asked Omar if the sword was his, to which Omar acknowledged and the Jewish man denied Omar's ownership to it. The judge then asked Omar for proof of ownership to the sword and Omar failed to provide such proof. As a result, the judge decided that the sword belongs to the Jewish man. The Jewish man was astonished by the equality he received despite his dispute was with the Calipha himself and that no claim will be accepted without proof. The Jewish man later confirmed that he is not the rightful owner of the sword and returned the sword back to Omar.[420] A similar incident happened to Ali bin Abi Talib, The fourth Calipha. Ali lost his shield and saw it being sold by a Christian merchant in the Market. Ali did not use force to get the shield back but rather asked the merchant to go to a judge to adjudicate between them.[421]

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[418] ibid
[419] ibid
[420] Al Mawardi, *Al Ahkam Al Sultaniyyah,* Cairo, Dar Al Hadith, 2008
[421] ibid

Finally, there are no special courts in Islam responsible for dealing with cases concerning a specific group of people or a specific social class. All people, including the Calipha, were equal in front of the law.[422]

4.4.3 The Unity of the Law Implemented and Equality in Punishment in Islam

During the times of Prophet Mohammed, he did not allow any form of discrimination or segregation between people when applying the law, whether that was based on bloodline, wealth or social class or any other form of discrimination.[423]

The incident of the noble woman from Mecca that stole and the way the Prophet dealt with the situation by applying the law and punishment deserved to the woman is a clear example for the equality of the law implemented and the punishment to all violators of that law in Islam. The Caliphas followed the footsteps of the Prophet and they too treated everyone equally. The incident of Oman and the Coptic man from Egypt is a good example. Ibn Abd Al-Hakim reported: Anas, may God be pleased with him, said that a man from the people of Egypt came to Umar ibn Al-Khattab and said, "O leader of the believers, I seek refuge in you from injustice!" Umar replied, "You have sought someone willing." The man said, "I competed with the son of Amr ibn Al-'As and I won, but he started striking me with a whip and saying: I am the son of the dignified!" Upon this, Umar wrote to Amr ordering him to travel to him with his son. He came with his son and Umar said, "Where is the Egyptian?" He gave him the whip and told him to strike the son of Amr. The man started striking him while Umar was saying, "Strike the son of the illiterates!" Anas said, "By God, the man struck him and we loved his striking, and he did not stop until we wished he stopped." Then Umar said to the Egyptian, "Direct it to Amr." The Egyptian said, "O leader of the believers, it was only his son who struck me and I have settled the score." Umar said to Amr, "Since when did you enslave the people though they were born from their mothers in freedom?**"** Amr said, "O leader of the believers, I did not know about this and he did not tell me." [424]

In another incident, Omar gathered people to seek advice on an incident he had witnessed. Omar claimed that he saw an act of adultery and sought advice on how to proceed. Ali bin

[422] Dr. Al Fudaylat, Jabr, *Al Qada fil Islam,* Jordan, Dar Ammar, 1991, p. 251-268
[423] Al Mawardi, *Al Ahkam Al Sultaniyyah,* Cairo, Dar Al Hadith, 2008
[424] Al Asqalani, Ibn Hajar, *Fat'h Al Bari fe Sharh Sahih Al Bukhari,* Riyadh, Dar Al Salam, 2006, Hadith no. 1770

Abi Talib approached him and asked him to come with four witnesses to prove that the parties involved guilty and recited the verse from the Quran: "And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient," Omar, therefore, kept quiet and did not mention the names of the two persons.[425]

4.4.4 Equality between the Litigants in Treatment

Equality before the law dictates that the treatment between litigants should be the same without discrimination or favouritism. Furthermore, the same legal procedures should be applied to both parties to the dispute.[426] The responsibility of the judges is significant to maintain equality. The judge should listen to both parties' claims to reach a conclusion as to whom the right belongs to. He should also give the chance for both to explain their point of view to the issue. Finally, he should adjudicate the dispute based on knowledge and far from any form of influence.[427]

Islamic history passed a good image on how to achieve equality before the law. Despite its ancient roots, it was a good illustration for how to achieve equality in a community. The expansion of the population in the area and the modernization the area witnessed meant that new efforts should be dedicated towards achieving equality, as new forms of equality started to emerge. Islam did not restrict equality to that mentioned in the Quran or Hadith, but it also encouraged to seek equality in its different forms.

4.4 Equality before the Law in Oman

The Omani constitution of 1996 set out some guarantees for equality between all citizens. Article 17 of the constitution states: "All Citizens are equal before the Law and share the same public rights and duties. There shall be no discrimination amongst them on the ground of gender, origin, colour, language, religion, sect, domicile, or social status".[428] Furthermore,

[425] Dr. Al Fudaylat, Jabr, *Al Qada fil Islam,* Jordan, Dar Ammar, 1991, p. 266
[426] Dr. Abdullah, Abdul Ghani, *Mabda Al Musawa Amam Al Qada wa Kafalat haq Al Taqadi,* Cairo, Munshaat Al Maarif, 1983, p. 25
[427] ibid
[428] Oman Basic Statute of the State 1996, Official Gazette, Oman

the social principles listed in Article 12 of the constitution highlights the concept of equality: "Justice, equality, and equal opportunities between Omanis are pillars of the Society guaranteed by the State.; Citizens are considered equal in taking up public employment in accordance with the provisions stipulated by the Law".[429]

Despite the protections found in the legislations to uphold the principle of equality, the survey results say otherwise. Although Oman is ranked 1st in the region in the protection of fundamental rights, the subfactor for non-discrimination scored (0.51). This is an alarming score, as this factor is one of the basic pillars for the rule of law. On the other hand, non-discrimination in the civil and criminal justice system scored reasonably higher, however, urgent attention to address this sub-factor in the justice system should be undertaken.

4.6 Conclusion and Recommendations

In conclusion, this chapter analysed the second pillar of the Rule of law that is 'Equality before the law. The first section defined the concept based on the end goals it tries to achieve. The next section highlighted the right to litigate and the methods used to limit this right by some states. Furthermore, the chapter looked into the concept in Islamic theology. The chapter ends with describing the situation of the concept in Oman.

Based on the survey conducted, discrimination in the civil and criminal justice systems is low with a score averaging (0.55). This is a low score in comparison to other high-income group countries. Efforts should be focused to ensure non-discrimination in court procedures or within society in general. Although there is a legal protection for non-discrimination, there are some exceptions by which individuals have to be prosecuted and punished for breaking those laws. Furthermore, high government officials should be prosecuted and punished for official misconduct. Investigations should be transparent, and the public should be kept informed about the developments of such investigations. Finally, the complaint mechanisms on the performance of government institutions should be enhanced. This will ensure the enhancement of the performance of the government institutions that deals with the citizens.

[429] ibid

To enhance the situation of the concept of equality before the law in Oman, it is proposed that the decision makers focus their efforts on first reducing the level of discrimination in all the sectors of the state. Discrimination in Oman occurs mainly due to ethnicity or social level. This can be addressed through more strict regulations to ensure the non-discrimination in all stages of the dispute settlement or in daily life.

With regards to the sanctioning of government officials for misconduct, it is important to develop and increase the efficiency and effectiveness of the state audit authority. There is a high perception among citizens that high-ranking officials are not punished or sanctioned for using their positions for private gain. This undermines the concept of equality before the law. Moreover, many citizens avoid resolving their disputes in the justice system due to the high costs of litigation. The lack of legal aid or an effective legal assistance for people of limited income undermines the concept, and the decision makers should work urgently to address the defect. Although the constitution indicates that legal assistance should be provided to those in need, this article is not enforced fully in practice.
The concept is also linked to the principal of judicial independence. Ensuring the non-interference of the executive on the judiciary ensures the adherence to the concept. It ensures the impartiality of the judges and their integrity. Moreover, adherence to the concept builds a safer economic environment for foreign investors. If the concept is undermined, foreign investors would hesitate to come and invest in Oman, as they fear for the safety of their assets. The next chapter analyses the third pillar of the Rule of Law: ‘Accessibility, Impartiality and Judicial Independence’.

Chapter 5

The Concept of 'Accessibility, Impartiality and Judicial Independence'

5.0 Introduction

The third pillar of the concept of the rule of law is the concept of accessibility, impartiality and judicial independence. This chapter examines the notion, tries to identify the weaknesses in the current judicial system in Oman, and proposes reform recommendations to improve the current situation of the judicial system in Oman.

To reach a conclusion and a set of recommendations to the above stated objective, the chapter is divided into six parts. The first part outlines the definitions of the concept. The second part explores the concept of accessibility. The third part explores the concept of Impartiality and how to better protect it. The fourth part explores the concept of judicial independence and how it is achieved. The situation of the concept in Oman is outlined in the fifth part. Conclusion and recommendations are drawn at the end of the chapter.

5.1 Definition of the concept

The concept aims at ensuring the delivery of justice in a timely and competent manner, by neutral, ethical and independent representatives who are accessible, have adequate resources and reflect the makeup of the communities they serve.[430] Furthermore, the judiciary should be independent from the executive and legislature.

The concept could also be defined in relation to the right for litigation. The right for litigation consists of three pillars: 1) provide access to justice without any boundaries or hurdles, 2) ensure a fair trial that leads to a fair and accepted result by both parties, and 3) proper implementation of the judicial decisions.[431]

For the purpose of this study, the definition of the concept consists of fulfilling the following elements: accessibility, impartiality and judicial independence. Each element is analysed and discussed in the following section.

[430] Online Source: https://worldjusticeproject.org/about-us/overview/what-rule-law
[431] Dr. Abdullah, Abdul Ghani, *Mabda Al Musawa Amam Al Qada wa Kafalat haq Al Taqadi,* Cairo, Munshaat Al Maarif, 1983, p. 30

5.2 Accessibility of the Judiciary

One of the most important conditions for ensuring the rule of law is an effective and efficient access to justice. Having full access to justice results in a better level of trust and confidence in the justice system. According to Cappelltto and Garth, the term access to justice focuses on two basic purposes of the legal system. First, the legal system must be equally accessible to all. Access to justice cannot be achieved when claimants face many obstacles that prevent them from filing a lawsuit, whether that be the legal costs, the availability of legal aid, or access to legal representation. Those can be an obstacle especially to the poor and the disadvantaged. Second, access to justice also means that the legal system must lead to results that are individually and socially just.[432]

The term access to justice is not commonly used as a legal terminology and is not generally defined in legal texts. It covers a variety of areas such as: access to a court, fair trial, legal aid, etc. For the purpose of this study, and given the broad nature of the concept, the focus is on the three main category of issues in Oman: effective access to court, costs of judicial and legal assistants, access to a fair trial and enforcement of judgements.

5.2.1 Effective Access to Court

Effective access to court entails that litigants could file a lawsuit before any dispute resolution body. Article 47 of the EU Charter embodied the right to access to a court: "*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice".*[433]

Three main areas have been identified as barriers to effective access to court: 1) organisation of the judicial system, 2) legal and procedural obstacles, and 3) practical obstacles. The area of organisation of the judicial system covers the following issues: lack of resources (financial and human resources) that hinders the judiciary's abilities to adjudicate. The second issue is

[432] Blanck, Peter David, and Eilionóir Flynn. *Routledge Handbook of Disability Law and Human Rights*. Routledge, 2017, p.89

[433] European Union, *Charter of Fundamental Rights of the European Union*, Article 47, 26 October 2012, 2012/C 326/02, available at: http://www.refworld.org/docid/3ae6b3b70.html

the absence of specialised courts, such as small claim courts or alternative dispute resolution mechanisms. The final issue is the absence of the possibility to appeal. [434]

The area of legal and procedural obstacles covers the issue of restrictive rules on time limits, legal standing or admissibility. It also covers the issue of strict rules governing the presentation of evidence and the burden of proof. Furthermore, excessive procedural formalities are another issue. Finally, there are a lack of rules guaranteeing access to information and transparency, or access to legislations. The final area are practical obstacles which covers the issue of insufficient geographical court coverage and digital services in the courts.[435]

5.2.2 Cost of Judicial and Legal Assistants

The high costs of legal representation and court fees may discourage citizens from bringing a claim before a court. [436] For the aim of this study, three main areas have been identified: 1) costs of justice, 2) rules governing legal aid, and 3) other issues affecting access to proper legal assistance.

The area of costs of justice covers the issue of application fees, costs of representation, testimony costs and expert costs. The area of legal aid covers the issue of the availability of legal aid for all types of cases. It also covers the issue of the eligibility for legal aid. Further, it covers the issue of the existence of legal insurance. Finally, insufficient availability of lawyers or other types of council and the quality of representation are issues that might have an impact on access to justice.[437]

5.2.3 Access to a Fair Trial and the Enforcement of Judgements

This study considers three issues that have an impact on an effective access to justice: procedural guarantees, length of the proceedings and enforcement of judgements. The area of procedural guarantees covers the issue of the independence and impartiality of the courts. It also covers the issue of procedural rights and suspects rights in criminal proceedings, such as the presumption of innocence, the Right to interpretation and translation and the right to

[434] Dr. Abdullah, Abdul Ghani, *Mabda Al Musawa Amam Al Qada wa Kafalat haq Al Taqadi,* Cairo, Munshaat Al Maarif, 1983, p. 34-42
[435] ibid
[436] Ministry of Justice, UK, Online Source: http://www.justice.gov.uk/publications/research-and-analysis/moj
[437] George, James P. *"Access to Justice, Costs, and Legal Aid."* The American Journal of Comparative Law 54, 2006, p. 293-315.

information on rights. Further, the issue of absence of discrimination and the protection of vulnerable parties. Finally, the issue of the absence of reasoning in a judgement.

The area of length of proceedings covers the issue of the average length of proceedings. It also covers the issues of backlog. Finally, the issue of the existence of a fast-track process for claims of small amount of money. The area of the enforcement of judgements covers the issue of failure or delay in enforcing the court decisions.

5.3 Impartiality of the Judiciary

Impartiality is one of the most important foundations of justice. International conventions emphasized on the importance of impartiality and made it a requirement for the protection of human rights.[438]

5.3.1 Defining Impartiality

Impartiality of the judge could be defined as the absence of influence due to external pressures on the judge that are not related to the dispute. The judge must treat conflicting parties equally and without any bias. He further should let aside the emotions and focus on providing justice. [439] Moreover, impartiality of the judge requires him to base his decision on the evidence provided and in accordance to the law of the state.[440]

Article 61 of the Omani constitution states: *"There shall be no power over judges in their ruling except for the Law. They shall be irremovable except in circumstances specified by the Law. It is not permissible for any party to interfere in lawsuits or affairs of justice, and such interference shall be considered a crime punishable by Law. The Law shall determine the conditions to be satisfied by those who exercise judicial functions, the conditions and procedures for appointing, transferring and promoting judges, the guarantees accorded to*

[438] United Nations basic principles on the independence of the judiciary 1985, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985: *2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*
[439] Lucy, William. *"The Possibility of Impartiality."* Oxford Journal of Legal Studies 25, no. 1 ,2005, p. 3-31.
[440] Allan, T. R. S. *"Procedural Fairness and the Duty of Respect."* Oxford Journal of Legal Studies 18, no. 3, 1998, p.497-515

them, the circumstances where they cannot be removed from office and all other provisions relevant to them". [441]

In practice, neutrality and impartiality of the judge can be elusive.[442] The judge is a member of the society, and as a result he is constantly influenced by ideological and other influences within society. Moreover, impartiality of the judge dictates that he should leave aside his preferences or support to a specific faction of society. For example, if the judge is renting his house, this should not influence him negatively when deciding a property case involving a landlord. Additionally, if the judge belongs to a family whom are merchants or businessmen, he should be careful when adjudicating a dispute between an employee and employer. Moreover, if the judge belongs to a poor family or he himself is poor, he should be careful when adjudicating disputes of wealthy parties. This can only be achieved by relying on the strong personality of the judge and setting aside the private life from work.

The concept of impartiality is violated if the judge decides on a case based on his personal will.[443] The judge should only look into evidence provided by the conflicting parties and estimate the strength of each evidence in accordance to how the law administers it. Furthermore, the judge should not be a relative of either party.

5.3.2 Significance of Impartiality

The impartiality of the judge guarantees the future of the system. It gives disputers the confidence that the judge will not decide a case by being influenced by a person or other forms of pressure. It is important to appoint judges that have the characteristics of awareness, courage, objectivity, knowledge and good reputation.[444]

The concepts of judicial independence and impartiality are integrated for two reasons. The first, judicial independence and judicial impartiality are guarantors for an efficient judicial administration. A judicial dispute cannot be resolved justly if mixed with the external influences that affects the objectivity of the decision. As a result, they have the same constitutional value. The second, impartiality takes place between the judge and the

[441] Oman Basic Statute of the State 1996, Official Gazette, Oman
[442] Diego M. Papayannis, *Independence, Impartiality and Neutrality in Legal Adjudication*, Revus, 28, 2016, 33–52
[443] Dr. Mohammed, Ahmed, *Al Hay'ah Al Qadaiyyah wa Aawanoha fe Dawou Sumow Al Qanoon Al Ilahi*, Dar Al Nahda Al Arabiyyah, Cairo, 2009, p.84
[444] Dr. Omar, Mohammed Abdulqaliq, *Al Nidam Al Qada'I Al Madani,* vol.1, Dar Al Nahda Al Arabiyyah, Cairo, 1976, p.27

conflicting parties, while judicial independence deals with the separation of the judiciary from the other powers of the state.[445]

5.3.3 Conceptions of Judicial Partiality

The concept of judicial impartiality did not receive the same amount of research efforts as other judicial concepts had. As a consequence, the concept was surrounded by contradictions and ambiguities.[446] The traditional understanding of the concept can be collected from many different texts and literature. From such literature, the perception of impartiality among the public could be understood.

Traditional conception of impartiality is organized into four categories: judges that have personal interests in case outcomes, judges who have relational interests in case outcomes, judges who have personal biases for or against the conflicting parties, due to political, economic or social interests.[447]

a) The judge who has a personal interest in case outcomes

The most common known conception of partial judges is that of those accepting bribes. The judge usually excepts a financial gift in return for a favour. Moreover, it was also conceived wrong for a judge to accept a gift from either party after the case has been resolved.[448]

b) The judge who have a relational interest in case outcomes

The risk that the judge's impartiality can be corrupted by a pre-existing relationship with the parties to a proceeding, has been a concern for a long time in history.[449]

c) The judge who has a political interest in case outcomes

Impartiality is seen as being compromised when judges have a political interest in the outcomes of a case. Political interest can be divided into external and internal. External political interests are caused by the interference of other powers of the state on the judiciary,

[445] Dr. Khatir, Talat, *Istiqlal Al Qada wa haq al Insan fil Logu ila Qada Mostaqil,* Al Mansoorah, Dar al Fikr wal Qanoon, 2014,
[446] Charles Gardner Geyh, *Dimensions of Judicial Impartiality*, 65 Fla. L. Rev. 493 (2014). Available at: http://scholarship.law.ufl.edu/r/vol65/iss2/4
[447] ibid
[448] ibid
[449] ibid

and thus affecting the Judges decisions. Internal political interests are that related to ideological beliefs.[450]

d) The Judge who has a personal bias

This includes the unjustifiable fondness to or empathy towards one party over the other by the judge. This can be either due to their status, ethnicity, gender or social class.

5.3.4 Dimensions of Impartiality

To better understand how impartial a judge must be in order to uphold the rule of law, a deeper analysis on whom the beneficiaries are of an impartial judiciary. Judicial impartiality serves three distinct audiences: 1) Parties and the procedural dimension, 2) the Public and the political dimension, and 3) the Judges and the ethical dimension.[451]

Judges resolve disputes for the benefit of parties to the dispute. When two parties have a dispute that they could not resolve mutually, a fair and impartial judge is often the third party they trust and choose to adjudicate in their dispute. For the parties in dispute, the impartiality of the judge is focused on the process employed to litigate their dispute and whether the process protected them adequately from any biases. This is the procedural dimension of impartiality.[452]

In addition to resolving disputes, judges also serve as public officials to an independent branch of the government and as impartial guardians of the law. The public expects the courts to uphold their rights when abused by the other powers of the state. The focus of the public attention is on the impartiality of judges in relation to the role they play in the administration of government.[453] This is the political dimension of impartiality.

The concept for a thousand of years and more, was that being a good judge meant being an impartial judge. Being a good judge that impartially upholds the law is important to ensure a

[450] Ibid p.11
[451] Ibid p.19
[452] Tom R. Tyler, *The Role of Perceived Injustice in Defendants'* Evaluations of Their Courtroom Experience, 18 Law & Soc'y Rev. 51, 1984, p. 69–70
[453] Tomkins, Adam. *"The Role of the Courts in the Political Constitution."* The University of Toronto Law Journal 60, no. 1, 2010, p.1-22

fair process to the parties and to promote public confidence on the courts. This is the ethical dimension of impartiality.[454]

5.3.5 Regulating the Dimensions of Impartiality

Impartiality has three main themes to its dimensions, namely: Procedural, Ethical and Political. These dimensions have been regulated according to the nations visions, and usually such regulations are overlapping with one another in terms of their procedures. The main objectives for promoting impartiality are: to ensure that the litigation process of the parties is conducted in a fair procedural manner, to encourage judges to conduct their duties honourably and ethically, and to ensure public confidence in the courts.[455]

This section examines the primary mechanisms for regulating impartiality in the above-mentioned dimensions: Due process, disqualification and rules of litigation procedure in the procedural dimension; codes of judicial conduct and disciplinary process in the ethical dimension, and removal, selection, and oversight in the political dimension.

A) Regulating Impartiality in the Procedural Dimension

There are three basic procedural mechanisms that can be used to regulate the impartiality of judges: 1) Due process clauses, 2) Disqualification process, and 3) litigation procedure rules. Those three mechanisms should be construed, applied, and focused on ensuring the effective and expeditious administration of justice.[456]

i) Due Process Clauses

Most constitutions deny governments from depriving people of their liberty, life and property without due process of law. The United States of America Supreme Court interpreted the due process clause as: "*a fair trial in a fair tribunal is a basic requirement of due process and that the due process clause guarantees parties the right to have an impartial judge"*.[457]

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[454] Charles Gardner Geyh, *Dimensions of Judicial Impartiality*, 65 Fla. L. Rev. 493 (2014). p.20, Available at: http://scholarship.law.ufl.edu/r/vol65/iss2/4
[455] Jollimore, Troy, *"Impartiality",* The Stanford Encyclopedia of Philosophy (Winter 2017 Edition), Edward N. Zalta (ed.)
[456] Charles Gardner Geyh, *Dimensions of Judicial Impartiality*, 65 Fla. L. Rev. 493 (2014). p.21, Available at: http://scholarship.law.ufl.edu/r/vol65/iss2/4
[457] Tumey v. Ohio, 273 U.S. 510, 535 (1927)

Historically, civil and common law systems gave parties the opportunity to challenge the impartiality of the judge hearing their case. English common law judges were given a high level of trust on their impartiality, apart from when they have an economic interest in the outcome. The ancient presumption, however, limits the application of the due process clause to complex exceptions and to certain circumstances.[458]

In the US, the constitution's fifth amendment includes the due process clause. Although it guarantees litigants the right to an impartial judge in the federal courts, federal courts avoided constitutional questions when cases can be resolved on non-constitutional grounds. Given the availability of disqualification procedures, recourse to the fifth amendment is not necessary.[459]

ii) Disqualification

Disqualification rules seek to ensure parties a fair hearing by giving them the opportunity to challenge the impartiality of their assigned judge. In the US, the model code of judicial conduct makes the provisions for disqualifying a judge. Personal and relational conflicts of interest are addressed by rules requiring disqualification when the judges' close relatives are parties to the dispute, lawyers, or material witness in a case; have an economic or other interest on the outcome of the case; the firm or governmental entity under question was a previous employer of the judge, and when a judge as a judicial candidate receives campaign contributions from parties or lawyers in excess of a specified amount in law. Finally, bias is addressed by rules requiring disqualification when the judge has a personal bias or prejudice concerning a party or a party's lawyer.[460]

Historically, judges enjoyed the same presumption of impartiality that limits the application of due process clauses. However, the subjective nature of judicial bias has limited its reach as a traditional ground for disqualification.

iii) Litigation Procedure Rules

The law that regulates the way judges decide a case is embodied in procedural rules and statutes, which regulates impartiality indirectly. This includes the disqualification rules

[458] John P. Frank, *Disqualification of Judges*, 56 Yale L.J. 605, 611–12 (1947)
[459] *Ashwander v. Tenn*. Valley Auth., 297 U.S. 288, 346–48 (1936) (Brandeis, J., concurring) ("The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.").
[460] BA Judicial Disqualification Project, *Taking Disqualification Seriously*, 92 Judicature 12,2008, p. 14–15.

mentioned earlier and the judicial oath of the office. Appellate review operates as another indirect procedural check on partiality. Appellate review is usually justified for an error in the adjudication of a case at a lower court. The Appellate courts also review appeals due to judicial partiality claims.

B) Regulating Impartiality in the Ethical Dimension

The ethics of impartiality are guided by codes of judicial conduct and the disciplinary processes that implement them. In the US, the American Bar Association's model code of judicial conduct is adopted as the guide. Among the ethical rules in the Model code are the prophylactic restrictions on judicial speech or conduct that poses an unacceptable risk on partiality. The code directs judges not to initiate, permit or consider ex parties communications. Another rule admonishes judges from making any public statement that might reasonably expected to affect the outcome or impair the fairness of a case.[461]

The application of disqualification in the procedural dimension is different to that in the ethical dimension. Whereas the judge is subject to disqualification in the procedural dimension when his impartiality is reasonably questioned, irrespective of his state of mind, the judge is subject to discipline in the ethical dimension only when non-disqualification is wilful, i.e. when the judge knew that disqualification was/is necessary. That said, some judges make honest mistakes. When this is the case, the best way to deal with the matter is through appeal and not through disciplinary measures.[462]

C) Regulating Impartiality in the Political Dimension

To regulate impartiality in the political dimension, this section explores three areas, namely: judicial removal, judicial selection and judicial oversight.

The inability to remove judges from their positions does not mean that judges are protected from wrongdoings. Such immunity should be used to secure the judicial work and ensure the impartiality of judges. Further, it ensures the independence of the judiciary. Many constitutions emphasized that judges are not subject to removal unless they broke the law and a disciplinary case is put forward.[463] Moreover, the judge might be sent to retirement earlier if

[461] Leslie W. Abramson, *Appearance of Impropriety: Deciding When a Judge's Impartiality Might Reasonably Be Questioned,* 14 GEO. J. Legal Ethics, 2008, p.55
[462] ibid
[463] *See* Constitutions of: France, Germany, Belgium, Jordan and Oman.

his health deteriorates in a way that does not allow him to perform his tasks fully. Such decisions should be made by an independent judicial administrative institution.

There are two methods for judicial selection, either by election or by appointment by the executive.[464] There are advantages and disadvantages in both methods. Appointing judges by the executive might affect their impartiality as they might face direct or indirect influences by it. However, direct selection might also lead to a qualified and effective judge. On the other hand, electing judges could be seen as more democratic. However, those elected for the post might lack legal knowledge and thus undermine the justice system. It is important for the citizens to have political and legal awareness in order for such mechanism of selection to work.[465] In Oman, judges are appointed by the Judicial Administrative Affairs Council, and this is a better method for Oman at the time being. Nonetheless, appointment should be based on high levels of qualifications and strict requirements in place in order for a judge to be nominated for this position.

Finally, Judicial oversight should be conducted by an independent authority. It should consist of legal and administrative experts to assess the sector effectively. Many countries established judicial inspection committees to measure the performance of the judicial institutions.[466] However, some of those institutions were established by the executive or are supervised by it. This undermines the work of such committees and undermine the impartiality of judges. Judicial oversight committees should be independent financially and administratively. It should also consist of qualified personnel in legal and administrative affairs.

5.4 Judicial Independence

The importance of the concept of Judicial Independence was illustrated in many international treaties and conventions. The following section explores the definition of Judicial independence in international treaties and conventions, National constitutions and in legislations.

[464] Geyh, Charles Gardner. *"Methods of Judicial Selection & Their Impact on Judicial Independence." Daedalus* 137, no. 4, 2008, p. 86-101
[465] ibid
[466] Includes: USA, UK, France, Germany, Jordan, Austria.

5.4.1 The Concept of Judicial Independence in International Treaties and Conventions

a) The Universal Declaration of Human Rights

The Universal Declaration of Human Rights adopted by the United Nations on the 10th of December 1948, emphasized that judicial independence is a human right. Article 10 of the declaration states: *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".* [467]

b) International Covenant on Civil and Political Rights

Article 14 of the covenant states: "*All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a* ***competent, independent and impartial tribunal established by law****...".* [468]

5.4.2 The Concept of Judicial Independence in Constitutions

All modern constitutions highlighted the concept of judicial independence and enshrined the means to protect and support the judicial authority. Further, the constitutions are the only tool available to protect the rule of law and ensure the equal enforcement of the law on all.

The Egyptian constitution in article 186 states: *"Judges are independent, cannot be dismissed, are subject to no other authority but the law, and are equal in rights and duties. The conditions and procedures for their appointment, secondment, delegation and retirement are regulated by the law. It also regulates their disciplinary accountability".* [469]

Article 3 of the American constitution states: *"...both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office".*[470]

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[467] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: http://www.refworld.org/docid/3ae6b3712c.html
[468] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.refworld.org/docid/3ae6b3aa0.html
[469] Egypt Constitution 2014, Available at: https://www.constituteproject.org/constitution/Egypt_2014.pdf
[470] United States of America Constitution 1789 with Amendments through 1992, Available at: https://www.constituteproject.org/constitution/United_States_of_America_1992.pdf?lang=en

Article 60 of the Omani constitution states: *"The judiciary shall be independent, its authority shall be exercised by the courts in their different types and hierarchies, and their judgements shall be rendered in accordance with the Law".* [471]

5.4.3 The Concept of Judicial Independence in Legislations

In any state, it is essential to have a clear text that refers to the judicial authority and ensure its full independence. Those legal texts set what the characteristics of the judiciary are, and the functions assigned to it. Furthermore, the role of the judiciary is to ensure the non-interference of the other state powers on the work and functions of the judiciary. In other words, it ensures the separation of powers between the powers of the state and the non-interference in the work and functions of the judiciary.

Moreover, judicial independence can be undermined with legal texts that create special courts. It is crucial for justice to be served to have a case adjudicated in front of a neutral and impartial judge and in a normal Court. Establishing special courts undermine the independence of the courts and that of the judge, as special courts are usually set up by the executive.[472] In addition to the legal texts, it is essential to have legal guarantees that ensures the independence of judges as individuals and not to put them under the scrutiny and influence of other state powers. To achieve this, a set of occupational guarantees must be available to preserve the independence of the judges. Judicial selection must be made by the judiciary and the judges should be protected from false accusations by other state powers. Further, judges should not be impeached by decisions made by the executive.[473]

5.4.4 Judicial Independence in Islam

The person responsible for justice has been warned in Islamic texts and was also warned not to be influenced by his emotions. Judicial independence in Islam is based on three pillars that should be available in the judicial work, namely: impartiality, specialisation and *Ijtihad* (independent reasoning of the Islamic texts). [474]

[471] Oman Basic Statute of the State 1996, Official Gazette, Oman
[472] Shapiro, Martin. *"Judicial Independence: New Challenges in Established Nations."* Indiana Journal of Global Legal Studies 20, no. 1, 2013, p. 253-277
[473] ibid
[474] Dr. Al Fudaylat, Jabr, *Al Qada fil Islam,* Jordan, Dar Ammar, 1991, p. 254

a) Impartiality

The impartiality of the judge is the most important element of his independence. Impartiality means the elimination of any bias to a specific party or opponent, and away from any emotions and tendencies. If the judge is bias, the judiciary loses its independence. The judges' task is to be neutral when applying the laws. Islam indicated this very clearly in its texts. Many Quranic verses emphasize the obligation of enforcing justice and that judges should not be driven by their emotions or tendencies while adjudicating cases. Examples include the following versus:

(4:58) *Indeed, God commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which God instructs you. Indeed, God is ever Hearing and Seeing.*[475]

(4:135) *O you who have believed, be persistently standing firm in justice, witnesses for God, even if it be against yourselves or parents and relatives. Whether one is rich or poor, God is more worthy of both. So follow not [personal] inclination, lest you not be just. And if you distort [your testimony] or refuse [to give it], then indeed God is ever, with what you do, Acquainted.*[476]

(38:26) *"O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of God. Indeed, those who go astray from the way of God will have a severe punishment for having forgotten the Day of Account".*[477]

(5:8) *"O you who have believed, be persistently standing firm for God, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear God; indeed, God is Acquainted with what you do".*[478]

Examples from the Prophet sayings include:

1. Aisha said she heard the Prophet say: "Do you know who are the first to be under the shadow of God on the day of judgement? They said: God and his Messenger knows

[475] The Holy Quran, Surat Al Nisa, (4:58)
[476] Ibid (4:135)
[477] The Holy Quran, Surat Saad, (38:26)
[478] The Holy Quran, Surat Al Ma'idah, (5:8)

best. He said: Those if they were asked to adjudicate between people accepted to do so, and when adjudicating did their best to reach a conclusion, and to judge between people as if they were judging themselves". [479]

2. Um Salama said that the Prophet said: "Those who have been chosen to carry the weight of adjudicating between people should not raise their voice to one party over the other". [480]

3. "He (the judge) has to be equal between the parties in their seating positions, hand gestures and eye contact". [481]

b) Specialisation

The specialisation of judges means that the judicial work should be limited to a group of people that are specially qualified personnel with experience and personal advantages that enables them to perform the task of the judiciary efficiently and impartially. This is all due to the multiplicity of laws and having the knowledge of them all requires specialised and in-depth study and extensive experience of the realities of life. It is the specialisation and experience that shapes the judge and sets the legal mindset required to assume the responsibility of the judicial work. Specialisation makes the judge capable of diligence, innovation and no imitation.[482]

Therefore, Islamic Shariah states that for those nominated for the position of judge that they should fulfil the following requirements:[483]

1. Muslim
2. Adult
3. Diligence
4. Have a sane mind
5. Male

[479] Al Asqalani, A., Fath Al Bari, Dar Al Rayyan lil Turath, 1988,
[480] ibid
[481] ibid
[482] Dr. Al Fudaylat, Jabr, *Al Qada fil Islam,* Jordan, Dar Ammar, 1991, p. 258
[483] ibid

6. Efficient
7. Just
8. Without a deficiency in his senses

Islamic scholars went forward to say that the judge should enjoy certain qualities such as piety, abstinence, away from greed, integrity and to ask for advice when needed. Shariah has no reason why a candidate for the post of judge should not be subject to an examination or review when conducting such an important role. The judges have functions to fulfil and they should meet the objectives set. The fact that the judge is seen as an elite member of specialisation and knowledge is important pillar in the pillars of judicial independence and its impartiality. The following Hadith gives a severe warning to those taking over the judiciary, especially those who are not qualified for this position: "Abu Buraydah said he heard the Prophet say: the judges are three categories, two are in hell and one in heaven. A judge who knew the truth and judged upon it is in heaven. A man who knew the truth but did not judge upon it is in hell, and a judge who did not know the truth and judged based on ignorance is in hell".[484] This Hadith indicates a punishment so that only the qualified comes forward to become a judge.

Judicial work requires other qualifications, such as dedication, integrity, and some aspects related to morality. Such qualifications are not less important to specialisation based on practical experience and theoretical knowledge required for the judicial position.

c) Independent Reasoning (*Ijtihad)*

The independence of the judiciary can only be achieved through the freedom of independent reasoning by the judge. Independent reasoning is an important basic pillar of judicial independence in Islam.[485] It means the ability of the judge to devise and scrutinise different judgements and laws to try and reach justice. There should be no external or internal pressures on the judge while performing his tasks.[486]

[484] Al Asqalani, Ibn Hajr, *Bloog Al Maram min Adilt Al Ahkam,* Amman, Dar Al Qabas lil Nashr wal tawzee, no. 1410, p. 287
[485] Dr. Yusof, Yaseen, *Istiqlal Al Sulta Al Qadaiyyah fil Nidamayn Al Wadi wal Islami,* Beirut, Dar wa Maktabat Al Hilal, 1995, p.78-79
[486] ibid

The judicial work when dominated by tyranny, suppression of opinion and the prevention of independent reasoning, can lead to a deadlock and the inappropriate understanding of facts and in finding solutions to the various issues put forward in front of the judge in a just manner. This weakens the effectiveness of the courts and the judicial work in the performance of justice. This makes the judiciary incapable of redressing the oppressed, restoring rights to their rightful owners, and turns justice to a mere instrument that makes unjust decisions. Independent reasoning gives the judge the ability to understand the different jurisprudential branches, allowing it to pursue the changing concepts and the rapid developments that persist over time.[487]

The judiciary cannot be independent in a closed society, or afraid of bold decisions and enlightened opinions that are consistent with the renewable realities of life. Moreover, the judge should not be bound by restrictions and his mind and intellect should not be obscured. The judge should be given the opportunity to think and draw judgements. Verse (43:23) of the Quran states: *"And similarly, we did not send before you any warner into a city except that its affluent said, Indeed, we found our fathers upon a religion, and we are, in their footsteps, following".*[488] This verse is the profile of rejecting blind imitation of others and encourage people to use their mind to reason and not follow the footsteps of others.

5.4.5 Elements of Judicial Independence

Judicial independence has three main elements, namely: judicial integrity, judicial impartiality, and specialisation and judicial diligence. This section explores each element individually.

a) Judicial Integrity

Judicial integrity is the foundational element for judicial proceedings. Although the concept of integrity and impartiality are often associated together, integrity is related to the character of the judge. The character of the judge can be weekend due to the lack of confidence, level of trust, has a personal interest (family tie) or a material interest (bribe). The judge should not accept gifts or be a guest of either parties. Moreover, the judge should be free from any

[487] Al Qasim, Mohammed, *Al Ijtihad Al Qada'i,* Maktabat Al Qawanin wal Tashree, 2007, p.32
[488] The Holy Quran, Surat Al Zukhruf, (43:23)

personal or emotional motives. The judge should not be influenced by the interests of his/her personal or relational ties.[489]

To reduce the chances of bribery and gift acceptance, the state should ensure that the judges receive adequate salaries to live a decent life without the need to search for another source of income or be in a situation to accept a bribe or gift.

b) Judicial Impartiality

Impartiality is one of the main pillars for Judicial Independence. This refers to the non-bias of the judge to the parties in the dispute. Political or ideological bias may interfere in the decision-making of the judge, therefore, losing his impartiality. Among the cases that the judge should avoid are: existence of particular biases, member of a political party, or racial and sectarian discrimination.[490]

The involvement of the judges in the work of political parties can cause the judge to shape policy in line with the party's agenda and not according to the law. This causes the judge to lose his impartiality. Further, the judge should not be exposed to the debates of the general public and media. The role of the judge is not only to apply the law, but also to ensure the spreading of justice and fortifying the concepts of social justice and peace.[491]

c) Specialisation and Judicial Diligence

Specialisation is another foundational element for judicial proceedings. Specialisation and experience shape the conscience of the judge and generates his legal thinking. This allows the judge to be creative and search for the truth in depth when adjudicating cases.[492]

Specialisation in different fields of science became a main theme. The advancing technology and how we receive and communicate information led to the birth of detailed specialities within any field. Experts on those specialities are trained and prepared in line with their duties. The judiciary is no exception. Having specialised courts each dealing with an area of

[489] Mohammed, Bakr, *Istiqlal Al Qada fil Fiqh Al Islami wal Qanoon Al Wad'ee,* Bierut, Dar Al Sanhoori, 2017, p.99
[490] Ibid p.101
[491] Ibid p.103
[492] Al Kailani, Farooq, *Istiqlal Al Qada'a,* Cairo, Dar Al Nahda Al Arabiyyah, 2005, p.36

the law such as criminal, contract, or family, makes the judicial process faster, efficient and more effective. The judges will be equipped and prepared with the knowledge necessary to solve complex cases on their areas of expertise. The concept of judicial diligence is supplemental to the concept of diligence. The judiciary by adopting both concepts insures its independence and the proper application of the spirit of the law. Judicial diligence becomes significant especially when a judge deals with ambiguous legal texts that requires more than one definition or interpretation to reach a just decision.[493]

It is crucial that the legislator gives the judge the necessary powers to interpret the legal texts that gives its application flexibility and balance and goes in line with the facts of the case. Moreover, the application of the law by the judge should be in accordance to the spirit of the legal text and the general reasoning's for the legislation.[494]

Judicial adjudication does not rely on the knowledge of the law alone but relies as well on the ability of the judge to understand the reasoning behind the legal text and search for justice outside the legal texts in front of him.[495]

In criminal law, judicial diligence is apparent through the application of the concept of the uniqueness of the punishment. This refers to deciding a punishment that is suitable to the circumstances of the criminal and his/her history before and after the crime. Examples of this from Islamic history is the story of Omar when he had to decide on a case involving a man at a time of famine. Omar decided not to punish him as the man stole in order to feed himself.[496]

5.4.6 The Concept of Separation of Powers

The concept of separation of powers is one of the general principles that the French Revolution assured to adopt. The American Revolution, as well, adopted the concept as the foundation of government administration. The concept can only work effectively in a parliamentary system.[497]

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[493] Ibid p.26
[494] Mohammed, Bakr, *Istiqlal Al Qada fil Fiqh Al Islami wal Qanoon Al Wad'ee,* Bierut, Dar Al Sanhoori, 2017, p.104-113
[495] ibid
[496] ibid
[497] Dr. Laylah, Mohammed, *Al Nudum Al Siyasiyyah Al Dawla wal Hukoomah,* Beirut, Dar Al Nahda Al Arabiyyah, 1969, p. 848-849

The concept has been analysed and discussed by many ancient scholars and thought of dividing the powers of the state. In his book 'Laws', Plato distributed the functions of the state and its work into different authorities in which each authority practices a specific task. Plato indicated the authorities in the following manner:[498]

- Sovereign council consisting of ten members, and its task is to cover the different public affairs in the state.
- An Association consisting of notable scholars and legislators with the duty of protecting the Constitution from the leaders and to ensure its good application.
- Council of elders elected by the public with the duty to legislate the necessary laws for the state.
- Police authority to help secure national peace, and a military authority to help secure the safety of the state from foreign attacks.

Plato thought that each authority must work on a specific task and is accountable to its work and should work alongside the other authorities in order to achieve the public good. Through this, the state becomes stable and tyranny could be avoided.[499]

In his book 'Politics', Aristotle indicated that the authority stems from the people, therefore, it cannot be assigned to a person or to minority of citizens, but to the citizens in large. However, due to the numerous tasks of the state and its differences, it is necessary to divide those tasks to multiple subtasks. Aristotle divided them into three main tasks:[500]

1- Deliberation: this task was assigned to an institution Aristotle referred to as a parliamentary authority. Its members are the general council with the duty of reviewing general cases in the state.
2- Orders: the task of governing and executing orders was assigned, by Aristotle, to the governors and the high-ranking officials in the state.
3- Justice: the task is the responsibility of the judiciary and courts, which is assigned with the duty to adjudicate cases.

John Lock is the founder of the theory of separation of powers. Lock argued that the executive branch of the state can in certain special circumstances refrain from executing the

[498] Plato, & Jowett, B., *Laws by Plato*. New Delhi: Cosmo Publications, 2002
[499] ibid
[500] Aristotle, Benjamin Jowett, and H. W. Carless Davis. *Aristotle's Politics*. Oxford: At the Clarendon Press, 1920

laws, as long as this action is for the public good.[501] The concept was also explored by Montesquieu in his book 'The spirit of the law'. He divided the powers of the state into three categories: legislature, executive and judiciary. Montesquieu justified the separation of powers as a method to: 1) prevent tyranny and protect freedoms, 2) guarantees the principle of legality of the state.[502]

5.4.7 Methods on how the Legislature may Influence the Judiciary

The first method of influence is the undertaking of judicial duties by the legislature, which is the sole responsibility of the judiciary. An example is the trial of a Minister or Prime Minister in front of Parliament on violations that they might have committed while performing their duties. This was apparent in France under the reign of Louise XVI, where ministers had special trials at the Parliament for the violations rather than in an ordinary court.[503]

When the concept of political accountability appeared, a distinction has been made between the responsibilities of the politicians for their actions whilst performing their duties, and between being accountable for criminal actions. The first is adjudicated in Parliament, where the latter is adjudicated in ordinary courts.

Interfering or influencing the work of the judiciary by the legislature is a violation to the principle of judicial independence for three main reasons:[504]

1- Judicial functions should always be carried out by legal specialists that are equipped with the knowledge and impartiality required to understand the legal problems. Further, they should be impartial and away from any political influences or biases. The legislature is a political and not the judicial body.
2- According to the concept of separation of powers, the three powers of the state should be independent when performing their tasks. However, the concept does not require a full separation to an extent that does not allow communication and fusion between each institution. Nonetheless, the concept requires the full independence of the

[501] Locke, John, *Works*, 10 volumes, London, 1823; reprinted, Aalen: Scientia Verlag, 1963, *Two Treatises* 2, p.150
[502] Montesquieu, *The Spirit of the Laws*, Cambridge University Press, 1989
[503] Gottschalk, Louis. *"The French Parliaments and Judicial Review."* Journal of the History of Ideas, vol. 5, no. 1, 1944, pp. 105–112.
[504] Harrison, John, *"Legislative Power and Judicial Power"* (2016). Constitutional Commentary. 22., Available at: http://scholarship.law.umn.edu/concomm/22

judiciary, as the judiciary can also resolve disputes that arise between the legislature and executive.

3- Practicing the functions of the judiciary by the legislature can undermine the confidence on the authority of the judiciary. The functions such as judicial review and judicial protection becomes severely undermined.

The second method of influence is the interference on how the judiciary functions. This can be done by preventing the trial of certain cases or issue a legislation to affect the outcome of a case or interfere in case decisions already decided by court. Further, the legislature should not monitor decisions made by the courts or check whether they are right or wrong. This is the duty of higher courts. The third method of influence is through expropriating the right to litigate. This was discussed earlier in chapter five.

The fourth method is by issuing legislations on certain cases. This method started appearing even more recently. Such legislations include the counterterrorism acts and other legislations that limit the freedoms of people. The fifth method is through establishing special courts. Such courts are established to trial certain group of people or to trial certain cases such as national-security cases. Such courts violate the concept of judicial independence, as such courts are usually established by the executive. The sixth method is the interference in the organisation of the judiciary. It is the independence of the judiciary that gives the judiciary its power to use it to check on the other powers of the state. If the legislature interferes in the judiciary's organisation, such as the minister of justice to appoint judges, the integrity of the judiciary and its independence is undermined.[505]

5.4.8 Guarantees for The Non-Interference of The Legislature on the Functions of the Judiciary

After describing the methods of interference, this section explores the guarantees for non-interference. Among those guarantees is judicial control and judicial review. Judicial review is defined as the process in which the legislations issued by the legislature are examined and analysed by a Judicial Constitutional body, to check the compatibility of the legislation with the Constitution of the state.[506] One of the forms of judicial review is the control by judicial

[505] Mohammed, Bakr, *Istiqlal Al Qada fil Fiqh Al Islami wal Qanoon Al Wad'ee,* Bierut, Dar Al Sanhoori, 2017, p.153-157

[506] Poole, Thomas. *"Legitimacy, Rights and Judicial Review."* Oxford Journal of Legal Studies, vol. 25, no. 4, 2005, p.697–725.

abstinence. Such form of control has three modes: to push for unconstitutionality, judicial disapproval and judicial declaration.[507]

a) To push for Unconstitutionality

In this case, there should be a trial in front of a court, criminal or civil, in which one party push for the unconstitutionality of the law applied. The court should then refer the case to the higher court to check the constitutionality of the law. The court then looks to what the law tries to solve and whether it contradicts with the Constitution. The law may not be changed but could be interpreted according to the case in hand. This allows the flexibility of the application of the law.[508]

b) Judicial Disapproval

This mode implies that a citizen goes to a court and asks for the pause of the application of a law for its unconstitutionality. If it is proven to the court the unconstitutionality of the law in question, it can make a judicial order to stop its application.[509]

c) Judicial Declaration

This mode is the most modern form. It implies that the person requests from a court to decide on the constitutionality of the law. As a result, the law in question will not be applied until the court decides.[510]

5.4.9 Methods on how the Executive may Influence the Judiciary

There are several ways in which the executive can interfere in the functions of the judiciary. Such interferences include: interference in cases, influence on judges, and influence on parties.

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[507] Mohammed, Bakr, *Istiqlal Al Qada fil Fiqh Al Islami wal Qanoon Al Wad'ee,* Bierut, Dar Al Sanhoori, 2017, p.140

[508] Field, Oliver P. *The Effect of an Unconstitutional Statute*. NED - New edition ed., University of Minnesota Press, 1935. *JSTOR*, available at: www.jstor.org/stable/10.5749/j.ctttv8bg

[509] Neil Duxbury; *Judicial disapproval as a constitutional technique*, International Journal of Constitutional Law, Volume 15, Issue 3, 30 October 2017, p.649–670

[510] Charles B. Elliott, *The Legislatures and the Courts: The Power to Declare Statutes Unconstitutional,* Political Science Quarterly, Vol. 5, No. 2, 1890, p. 224-258

a) Influence in cases

Interference can occur in criminal, civil and administrative cases. Such interferences occur today and are justified by some states for the improper application of the law. However, if the court applies the law in a wrong way, then it is the duty of the higher courts to review the law in question, not the executive. Moreover, the executive can also interfere in the judiciary's function by issuing procedures and regulations that prevent the people from accessing the courts.[511]

The executive can interfere in criminal cases during the two stages of the trial: the investigation stage undertaken by the public prosecutor and the hearing stage at court. Although the public prosecutor superiors are from the executive, his investigation functions are judicial and should not be influenced. However, it is not the case today and it is hard to ensure it or prove it. Moreover, the executive can influence the decisions made by the judiciary by the non-application of the decision or create obstacles to ensure the non-execution of the court decision.[512]

Finally, the executive should not have any control over the judicial proceedings. In the case that there is a wrong application of the law, it is the duty of the appeal courts to review the error, not the executive.

b) Influence on Parties

Influencing parties to a case by the executive is a clear breach of judicial independence. It leads the people to have less confidence in the justice system and may lead them to not resolving the dispute. Influences can include threats, detention or bribery.[513]

c) Influence on Judges

This includes assault on judges whether physical or oral. Another method is through a mandate. This is usually a power given to the Minister of Justice to move one judge from one place to another temporarily, in order to look into a specific issue or to deal with case backlog in an area. However, this power can be abused by the Minister, as he can move judges he

[511] Al Kailani, Farooq, *Istiqlal Al Qada'a,* Cairo, Dar Al Nahda Al Arabiyyah, 2005, p.80
[512] Mohammed, Bakr, *Istiqlal Al Qada fil Fiqh Al Islami wal Qanoon Al Wad'ee,* Bierut, Dar Al Sanhoori, 2017, p.196
[513] Fiss, Owen M. *"The Limits of Judicial Independence."* The University of Miami Inter-American Law Review, vol. 25, no. 1, 1993, p. 57–76

does not like or has an issue with. The third method is by issuing an end of service or referring to retirement of judges by the executive. Finally, threats addressed to the judge.[514]

5.4.10 Guarantees for non-interference of the Executive on the functions of the Judiciary

This section focuses on four guarantees to ensure the non- interference of the executive on the functions of the judiciary, namely: judicial administration guarantees, judicial appointment guarantees, integrity guarantees, and impartiality guarantees.

a) Judicial Administration Guarantees

One of the most important guarantees for judicial independence is giving a council consisting of senior judges the duty of administrating justice and appointing judges, moving them and promoting them.[515] In Oman, the Judicial Administrative Council performs this task.

b) Judicial Appointment Guarantees

In order for the judge to be independent, he/she has to be free from any pressures or influences and should not feel that they owe a favour to a person or institution.[516] There are many ways in which judges are appointed across the world. This part mentions but a few.

1) Through Election

This method includes people voting for the judges in a direct or indirect way. The historical origin of this method of appointment dates back to France in 1790. The judge was elected and had a fixed term of six years. However, this was changed by Napoleon, and France followed the system of appointment by the executive.[517] The system of election is also followed for circuit judges in the US.[518]

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[514] ibid
[515] Nuno Garoupa & Tom Ginsburg, *"Guarding the Guardians: Judicial Councils and Judicial Independence"* (John M. Olin Program in Law and Economics Working Paper No. 444, 2008)
[516] Malleson, Kate. *"Rethinking the Merit Principle in Judicial Selection."* Journal of Law and Society, vol. 33, no. 1, 2006, p. 126–140
[517] Garner, James W. *"The French Judiciary."* The Yale Law Journal, vol. 26, no. 5, 1917, p. 349–387
[518] Volcansek, Mary L. *"An Exploration of the Judicial Election Process."* The Western Political Quarterly, vol. 34, no. 4, 1981, p. 572–577.

2) Through election by the legislature

This is usually the case in courts of a political nature. However, appointing judges by the legislature, although elected by the people, is a violation to the principle of judicial independence.[519]

3) Appointment by the executive

This method is the most common method of appointment. Nonetheless, the judges can be influenced by the executive as a result. On the other hand, some argue that this method does not violate the principle of judicial independence, since the law prescribes the way in which judges are appointed.[520]

4) Appointment through a judicial authority

Many countries have also adopted this method of appointment. An authority responsible for the appointment, referral, promotion and end of service of judges has been established in many countries. This method ensures judicial independence and the separation of powers. Judges are less likely to be influenced while performing his/her duties by other state powers.[521]

c) Judicial integrity guarantees

Among the guarantees for judicial independence is that the judge should not be questioned nor should be responsible for the decisions he/she make, unless he/she integrity was the issue in question. Questioning or criticising judicial decisions should be made by referring it to the Court of Appeal. Courts are organised in levels, and each level corrects the mistakes on decisions made by the courts in the lower levels. Furthermore, judges should be protected from people who might falsely accuse them. If the judge is not suitable for the job, then there should be certain legislations that must be followed in order to replace him/her.[522]

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[519] Nirmalendu Bikash Rakshit. *"Judicial Appointments."* Economic and Political Weekly, vol. 39, no. 27, 2004, p. 2959–2961

[520] ibid

[521] Garoupa, Nuno, and Tom Ginsburg. *"Guarding the Guardians: Judicial Councils and Judicial Independence."* The American Journal of Comparative Law, vol. 57, no. 1, 2009, p.103–134

[522] Mohammed, Bakr, *Istiqlal Al Qada fil Fiqh Al Islami wal Qanoon Al Wad'ee,* Bierut, Dar Al Sanhoori, 2017, p.214

d) Judicial impartiality guarantees

This principle has been discussed in **section 6.3.5** of this chapter.

5.5 The Concept of Accountability, Impartiality and Judicial Independence in Oman

The organization of the judicial system in Oman was influenced like in many other countries in the world by the civil court system of justice in France, the Netherlands, Belgium, Jordan, etc. This system also influenced the Egyptian justice system, which exported this concept to the rest of the Arabic world, including Oman.[523]

The backbone of any justice system in society is the judicial employees (Judges, public prosecutors, lawyers, experts, translators or any person working for the institution). Among the foundational principles that the judicial system relies on include: equality before the law, a free of charge judiciary, the concept of the publicity of trials, the principle of judicial independence, the concept of the defence and the respect of the defence of both parties, adjudication in two levels.[524] Since the concept of equality before the law has been discussed earlier, this section will focus on the other principles and the situation of those principles in Oman. The first part look into the principles governing the administration of the judiciary and the second part discusses the people of the judiciary.

5.5.1 Principles of Judicial Administration in Oman

This section focuses on five principles of judicial administration and its situation in Oman. Those principles are: free of charge judiciary, judicial independence, publicity of trials, the concept of the defence and the right to defend in a trial, and two-level system of adjudication. Each principle is explored below respectively.

a) Free of charge judiciary

This concept is considered to be a direct derivative of the concept of equality before the law. To consider justice a right guaranteed to all citizens irrespective of their social or economic status, it must be insured that this right is applied to all without discrimination.

[523] Peterson, J. E. *"Middle East Journal."* Middle East Journal, vol. 55, no. 1, 2001, pp. 138–140
[524] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p. 2-10

The concept implies that the salaries of the judges are to be taken care of by the state and not the claimants. This, however, does not mean that all people should be exempted from paying court fees, but only those who are not able to pay such fees, and such exemptions are prescribed in the law. Article 2 of Royal decree 119/2006, states: *"Article (74) bis shall be added to the Code of Civil and Commercial Procedures in the following manner: The Minister of Justice shall issue a regulation for the organization of judicial assistance for the financially incapable after agreement with the Ministry of Finance".* [525]

b) The Concept of Judicial Independence

As discussed earlier, the concept of judicial independence is the method for achieving separation of power between the three powers of the state. However, it does not require a full separation, but rather a separation that carries within it the capacity to work and check the possible abuse of power between the different institutions.

The Omani legislation provided some guarantees for the independence of the judges. Article 61 of the Constitution states that: *"There shall be no power over judges in their ruling except for the Law. They shall be irremovable except in circumstances specified by the Law. It is not permissible for any party to interfere in lawsuits or affairs of justice, and such interference shall be considered a crime punishable by Law. The Law shall determine the conditions to be satisfied by those who exercise judicial functions, the conditions and procedures for appointing, transferring and promoting judges, the guarantees accorded to them, the circumstances where they cannot be removed from office and all other provisions relevant to them".* [526]

c) Publicity of Trials

The concept implies the publicity of court hearings and the decision of the case, and that the court hearings should be open to the public and for the case debates and decisions to be published. Furthermore, people should be able to get a copy of the decision of the case, provided that they apply for it in accordance to the law. Article 174 of the CCCP states that: *"An official copy of the original copy of the judgment may be given to the person requesting it from the litigants or their agents and shall not be given to others except with the permission*

[525] Oman's *Code of Civil and Commercial Procedure,* Amendments by Royal Decree 119/2006, Official gazette, Oman
[526] Oman Basic Statute of the State 1996, Official Gazette, Oman

of the Head of the Court, after payment of the prescribed fee".[527] Nonetheless, there are certain cases that the courts decide to make certain case hearings private, for public order reasons or for the protection of the adjudicators. Article 103 of the CCCP states: *"The hearings of the Court shall be public unless the Court decides, on its own motion or at the request of one of the litigants, to make it confidential in the light of public order, morals or the inviolability of the family".*[528]

That said, decisions of such trials must be made public. Article 169 of the CCCP states: *"The judge pronounces the sentence, and it is to be pronounced openly or otherwise the ruling is invalid".* [529]

d) The concept of defence and the right to have a defence

This concept requires the judge to have both parties in a dispute to bring forward their defence that proves there point in a case, and to put all the documents presented under scrutiny and deep analysis and study. The two parties should respond to claims presented and defend any possible false allegations. The judge should then decide on a case and justify his decision and should reply to all essential defences raised during the trial.

e) The concept of the two-level adjudication system

This concept allows a party to a case where the Court of first instance ruled against his/her favour, to appeal the decision to a court of a higher degree to look into the case again, whether the appeal was on a point of fact or law. The significance of this concept is to ensure justice and for the outcome to be accepted by both parties. Such a system also insures that the first instance courts work hard during hearing and deciding cases so that the decisions are not appealed. Finally, it corrects errors that judges may fall into in first instance court trials.[530]

Nonetheless, this concept received a lot of criticism, as some see it prolonging the duration of the case and add additional expenses to the claimants. Further, some see that the appeal courts can also fall in error and third or fourth appeal Courts becomes required. However, a two-level system presents better outcomes of justice as the case is heard twice and on the

[527] Oman's *Code of Civil and Commercial Procedure,* Royal Decree 29/2002, Official gazette, Oman
[528] ibid
[529] ibid
[530] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p.40

second time heard by better qualified and more experienced judges. Finally, the third level of appeal is restricted to points of law and is the sole duty of the Supreme Court. [531]

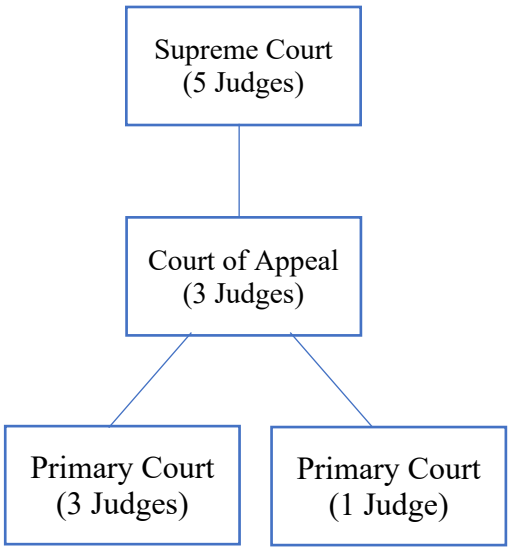

Figure 6-1: *Court Hierarchy Structure in Oman*

[531] ibid

5.5.2 Judicial Personnel and their Assistants

Judicial personnel include judges and the public prosecutors. Both works to compliment the work of the other. Moreover, public prosecutors form an integral part of criminal cases, and in some civil cases. Article 38 of the judicial authority law states: *"Judges may be transferred to the public prosecution and members of the public prosecution may be transferred to the judiciary, in equivalent functions, based on the circumstances, after a recommendation by the administrative council of the judiciary"* [532]

To fulfil their duties in the best manner, judicial personnel are assisted by experts, translators, secretaries and clerks. This section explores the three jobs making the judiciary in Oman, namely: judges, public prosecutors and judicial assistants.

A) Judges

In Oman, judges are appointed and not elected. Therefore, judges are defined as those who are appointed by the state to adjudicate disputes. Articles 23 and 24 presents the way judges are appointed:

Article 23: In the first instance, the appointment of the judge starts by first assuming the duties of assistant judge. The assistant judge then undergoes a training period no less than two years and based on the system made by the administration affairs Council. If the candidate did not finish the training period specified to him within three years, the candidate is then transferred to a non-judicial position and based on his qualifications.[533]

Article 24: A candidate is appointed a judge after undergoing the training period for assistant judges set in Article 23.[534]

Article 20 of the judicial authority law states that the judicial rank of judges is as follows:[535]

1) Head of the Supreme Court
2) Supreme Court judge
3) Appeal Court Judge
4) First primary court judge

[532] Judicial Authority Law (90/99), Official Gazette, Oman
[533] ibid
[534] ibid
[535] ibid

5) Second primary court judge
6) Judge
7) Assistant judge

Article 21 set the requirements for appointing judges. Those requirements are the following:[536]

a) Muslim and of Omani nationality
b) Fully qualified and fit
c) Good reputation and behaviour
d) Obtain a university qualification in either Shariah studies or law from a recognized institution
e) Has no criminal or civil Records even if accused wrongly
f) Have passed all exams and assessments designed for the selection process

Article 25 states: taking into consideration article 21 contexts, it is possible to appoint the candidate to any judicial post if he taught Shariah or law studies in a recognized educational institution, or practiced law as a lawyer for a period not less than:[537]

a) Three years if the appointment was for the post of judge
b) Six years if the appointment was for second judge in a primary court and two years minimum for lawyers in front of a primary court
c) Eight years if the appointment was for first judge in a primary court and three years minimum for lawyers in front of a primary court.
d) 12 years if the appointment was for appeal court judge and two years for lawyers in front of the appeal court.
e) 17 years if the appointment was for the Supreme Court, and two years for lawyers in front of the Supreme Court.

Article 26 states: taking into consideration article 21 contents, it is possible to appoint a candidate to any judicial post if the candidate worked in a legal related field for a period not less than:[538]

[536] ibid
[537] ibid
[538] ibid

a) Five years if the appointment was for the position of judge.
b) 8 years if the appointment was for the position of second judge in the primary court.
c) 10 years if the appointment was for the position of first judge in the primary court.
d) 14 years if the appointment was for the position of appeal Court Judge.
e) 19 years if the appointment was for the position of Supreme Court judge.

Article 32 states: appointment to judicial positions should be done via the administrative judicial affairs Council, except for the positions of Head of the Supreme Court, Vice president of the Supreme Court, and supreme Court judges, whom are appointed by a royal decree.[539]

To ensure the integrity of the judiciary and the impartiality of judges, the judicial authority law set a group of duties that judges should fulfil:

1) Oath before commencing the duties: article 50 states: "*I swear to God the Almighty to adjudicate justly and respect the laws"* [540]
2) Prohibition from working in trade or any job that may undermine the integrity and independence of the judiciary. Article 51 states: "*the judge is forbidden from undertaking any business-related side job and is forbidden from practicing any job that might undermine his independence and integrity. The judicial administrative affairs council can prevent the judge from practicing any job it sees undermining his integrity and independence"* [541]
3) Prohibition from giving political opinions or working in politics.
4) Respecting the confidentiality of court deliberations. Article 54 states: "*The judge shall not disclose the secrets of the State".* [542]
5) Close proximity of the judge from his workplace. Article 56 states: *"The judge must live in the same area of his workplace. The judicial administrative affairs Council may give an exception to a judge to live in another place that is in close proximity to his workplace. The government pays for the expenses of the judges' transfer".* [543]

[539] ibid
[540] ibid
[541] ibid
[542] ibid
[543] ibid

6) Attendance at work. Article 57 states: *"The judge is not allowed to be absent from work and cannot stop it without a written urgent notification. If he disobeys the rules, the head of the court should warn him in writing. If the incident occurs, then the issue is raised to the judicial administrative affairs Council to question him. The judge is considered resigning if he was absent from work for 30 days continuously without a previous permission. If the Judge gives reasonable excuses for his absence, then he might be eligible to continue his duties".* [544]

i) Guarantees given to Judges

The most important guarantees given by the judicial authority law to the judges include: disqualification, establishment of an administrative judicial affairs Council and special rules for questioning judges criminally or disciplinary.

a) Deposing judges

Article 61 of the Constitution states that: *"There shall be no power over judges in their ruling except for the Law. They shall be irremovable except in circumstances specified by the Law…."* [545] Article 86 of the judicial authority law states: *"Judges –apart from assistant judges–cannot be deposed, I less in cases where is the law stipulates it. Supreme Court judges cannot be moved or assigned in a different location unless the Supreme Court allows it".* [546]

The law also stipulates the occasions where a judge could be sent to retirement or end of service. Article 48 states that: "*The judge may serve to the age of 65… the request of resignation is accepted after a month of its submission to the judicial administrative affairs concert".*[547] Article 49 states that: *"If the judge was unable to commence his duties due to illness and after the end of the sick leave set in article 62, or he was deemed unfit to commence his duties due to his illness, the judge is sent to retirement after the approval of the judicial administrative affairs Council…."*. [548]

[544] ibid
[545] Oman Basic Statute of the State 1996, Official Gazette, Oman
[546] Judicial Authority Law (90/99), Official Gazette, Oman
[547] ibid
[548] ibid

b) Establishment of the Judicial Administrative Affairs Council

One of the important guarantees given to the judges is the establishment of a council specially dealing with their affairs. Article 17 of the Judicial Authority law states that: *"The Administrative Affairs Council specializes in dealing in all affairs of the appointment, promotion, transfer of judges and all job-related affairs and other duties set by law. The councils can also propose laws concerning the judiciary and should be consulted in such law proposals"*.[549] Article 16 states that: *"The judiciary shall have a Council for administrative affairs, headed by the president of the Supreme Court and the membership of:*

- Three most senior vice presidents of the Supreme Court
- Public prosecutor
- Most senior head of the Court of Appeal
- Most senior head of the Primary Court". [550]

c) Special Rules to Questioning Judges Criminally or Disciplinary

In order to protect the judge and protect him from any interference to his impartiality and independence, articles 87-90 gives a list of guarantees to the judge:

(Article 87): *"In cases other than cases of flagrante delicto, the judge may not be arrested or held in custody without obtaining permission from the administrative affairs council"*. [551]

(Article 88): *"No investigation or Public prosecution proceedings may be taken on a judge without the permission of the administrative affairs Council and at the request of the public prosecutor"*. [552]

(Article 89): *"The imprisonment and implementation of penalties depriving the liberty of judges shall take place in other places than those designed to imprison other offenders"*.

(Article 90): *"The imprisonment of the judge shall inevitably result in the suspension of his employment from the period of his imprisonment…."*. [553]

[549] ibid
[550] ibid
[551] ibid
[552] ibid
[553] ibid

Article 76 of the judicial authority law states that: *"Any judge that violates the duties or honour of his job, or conduct and behaviour that detracts from his dignity, or show at any time that he has lost the authority to conduct his duties for no other than health reasons, shall be referred to the accountability council".* [554]

The judicial authority law listed a group of guarantees for the judges in order to protect them from the misuse of the disciplinary rules. Article 74 states that: *"Holding judges accountable in all of their ranks shall be the responsibility of the accountability council, to be led by the head of the supreme court and the membership of his four most senior Vice presidents".*[555]

Article 80 states that: "*The proceedings of the accountability council should be secret…."*.[556]

Article 81 states that: *"The case for accountability ends with the death, resignation, or retirement of the judge".* [557]

Article 82 states that: *"The judgement of an accountability case shall be passed by a majority vote and is final and cannot be appealed…. ".* [558]

ii) Disqualification

Article 142 of the CCCP indicates the occasions where a judge is not eligible to hear a case. Further, article 14 of the same law and article 55 of the judicial authority law indicate other occasions. If the reasons for disqualification are present, the judge is not eligible to hear the case and any decision he makes is void by law. The case can be appealed. Article 143 states: "*The judge's act or judgment shall stand void in the cases provided for in the preceding Article, notwithstanding that, it has been done by the agreement of the parties. If this void occurs in a judgement passed by the Supreme Court, the party may request the court to reverse the judgment and review the cassation before another panel".* [559]

[554] ibid
[555] ibid
[556] ibid
[557] ibid
[558] ibid
[559] Oman's *Code of Civil and Commercial Procedure,* Amendments by Royal Decree 119/2006, Official gazette, Oman

iii) Rebuttal of the judge

This occurs when one party request the removal of the judge from hearing the case based on reasons for rebuttal mentioned in the law. Article 144 (A), (B), (C) and (D) states that:

"The judge may be recused for one of the following reasons:

1. *If he or his wife has a suit similar to the suit he is hearing, or if a litigation between any one of them and one of the opponents has arisen, or for his wife after the initiation of the suit pending before him, unless this suit is filed for the purpose recusing him from the suit pending before him.*
2. *If his divorced wife from whom he has a child, or one of his relatives, or one of his relatives by marriage, has an outstanding litigation with one of the parties to the suit or with his wife, unless this litigation has been initiated after the initiation of the suit pending before the judged required to be recused.*
3. *If one of the parties is his servant, or if he habitually eats and lives with one of the parties in a same place, or if he received a gift from him before or after filing the suit.*
4. *If there is enmity or intimate relationship between him and one of the parties which probably disallows him to deliver a judgment without bias."* [560]

iv) Stepping down of judges

Articles 145 and 146 indicates the reasons and cases in which a judge can stepdown from hearing a case, either for personal reasons or because he feels uncomfortable in doing so.

Article 145 states: *"If the judge is competent to hear the suit, or if one of the reasons for his recusal has been established, he should inform the court in the discussion room or the Chief of the Court of First Instance, as the case may be, of the reason recused for permitting him to retire. The same shall be noted in special record to be kept with the court."* [561]

Article 146 states: *"The judge, may in cases other than provided for in Articles (142) and (144), if he feels for any reason it is embarrassing to hear the suit, may suggest to the court in the discussion room, his retirement or to Chief of the Court of First Instance to obtain his approval for recusal."* [562]

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[560] ibid
[561] ibid
[562] ibid

B) Public Prosecution

Members of the public prosecution are civil servants affiliated to the executive. There sole duty is to monitor the good application of the criminal law and to defend public interests and public order in the society. Article 64 of the Constitution states that: *"The Public Prosecution shall conduct criminal proceedings on behalf of Society. It shall supervise the affairs of criminal investigation and ensure the implementation of criminal laws, prosecution of offenders, and enforcement of judgements. The Law shall organize the Public Prosecution, regulate its jurisdiction, and specify the conditions and guarantees for those who exercise its functions. Public security authorities may by virtue of a law be exceptionally entrusted with conducting criminal proceedings in cases of misdemeanours and in accordance with the conditions prescribed by the Law".* [563]

Article 5 of the Public prosecution law 92/1999 sets the hierarchy of ranks within the Public prosecution as follows: The Attorney General, The Deputy Attorney General, The Assistant Attorneys General, The Public Prosecution Chiefs, The Principal Public Prosecution Agents, The Secondary Public Prosecution Agents and The Public Prosecution Assistants.[564]

Article 7 states the process of appointing the members of the public prosecution: *"The appointment to the Public Prosecution functions shall be decided by Royal Decree upon nomination by the Administrative Affairs Council stipulated in the Judicial Authority Law, on the basis of a suggestion by the Inspector General of Police and Customs, except for the function of the Public prosecution Assistant where appointment shall be decided by an Inspector General's decision following consent of the Council".*[565]

Article 11 states that: *"The Public Prosecution members shall take the following oath, prior to conducting their functions: (I swear by the Name of God, the Gracious, to deal honestly with the public action and endeavour to justly and objectively implement the laws and execute the sentences)".*[566]

The Public prosecution acts as a link between the executive and the judiciary. The Public prosecutors are giving guarantees and privileges similar to that given to judges. Article 8 states that: "*The Public Prosecution functions shall be deemed equal to the functions of*

[563] Oman Basic Statute of the State 1996, Official Gazette, Oman
[564] Oman Public Prosecution law, Royal Decree 92/1999, Official Gazette, Oman
[565] ibid
[566] ibid

judges as determined in the Table of judges' salaries, allowances and premiums, which shall constitute the subject of a Royal Decree. The provisions and organising the judges affairs regarding their appointment, promotion, seniority and control and other functional matters, shall be applicable to the Public Prosecution members, unless there is a special provision included herein. The Inspector General of Police and Customs shall be the minister competent in this regard". [567]

Article 9 states that: *"The provisions concerning judicial immunity and the procedures of the removal thereof, stipulated in the Judicial Authority Law, shall be applicable to the Public Prosecution members, save the Public Prosecution Assistants".* [568]

C) Judicial Assistants

Judicial assistants include lawyers, experts, translators and clerks.

a) Lawyers

Articles 1 and 3 of the Advocacy Law 41/2003 states that:

Article 1: *"The profession of law is a free profession which consists of the realisation of justice and affirms the sovereignty of the law by means of ensuring the right to defend litigants. While practicing their profession, lawyers shall only be guided by an awareness of the provisions of the law".*[569]

Article 3: "*The following shall be considered activities practiced by lawyers:*

(a) To appear with or on behalf of the concerned parties, before the competent legal authorities, arbitration authorities, public prosecutor, administrative committees having legal jurisdiction and other official investigative authorities, and to defend the parties concerned against cases filed by or against them.

(b) To provide legal opinions and advice to those parties who request the same.

(c) The draft contracts attestation and take necessary legal proceedings related to them".[570]

[567] ibid
[568] ibid
[569] Oman Advocacy law, Royal Decree 41/2003, Official Gazette, Oman
[570] ibid

Article 12 states that: "*To be entered into the General Register a person must be:*

(a) An Omani National.
(b) At least 21 years of age and of full legal capacity.

(c) Holder of a certificate in Shariah or law from one of the recognised universities or higher institutions.

(d) Of good reputation and have never been convicted of a crime or misdemeanour of an unconscionable or dishonest nature or have been dismissed from his position or profession for any of these reasons, unless he has been reinstated.

Any lawyer who fails to satisfy any of these conditions shall be removed from the Register by a decision of the Committee for Acceptance of Lawyers.

A lawyer may appeal against a decision to remove him from the Register within one month from the date of notification thereof. The appeal shall take place before the Circuit of Appeal established by Article 13. The decision of the Circuit of Appeal in this respect shall be final". [571]

Article 6 states that: *"The profession of law may not be combined with the following:*

a) *The rank of minister and equivalent*
b) *Position in the civil service or any authorities, public authorities or public organisations*
c) *Business activities*
d) *Working for companies, banks, associations or individuals*

However, the following activities may not be considered as a profession with which the practice of law is prohibited: membership of government scientific temporary committees or councils, temporary tasks which will not last for more than six months, teaching of law or Shariah in universities and higher institutes, membership in the Majlis Al-Shura or of the board of directors of joint stock companies". [572]

[571] ibid
[572] ibid

Article 13 states that: *"A lawyer who is entered in the Register for the first time shall take the following oath before the Circuit of Appeal which will be specified by the Minister of Justice:*

1hereby swear by Almighty God to practice the profession of law with honesty, honour and truthfulness and to preserve the confidentiality and customs of the profession and to respect the law". [573]

i) Right of Lawyers

Article 27 states that: *"A lawyer must be treated with the respect required for this profession".* [574]

Article 28 states that: *"A lawyer is free to decide whether or not to accept a retainer in a certain case, as he deems fit. He may follow the method which he considers effective in accordance with the principles of the profession, in defending the rights of his client and shall not be liable in respect of his verbal pleadings or written submissions which are necessary for his right of defence within the limits of the law and the ethics of the profession".*[575]

Article 29 states that: *"A lawyer is entitled to consider the cases and legal documents, and obtain statements related to such cases".* [576]

Article 30 states that: *"A lawyer is entitled, in all cases when he visits his imprisoned client at precautionary detention stations or public prisons to meet with his client in a decent place within the station or prison".* [577]

Article 32 states that: *"The office of a lawyer or such of his assets as are necessary for practicing his profession, may not be seized. In cases other than in flagrante delicto a lawyer may not be detained, nor his office be searched without permission from the Chairman of the Committee for Acceptance of Lawyers".*[578]

Article 46 states that: *"A lawyer is entitled to receive fees in consideration of his legal services and be refunded for the costs he bore in pursuing the activities he undertook. A*

[573] ibid
[574] ibid
[575] ibid
[576] ibid
[577] ibid
[578] ibid

lawyer shall charge his client in accordance with the contract made between them in this respect. If the agreed original case resulted in other counterclaims or services, the lawyer may claim for his fees in accordance with Article 49 hereof".[579]

Article 47 states that: *"If a lawyer settles a case amicably or by arbitration then he shall still be entitled to the fees agreed unless otherwise agreed. A lawyer is also entitled to his fees if his client terminates the power of attorney without a justifiable reason prior to the completion of the duty entrusted to him".* [580]

ii) Duties of Lawyers

Article 34 states that: *"A lawyer, in his professional and personal behaviour, must observe the principles of honesty and integrity. He shall carry out all the duties imposed by this law, and any other law and the ethics and customs of the profession".*[581]

Article 39 states that*: "A lawyer is liable to pay the court and investigative authorities due respect and honour, avoid anything that may delay the settlement of the case or breaches the progress of justice and shall be liable in his dealings with his colleagues to follow the rules of professional courtesy and the customs of the profession".*[582]

Article 35 states that: *"In such cases as the law provides, a lawyer must provide legal assistance to those who cannot afford the same. He has to carry out his duties by putting in the effort and care required. He may not withdraw from carrying out his duties unless the court accepts such withdrawal and appoints a replacement".*[583]

Article 36 states that: *"A lawyer shall refrain from testifying to the facts or information which he is aware of by virtue of carrying on his profession, unless such testimonies are aimed at preventing a crime".*[584]

Article 38 states that: *"A person who held a public or private position and relinquished the same, and practiced the profession of law, may not accept instructions to be assigned in a case against the party for which he used to work, for three years following the expiry of his relationship with such party. A person who practices legal activities after he left the judiciary*

[579] ibid
[580] ibid
[581] ibid
[582] ibid
[583] ibid
[584] ibid

may not accept, to be appointed personally or through a lawyer working for him, to undertake a case which was referred to him while he held such position".[585]

Article 40 states that: *"A lawyer must refrain from disclosing personal matters which damage his client's opponent or alleges matters related to honour and dignity unless doing so was necessary to defend the interests of his client"*.[586]

Article 41 states that: *"A lawyer may not be present before any court without a lawyer's gown as specified by the Committee for Acceptance of Lawyers"*.[587]

Article 42 states that: *"A lawyer must occupy a respectable office and be responsible for supervising the workers therein, monitoring their behaviour and ensuring that they effectively and honestly carry out their duties. He may appoint one or more of his staff to consider, submit and receive documents from any authority, receive judgements and carry out the procedures relating to enforcement of the same"*.[588]

Article 43 states that: *"A lawyer shall undertake to represent his client in relation to the subject in dispute and within the limits of his appointment and pursuant to his applications provided that he has the liberty to accommodate the case and adduce legal documents and evidence in accordance with sound practice. He must advise his client on the progress of the case and the decision and judgement made and shall provide him with advice related to appeal against the same if they were contrary to the client's interests"*.[589]

Article 44 states that: *"A lawyer has to keep confidential information made available by the client unless asked to disclose the same in order to protect the interests of the client in the subject case. A lawyer must refrain from offering any assistance including in the form of advice to his client's opponent in the subject dispute or in a dispute related thereto. In general, a lawyer is not permitted to represent conflicting interests"*.[590]

[585] ibid
[586] ibid
[587] ibid
[588] ibid
[589] ibid
[590] ibid

Article 45 states that: *"A lawyer, his spouse, or sons and daughters, may not personally or through an agent purchase all or part of any of disputed rights if he undertakes to defend the same".*[591]

Article 50 states that: *"Upon the expiry of his appointment for any reason whatsoever, a lawyer must return to his client the power of attorney and other documents related to the case for which he was appointed. A lawyer may, however, retain such documents and exhibits until his client pays him all fees due".*[592]

iii) Disciplinary Measures on Lawyers

Article 58 states that: *"Investigation of the respondent lawyer shall be carried out by one of the judges from the Circuit of Appeal to be appointed by the President of the Court for this purpose in accordance with a request of the Committee".*[593]

Article 60 states that: *"The lawyer is entitled to appoint another lawyer to defend him. The Committee may order that the lawyer concerned is present before the Committee".*[594]

Article 61 states that: *"The Committee may call any witnesses which it considers useful for the hearing to be present. If one of them fails to be present or refrains from submitting his testimony or perjures under oath, then he shall be referred to the complaint authority".*[595]

Article 62 states that: *"Subject to the quorum specified in Article 11 regarding the validity of the meeting, resolutions are made by the majority of votes. When the votes are equal the Chairman shall have the casting vote. To impose the punishment of removal of a name from the Register, it is required that the members of the Committee present unanimously agree to such removal. The decision of the Committee must be justifiable and the reasons for such decision must be specified when announced".*[596]

[591] ibid
[592] ibid
[593] ibid
[594] ibid
[595] ibid
[596] ibid

Article 63 states that: *"The decision of the Committee shall be notified to those parties concerned by a registered letter. The lawyer may appeal such decisions within 15 days from the date of notification. The Circuit of Appeal (Article 13) is empowered to settle such appeal after the hearing. Its decision in this respect shall be final".*[597]

Article 65 states that: *"The lawyer against whom a decision or a final disciplinary judgement to remove his name is made may, after at least three years, apply to have his name re-entered. The Committee may consider such application if it decides that the period lapsed was sufficient to rehabilitate the lawyer and remove the effects of his actions. If such application is dismissed, then the lawyer may not reapply until at least one year from the date of rejection".* [598]

b) Experts

There are cases where judges are not able to understand certain technical issues or topics. The law allows judges to call in experts in cases to give their opinion on certain topics or write down a report of the findings regarding the case in question.[599]

c) Translators

Article 27 of the CCCP states that: *"Arabic is the official language of litigation; no papers or documents shall be admissible unless it is written in Arabic or the translation of the same is enclosed with it. In all cases, the authenticity shall be for the Arabic version and the court may hear the testimony of the parties and witnesses who do not know Arabic through a translator on oath".*[600] As a result, Arabic is the language of judicial proceedings and translators become necessary.

[597] ibid
[598] ibid
[599] Al Abri, Ibrahim, *Al Qada'a fi Oman,* Cairo, Markaz Al Ghandoor, 2012, p.110
[600] Oman's *Code of Civil and Commercial Procedure,* Amendments by Royal Decree 119/2006, Official gazette, Oman

Article 10 of the Translation and its Profession law 18/2003 states the requirements to work in the profession of legal translation:[601]

a) An Omani citizen.
b) A minimum of 21 years of age
c) Civically qualified
d) Good reputation and behaviour
e) Proficient in Arabic writing and speaking
f) Has a qualification that is approved and recognized
g) Has the minimum experience of five years in translation related tasks
h) Has no criminal record
i) Has chosen a suitable place to conduct his work.

d) Clerks

Article 25 of the CCCP states that: *"A clerk must attend the session in all the evidential proceedings to take minutes and to sign it along with the judge, otherwise the action will be void."* [602]

5.5.3 Judicial Independence in Oman

The judiciary in Oman witnessed a remarkable development towards achieving a full judicial independence. This was highlighted by the issuance of Royal Decree (25/2011) establishing the independence of the Public Prosecution financially and administratively. The Public Prosecutor assumed the roles of the Inspector General for Police and Customs outlined in the Public Prosecution law. In 2012, Royal Decree 10/2012 was issued dealing with judicial administration and to which a full judicial independence was achieved. The law moved the jurisdiction over to the courts, the Department for Judicial Review and the employees working in those institutions alongside the financial benefits allocated to them from the Ministry of Justice to the Administrative Affairs Council mentioned in the Judicial Authority law. The head of the council was given the competencies and powers previously given to the Minister for Justice. Article 6 of the same Decree further shifted the competencies and powers of the Minister for the Royal Court over the Administrative court to the Head of the Administrative Court.

[601] Oman Translation and its Profession law, Royal Decree 18/2003, Official gazette, Oman
[602] Oman's *Code of Civil and Commercial Procedure,* Amended by Royal Decree 119/2006, Official gazette, Oman

As a result, the judiciary in Oman became fully independent from any other legislative or executive body. The Supreme Judicial Council has been reformed by Royal Decree 9/2012. The council is formed of the Sultan and the membership of: [603]

1) The Head of the Supreme Court (Vice-President)
2) The Head of the Administrative Court
3) The Public Prosecutor
4) The most senior Vice-President of the Supreme Court
5) The Head of the Shariah Court department in the Supreme Court
6) The Vice-President of the Administrative Court
7) The most senior Head of a Court of Appeal

Through this historical background to the stages of development the Omani judiciary encountered, it is clear that the Omani government direct its policies towards modernisation and gradual development across all sectors, and most importantly, the development of the judiciary. The Sultanate is still continuing in taking careful and calculated steps to reach the finest means to modernization and development. Although the Omani renaissance started late compared with other Arabic and Islamic countries, the judicial system reached a good level of development and impartiality. This, however, does not mean that efforts should stop in seeking the development of the judiciary and increasing its efficiency.

5.6 Conclusion and Recommendations

In conclusion, this chapter analysed the third pillar of the rule of law that is, 'The concept of accessibility, impartiality and judicial independence. The first part defined the concept. For the purpose of this study, the definition of the concept consists of fulfilling the elements of accessibility of the justice system, impartiality of the judges and those working in the judiciary and judicial independence.

The second section explained the concept of accessibility. It then outlined the methods for effective access to court and the obstacles that act as barriers to the accessibility. It then explores the consequence of having high legal costs and high costs for legal representation.

[603] Supreme Judicial Council issued by Royal Decree 93/99, Amended by Royal Decree 9/2012, Official gazette, Oman

Finally, the section ends by discussing access to a fair trial and the enforcement of decisions. Procedural guarantees, length of proceedings and the enforcement of the decisions are briefly explained.

The third section explained the concept of impartiality. The section started by defining the concept, followed by highlighting the significance of the concept. It also explained the integration of impartiality with the concept of judicial independence. Further, the section outlined the common conceptions among people of judicial partiality. It includes personal interests, relational interests, political interests or personal biases. Each conception is described briefly. The section then explored the different dimensions of impartiality, which include: procedural dimension, ethical dimension and political dimension. Finally, the section ends by highlighting the methods of regulating the dimensions of impartiality.

The fourth section explained the concept of judicial independence. The concept in international treaties and conventions is outlined, followed by the concept and its enshrinement in constitutions. Finally, it explored the concept in legislation and in Islamic theology. In the section of the concept in Islam, the components of judicial independence are outlined. This includes: impartiality, specialization and *ijtihad.* The section then outlined the modern elements of judicial independence, which include: judicial integrity, judicial impartiality, and specialisation and judicial diligence. Each element has been described briefly. The section then explored the concept of separation of powers and its significance. It also explained the methods on how the legislature and the executive may influence the judiciary and the consequences of such interferences.

The fifth section highlighted the concept in Oman and its current situation. The first section explored the principals of judicial administration in Oman. It then outlined the judicial personnel and their assistants. It outlined the methods of judicial appointments, promotion and impeachment. It also covered the methods of judicial immunity and protection. Moreover, the public prosecution and its organization is outlined. Furthermore, the section highlighted the rights and duties of lawyers and regulations surrounding judicial assistants. Finally, the situation of judicial independence in Oman was analysed.

Based on the survey conducted, factors seven and eight represent the concept of accessibility, impartiality and judicial independence. Oman was ranked 3rd in both factors in the region with an average score of (0.55). Accessibility and affordability of the civil justice system was perceived negatively by the respondents. Efforts should be made to make the justice system

more affordable and reduce delays in adjudicating cases. Further, the process in which judges are appointed should be reviewed, as many judges lack the necessary experience to adjudicate cases more efficiently and cohesively. Judges appointment in Oman is currently based on qualifying law or Shariah graduates to the role via the two-year judge programme provided by the Higher Judicial Institute. The candidate is then appointed as an assistant judge for another two to three years before promoted a second judge at the primary court. This method of appointment was suitable at the beginning of the renaissance period, as judges were needed urgently and to be qualified quickly with the basic legal knowledge required at that time. However, this method of appointment is not suitable today. The modern development of the state and the rapid development of economic relations between states, requires a judiciary that is aware of the changes and is up to date with all the legal issues arising from such development. A new method should be considered, and it is beyond the scope of the researcher to go into details of the methods of appointment available. Moreover, the method of promotion of judges in Oman should be reconsidered. At the time being, promotions are made based on the seniority of the judge. A review of the judge performance is considered; however, seniority plays the major part on the decision making of the promotion. This should be reviewed, as the seniority of the judge does not mean that he is more qualified for holding a higher position. A more efficient method of assessing the judge's performance annually should be in place and the promotions should rely fully on this. Although judicial inspection does exist in the Omani judiciary, it needs reform. It currently consists of judges headed by the Head of the Supreme Court. More specialized personnel in judicial inspection should be in place and are qualified in this field. Judicial inspection consists of legal and administrative issues. The legal inspection could be carried by senior and experienced judges, while the administrative affairs should be inspected by more specialized personnel in legal administration. Finally, there should be a more modern and computerized court procedures. This will help reduce backlog of cases and increase the speed of dispute settlement.

Moreover, discrimination in the civil and criminal justice system is negatively perceived by respondents. The main reasons for discrimination, based on the survey respondents, were social status and ethnicity. This is alarming, and the decision makers in Oman should focus their efforts in reducing such cases. Further, it is also perceived that there is government influence on the work of the judiciary. This is worrying, as the integrity and impartiality of the judicial system is undermined. The legislations and the constitution clearly indicated the

separation of powers and the independence of the judiciary. It further emphasized the non-interference in the judiciary's work or undermine the impartiality of the judge.

Unreasonable delay of case adjudication is a serious problem facing the judiciary in Oman today. Digitalisation of court procedures and raising awareness to the available alternative dispute resolution methods are ways to improve the situation. Finally, the correctional institutions in the criminal justice system and its effectiveness are perceived the lowest in the survey (0.28). The majority of the respondents think that that prisons and other correctional institutions in the Sultanate does not perform its tasks well. All correctional institutions in Oman should be reviewed and the rehabilitation programs revised.

These are urgent areas that should be addressed immediately. Access to civil and criminal justice is directly linked to the economic opportunities that Oman is seeking. Without having an efficient and effective justice system, foreign investors would not risk investing in Oman. Furthermore, insuring the non-interference of the executive on the judiciary would further enhance the judicial independence in the Sultanate. A more efficient judicial review system should be in place to ensure the integrity and impartiality of the justice system.

This chapter analysed the third pillar of the rule of law and identified the weaknesses of the concept in Oman. The researcher classified the reform proposals for this concept as short-term goals to be achieved by the reformers in Oman. Accessibility of the judicial institutions and the backlog of cases is an urgent problem affecting the efficiency and effectiveness of the courts. Furthermore, legal aid and legal clinics are very limited, and thus hinders access to justice for the poor and marginalised. Oman could learn from the experiences of other countries in this area of reform. Further, Omani reformers could learn from Omani traditional organisation of the adjudication process and how justice was served swiftly. The section explored the different methods of judicial appointment, disqualification, and oversight. It also explored the methods followed by the different countries on regulating it. Oman should focus its efforts on enhancing the methods of judicial selection and to ensure that the judges receive a good amount of training and personal development assessments. Finding guarantees to ensure the independence of the judiciary should be addressed, and judicial review should be respected and developed. The chapter also translated many Omani laws into English, which were not available before the writing of this thesis. The next chapter analyses the fourth and final pillar of the Rule of Law: 'Fundamental Rights and how to better preserve them'. It also discusses the significance of establishing a Constitutional Court in Oman.

Chapter 6

The Concept of 'Fundamental Rights' and the Significance of Establishing a 'Constitutional Court'

6.0 Introduction

The fourth and final pillar of the concept of the Rule of Law is that the "laws protect fundamental rights, including the security of persons and property: are clear, publicized, stable, and just; and are applied evenly" [604]. This chapter will examine each of those notions, try to identify the weaknesses in the current judicial system in Oman in those areas and propose reform recommendations to improve the current status of the Judiciary. It will further look into the significance of establishing a Constitutional Court in Oman and its role in clarifying and deciding on any ambiguity on the laws or a possible clash between the laws and the constitution. Finally, the chapter will seek to look into the controversy surrounding Article 2 of the Basic Statute and the possible solutions to such a situation.

To reach a conclusion and a set of recommendations to the above stated objective, the chapter is divided into eight parts. The first part introduces Fundamental Rights and the different definitions to the term are outlined. The second part outlines the historical development of Human Rights starting from Mesopotamia and ending with our modern time definition to the term. The third part discusses the international recognition to Fundamental rights. The fourth part outlines the sources of Human Rights, including International sources, National sources and the Religious sources. The fifth part examines the human rights situation in Oman. The sixth part discusses the role of constitutional supervision in protecting Fundamental rights. The seventh part discusses the possibility of establishing a Constitutional Court in Oman. This part first brings forward the current situation in Oman regarding the constitutionality of laws and legislations promulgated. The second part outlines the theories surrounding Constitutional Courts and their significance. The third part examines the role, function and members of the prospective Constitutional Court in Oman. The fourth part discusses Article 2 of the Omani constitution and the controversy surrounding it. The fifth and final part examines the possible role of the Constitutional Court in solving the problems arising from Article 2 of the Omani constitution. The eighth and final part of the chapter draws a conclusion and set forward recommendations to the Omani government regarding the concept of fundamental Rights and the importance of establishing a Constitutional Court.

[604] Online Source: www.worldjusticeproject.org/what-rule-law.

6.1 Fundamental Rights

The concept of Human Rights has always been a major topic at the international forums. This concept became the main axes to which the political, social, cultural and intellectual relations circulate around.[605] The merit to achieving this global attention to Human Rights goes to the realisation of the international community of the value and high importance of the integrity of the human being. This realisation was a consequence of the remorse caused by the previous inhuman experiences that the world suffered.[606]

There is no doubt that the prevailing philosophy within the international community was to protect individual rights with all the available instruments. This was achieved through expanding international mechanisms for the protection of human rights by establishing a new legal system that has been enforced by substantial guarantees. The field of International Humanitarian Law was enriched by a large number of laws, treaties and declarations.

The concept of Human Rights consists of rights and freedoms that everyone should enjoy in their relations with each other or with the state. Human rights issues do not represent a general abstract concept, but it is linked to intellectual, ideological and historical sides.[607]

6.1.1 A Definition

It is difficult to give a comprehensive definition for Fundamental Rights (Human Rights), however, some scholars and institutions tried explaining the term. The UN Human Rights Commission defined those rights in Article 2 of the Universal Declaration as: "*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….*"[608].

According to the World Justice Project 'Rule of Law Index', fundamental rights include effective enforcement of laws that ensure equal protection, the right to life and security of the person, due process of law and the rights of the accused, freedom of opinion and expression, freedom of belief and religion, the right to privacy, freedom of assembly and association, and

[605] Fischer, Dana D. *"The International Protection of Human Rights."* Proceedings of the Academy of Political Science, vol. 32, no. 4, 1977, pp. 44–55.
[606] ibid
[607] Cornelius Murphy, *Ideological Interpretations of Human Rights*, 21 DePaul L. Rev. 286 (1972).
[608] Online source: www.un.org/en/universal-declaration-human-rights/

fundamental labour rights, including the right to collective bargaining, the prohibition of forced and child labour, and the elimination of discrimination.[609]

Within the Omani legislation, Article 17 of the 1996 Basic Statute of the State defined the term as: *"All citizens are equal before the law and share the same public rights and duties. There shall be no discrimination amongst them on the ground of gender, origin, colour, language, religion, sect domicile, or social status*".[610]

Professor Rene Cassin defined Human Rights as a special branch of social science dealing with the relationships between people, based on human dignity, and that determines the rights and licenses necessary for the prosperity of every human being[611].

Professor Karel Vasak proposed another definition for the term by defining it as a science associated to the individual, in particular the working individual, that lives within the boundaries of a state, and should benefit from the protection of the law when accused of a crime or being the victim of a crime. This is achieved by the intervention of the national judge and international organizations. Furthermore, he emphasized that the rights of all individuals, particularly the right to equality, should be consistent with the requirements of public order[612].

Based on the above-mentioned definitions, a definition for the purpose of this study is extracted. Fundamental Rights could be defined as those rights that are owned and enjoyed by every human being. Those rights seek to prosper, and progress humanity and all individuals enjoy the protection those rights give to victims of violations. Further, those rights should be consistent with the overall public order and may not be waived, should be applied without distinction to race, colour, sex, language, religion, political opinion or any other opinion, national or social origin or property. Such rights impose on both constitutional and international laws, the duty to respect and protect the application of such rights as provided for in the international and regional instruments and other mechanisms designed to protect those fundamental freedoms.

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[609] Online Source: https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017–2018/methodology
[610] Oman Basic Statute of the State 1996, Official Gazette, Oman
[611] Ishay, M., *The History of Human Rights: From Ancient Times to the Globalization Era*, University of California Press, 2008, page 3
[612] Brems, E., *Human Rights: Universality and Diversity*, Martinus Nijhoff Publishers, 2001, page 439

6.2 The Historical Development of Human Rights

The first signs of human rights emerged during the successive civilizations in ancient times in the period leading to the 5th century AD.

6.2.1 Human Rights in Mesopotamia

According to historical documents and the opinions of jurists, Mesopotamia was the birthplace of legislation and law. It was in Mesopotamia that the first human populations were formed, which as a result formed the first form of a state and its organization, politically, economically and socially.[613]

The development of the laws in Mesopotamia was dictated by different circumstances, most importantly was the development of thought, which was the hallmark of individuals during that period. This led to the development of the law, which is the basic premise to regulate the relations and to mount the rights and duties of the parties to the forms of economic and social relations. Despite the rigidness of the old Mesopotamian laws, it represents the first human experience in this field. Within the old Mesopotamian laws, the king was marked as no different from the rest of the people, delegated by the gods to rule the people. The king was charged with championing the oppressed and avenging them[614].

The code of Hammurabi contributed to a large extent in applying justice in order to end the injustice suffered by the weak from the powerful. The codification of the norms that listed the rights of the citizens came alongside the rise of the central government in Mesopotamia, which focused on the development of the legislative basis for those norms[615].

6.2.2 Human rights in Judaism

Judaism confirmed the rights of people by focusing on freeing the individual and the community and setting a goal that should be reached to achieve humanitarian integration. It also focused on the right to freedom from oppression, spread the values of justice and equality and getting rid of slavery[616].

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[613] McIntosh, J., *Ancient Mesopotamia: New Perspectives*, ABC-CLIO, 2005, page 157
[614] ibid
[615] ibid
[616] Witte, J. and Green, C., *Religion and Human Rights: An Introduction*, Oxford University Press, USA, 2011, page 34

The Prophet Moses's Ten Commandments calls for a range of human rights and freedoms. The Ten Commandments state: "You shall have no other gods before Me, You shall not make idols, You shall not take the name of the LORD your God in vain, Remember the Sabbath day, to keep it holy, Honour your father and your mother, You shall not murder, You shall not commit adultery, You shall not steal, You shall not bear false witness against your neighbour, You shall not covet"[617].

6.2.3 Human Rights in Christianity

Christianity calls upon unification and attention to human rights and fundamental freedoms. It stresses on the human's dignity that deserves attention and appreciation and on love and peace between people, to protect the weak and to uphold people's right, abolish slavery and hatred between people and the abolition of the death sentence[618]. The teachings of the Prophet Jesus showed clearly the values of equality and respect to others privacy. It gave the individual a high status asserting that human beings are brothers from single parenthood[619].

6.2.4 Human Rights in Islam

The Quran is the first Islamic document establishing human rights.[620] Those rights are found through the different verses of the Quran and are characterised as being general and absolute and in other occasions as specific. The Quran, and the verses mentioning the human rights, are surrounded by an aura of sanctity and respect by all Muslims. Human rights in Islam stands on four divine basic pillars, which are: succession of the human in earth, honouring the human, faith and work.[621] Those pillars call for freedom, equality, justice and consultation.

A) Human Rights from the Quran

The Quran contain one hundred and fifty verses about creation and its derivatives and about equality in creation:

(49:14) *"O mankind, We have created you from a male and a female; and We have made you into tribes and sub-tribes that you may recognize one another. Verily, the most honourable*

[617] ibid
[618] John Witte, Jr, Frank S. Alexander, *Christianity and Human Rights: An Introduction*, Cambridge University Press, 2010, page 87
[619] ibid
[620] Oh, Irene. *"Islamic Voices and the Definition of Human Rights."* Journal of Church and State, vol. 53, no. 3, 2011, pp. 376–400.
[621] ibid

among you, in the sight of God, is he who is the most righteous among you. Surely, God is All-knowing, All-Aware".[622]

The Quran also cited justice and what represents it in fifty-four verses and contain three hundred and twenty verses forbidding injustice, evil and indecency:

(16:91) *"Verily, God enjoins justice, and the doing of good to others; and giving like kindred; and forbids indecency, and manifest evil, and wrongful transgression. He admonished you that you may take heed".*[623]

(55:10) *"So weigh all things in justice and fall not short of the measure"*[624].

Furthermore, the meaning of dignity and honour appeared in twenty verses and consultation was cited twice:

(17:71) "*Indeed, We have honoured the children of Adam, and carried them by land and sea, and given them of good things and exalted them far above many of those whom We have created". [625]*

(42:39) *"And those who hearken to their Lord, and observe Prayer, and whose affairs are decided by mutual consultation, and who spend out of what We have provided for them*".[626]

(3:160) *"And it is by the great mercy of God that thou art kind towards them, and if thou had been rough and hard-hearted, they would surely have dispersed from around thee. So pardon them and ask forgiveness for them, and consult them in matters of administration; and when thou art determined, then put thy trust in God. Surely, God loves those who put their trust in Him".*[627]

The meaning of freedom of religion and belief, the establishment of self-belief through conviction, and the prevention of coercion appeared in more than one hundred and twenty verses:

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[622] The Holy Quran, Surat Al Hujurat (49:14)
[623] The Holy Quran, Surat Al Nahl (16:91)
[624] The Holy Quran, Surat Al Rahman
[625] The Holy Quran, Surat Al Isra, (17:71)
[626] The Holy Quran, Surat Al Shura, (42:39)
[627] The Holy Quran, Surah Al Emran, (3:160)

(2:257) *"There should be no compulsion in religion".*[628]

(10:100) *"..... Wilt thou, then, force men to become believers?"* [629]

(18:30) *"And say, 'It is the truth from your Lord; wherefore let him who will, believe, and let him who will, disbelieve".*[630]

Lastly, and in order to protect the right to life, the Quran cited the following verse:

(5:33) *"On account of this, We prescribed for the children of Israel that whosoever killed a person — unless it be for killing a person or for creating disorder in the land — it shall be as if he had killed all mankind; and whoso gave life to one, it shall be as if he had given life to all mankind"*[631].

B) Human Rights from the Sunna

The Sunna is the second source of legislation, after the Quran, and is the actual application of the rules and principles set in the Quran. The word 'right' appeared in different contexts and usages, such as: "The right of a Muslim on a Muslim five: replying the greeting, visiting the sick, attending funerals, accepting an invitation and blessing the sneezer". The Sunna also cited the right of the child to his parents and the rights of the neighbour[632]. There are also many treaties signed by the Prophet Mohammed, such as the treaty of Hudaibiyah in 6 A.H, and his last speech before his death in 10 A.H, which highlighted the importance of the individual and the importance of the harmony between people.

In 622 A.D, the first Islamic state was formed in Medina. The Prophet Mohammed issued a charter with the people of Medina when he first arrived. This charter is characterised by its advanced capability in organising the relations between the social and political formations found in this new society. It also served as the first step in establishing the civil and social rights in Islam. In his book 'Al Seerah Al Nabawiyyah', Ibn Hisham presented the outline of the Charter and its fifty-one articles[633]. The charter stated: "This is a document from

[628] The Holy Quran, Surah Al Baqarah, (2:257)
[629] The Holy Quran, Surah Al Yunus, (10:100)
[630] The Holy Quran, Surat Al Kahf, (18:30)
[631] The Holy Quran, Surat Al Ma'idah, (5:33)
[632] Ibn Hisham, *Al Seerah Al Nabawiyyah,* Beirut, Dar Al Ma'rifa, 1990
[633] ibid

Muhammad the Prophet (may God bless him and grant him peace), governing relations between the Believers i.e. Muslims of Quraysh and Yathrib and those who followed them and worked hard with them. The charter was an invitation from the Prophet to all the tribes in the area to gather and agree upon supreme principles, among them are:

1. They form one nation
2. In case of war with anybody they will redeem their prisoners with kindness and justice common among Believers.
3. Those Jews who follow the Believers will be helped and will be treated with equality.
4. No Jew will be wronged for being a Jew.
5. The Jews of Bani Awf will be treated as one community with the Believers. The Jews have their religion. This will also apply to their freedmen. The exception will be those who act unjustly and sinfully. By so doing the wrong themselves and their families.
6. They (parties to this Pact) must seek mutual advice and consultation.

6.2.5 Human Rights in the Modern Era

Attention to human rights on the modern era began through regional and international declarations and covenants. Those documents formed a kind of a universal guidebook, covering the area of individual relations and the community and the laws that set the rules. Such laws and rules decreased the ultimate sovereignty that the rulers used to have.

The first attempt to protect human rights internationally was modest, as its interests were restricted to certain cases. The first attempts focused on the abolition of slave trade, which resulted to the enactment of the first international human rights law. Later on, an interest appeared in the affairs of the working class and efforts were made to provide international protection to the social and economic rights. Montesquieu called for defending the rights of the individual and his freedoms and his right to practice whatever he likes as long as it is not an illegal act[634].

There were a number of revolutions that led to the announcement of many declarations emphasizing on human rights and its protection. The English revolution led to the

[634] Montesquieu, *The Spirit of the Laws*, Cambridge University Press, 1989

announcement of the Magna Carta in 1215[635], the American revolution led to the announcement of the Bill of Rights in 1779[636] and the French Revolution led to the announcement of the French declaration of Human Rights and the citizen in 1789.[637]

The United Nations is the leading international organization in the field of human rights and fundamental freedoms. The third paragraph of the first article of the Charter states that the purpose of the United Nations is : "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;". The Charter contain within it effective mechanisms to help maintain and respect human rights by member states.

6.3 International Recognition

The exclusiveness of human rights is due to it being a property for the individual by describing him as a human being that cannot be deprived from the essence of these rights in any circumstances. Those rights are inherent to human beings and therefore, the state is obliged to secure those rights to all individuals whom are subject to its jurisdiction. The universality of human rights is confirmed by this, as those rights are rooted in all the members of humanity and are inalienable for human beings.

The United Nations focused on the task of preparing a document that aims to clarify the essence of the Basic Rights mentioned in the UN Charter. This task was achieved by the issuance of the Universal Declaration of Human Rights on December 10, 1948, after the approval of the UN General Assembly. A proposal was presented to issue a Declaration of Fundamental Rights that represents the common standard to which all nations should aim to achieve. The Declaration consisted of a preamble and 34 Articles. The preamble confirmed the unity of the mankind family and the dignity and value of the individual. It further referred to the link between human rights and the prevalence of justice and peace in the world.

The first Article of the Declaration emphasizes on the above stated pillars. The second Article states that each individual is entitled to enjoy all rights and freedoms set forth in the

[635] Carpenter, D., *Magna Carta*. London: Penguin Classics, 2015
[636] Fradin, D., *The Bill of Rights*. Tarrytown, N.Y.: Marshall Cavendish Benchmark, 2009
[637] Goldstein, M., *Social and political thought of the French Revolution, 1788-1797*. New York: P. Lang, 1997

Declaration without distinction of any kind, particularly discrimination based on race, sex, language, religion or political opinion. The Declaration calls upon two types of Rights: Traditional Civil and Political Rights, which started to flourish during the eighteenth and nineteenth century, and the modern Economic, Social and Cultural Rights, which became adopted by modern constitutions.

6.4 Sources of Human Rights

The sources of Human Rights in the global community are the legal sources officially adopted in various sects and countries, most important of them are: legislation, custom, jurisprudence, the judiciary, conventions, and Shariah law specifically for Islamic countries. However, the sources of Human Rights in the modern global community are three: International legal sources, National legal sources and Religious sources[638].

6.4.1 International Legal Sources

International legal sources are seen by some as a source for forming the majority of the current domestic humanitarian laws, which includes: custom, international treaties, Jurisprudence, the Judiciary and international organizations resolutions[639].

a. Custom

Customary rules may be defined as a set of unwritten general legal provisions that arise as a result of the repetition of doing certain actions, with the proof of its dependence by the majority of the international community as to its legal powers. Custom played an important role in the development and the emergence of the concept of human rights. Scholars described custom as a behaviour that emerges alongside a state conduct when facing a legal strain and is frequently used by that state. In order for the custom to be adhered to by the international sphere, the custom should have a moral and material side[640].

b. International Conventions

International conventions are considered to be the most important binding sources in the field of human rights[641]. This is due to it containing a provision that binds different nations to its

[638]Simma and Alston, *The Sources of Human Rights Law*, Australian Year Book of International Law, 1989, page 84
[639] ibid
[640] ibid
[641] ibid

legal provisions when signing the conventions. Those conventions are considered to be the direct international source for the International Law base, whether it be in a bilateral or multilateral dimension, alongside custom.

It must be emphasised that human right treaties have been enacted for the purpose of securing an effective protection for human rights, insuring a non-violation to those rights and to promote respect to them. An example of those international conventions in the field of human rights are: The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights[642].

c. International Organisations Regulations

The reliance on Regulations of the International organisations emerged with the developments experienced by the international community. International organisations regulations may be defined as any legislation enacted by a legislative body of a global international organisation. The regulations maybe in the form of a resolution, recommendation, declaration, convention, charter, decision or a statement[643]. All those different forms are new legal rules facilitated by the International organisations[644].

The regulations contributed to the formation of the human rights legal norms and influenced the customary norms related to those rights. This influence was in the form of referencing them and issuing decisions that explained how to protect those rights and the obligations set on Member states by the different international organizations regarding the protection of those rights. As a result, there has been an effective role played by the international organisations in the area of guiding the authorities of the different member states to the right path when legislating the different laws, and the different civil and criminal laws that has to be available to ensure that those rights are properly protected.

d. Jurisprudence

Jurisprudence is the group of scientific research and studies related to international or national law, in addition to the analysis and explanation of human rights in the humanity sciences.[645] The Statute of the International Court of Justice approved the opinions of jurists,

[642] ibid
[643] ibid
[644] ibid
[645] Hart, H., *Definition and theory in jurisprudence*. Oxford: Clarendon Pr., 1975.

alongside the decisions made by the courts in different countries and civilizations, as a possible substitute to the international law bases.

e. The Judiciary

The legal sources for the bases of human rights include the international and national judicial decisions. Those decisions were adduced by the combined efforts of the judges from different jurisdictions in order to place legal rules and principles specific to human rights and capable of being enforced. Judicial decisions are also considered to be a source of public international law.

International law as a source for national laws in the field of human rights ensures the fusion between national and international law from one side, and the supremacy of international law over national laws in the field of human rights on the other.[646] Moreover, this phenomenon may have positive effects in the efforts of developing international comparative law for the sake of uniformity or agreement on the most important humanitarian issues.[647]

6.4.2 National Legal Sources

National legal sources are linked to the human rights protection legal texts found in the national constitutions, legislations, customs and judicial decisions. Furthermore, national legal sources could be derived from the international legal sources, such as the inclusion of the universal declaration of human rights, The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights issued by the UN in the constitutions of some member states.

Nonetheless, it has to be emphasised that whether the national sources are developed nationally or by means of transplantation from international sources, the national sources are considered always to be superior. The person whose rights are being violated seeks protection under the national laws, which means that national law prevails over international law in the field of human rights.

[646] Pierre-Hugues Verdier, and Mila Versteeg. *"International Law in National Legal Systems: An Empirical Investigation."* The American Journal of International Law, vol. 109, no. 3, 2015, pp. 514–533
[647] ibid

6.4.3 Religious Sources

The religious sources are one of the oldest sources for human rights protection.[648] Those sources helped to uphold the value of human beings and their dignity. For example, Christianity and Judaism focused on supporting the relations between people and God and called upon the importance of liberating the human from humiliation and insult. It further shaped society into a society dominated by freedoms and respect to human rights, when it emphasized the right to life for the individual. Furthermore, it called upon the principle of equality between individuals. In addition, Islamic Shariah was a complete system that refused tyranny. It upheld the primacy of the human and entrusted the individual with the responsibility of choice, which due to the rules of Shariah became an issue that required the consensus of the nation[649].

In summary, the human rights sources seek to achieve one goal, i.e. to protect the human and to defend his dignity, rights and freedoms from all violations, which might prejudice the integrity of the human. This goal is the aspiration of all the different legal systems in the world. Further, the topic of human rights should not only be a theoretical topic but should transform into an important and fundamental topic carried on by all the community institutions starting from the family, the schools and the universities. In addition, the role of the media should not be neglected in this field. This all could insure the development of the individual fundamental rights and insures that no violations to human rights occur.

6.5 Human Rights in Oman

Article 2 of the Universal Declaration of Human Rights defined civil rights as the entitlement of every person to those rights and freedoms set forth in the 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.[650] From this definition set forward by the UN, a further definition to those civil rights can be made. Those rights can be characterized as rights that are inherent to the human, protected by systems and legislation and cannot be waived or chosen from.

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[648] Henkin, Louis. *"Religion, Religions, and Human Rights."* The Journal of Religious Ethics, vol. 26, no. 2, 1998, pp. 229–239.
[649] Simma and Alston, *The Sources of Human Rights Law*, Australian Year Book of International Law, 1989, page 84
[650] Online Source: http://www.un.org/en/universal-declaration-human-rights/

Within the Omani legislation, there are a number of civil rights outlined for both Omani citizens and the residents. The next part of the section will outline those rights and the mechanisms available to protect them. It will later identify the weaknesses in the current legal system in this area and the policy recommendations to rectify such deficiencies.

The social, economic and intellectual development of the Omani society resulted in the announcement of the Basic statute of the state in 1996. The constitution was amended once in the year 2011, giving the citizens more rights and freedoms, corresponding to the development happening. The Omani constitution contains within it many rights and freedoms and is to some extent democratic containing the traditional fundamental rights and affirming the right of the citizens to participate in public affairs.

The Omani Basic Law of the State 1996 provides for accountability, government limited by law, protection for fundamental rights and personal freedoms, and power divided between the three branches of government with an independent judiciary.

The Basic Law dedicates its third chapter (Articles 15-40) to public rights and duties, covering what could be classified as criminal rights, personal liberties and civil rights, and social duties. (Article 16) provides for the protection against retrospectivity in criminal law(Article 17) refers to habeas corpus(Article 18), access to legal representation(Article 19), protection from unlawful and arbitrary detention(Article 20), and prohibits torture, enticement and ill treatment.(Article 21) It also covers personal liberties and civil rights including the right to litigation(Article 22), protection from trespass on the home or the person(Article 23), religious freedom(Article 24), freedom of expression(Article 25), freedom and privacy of correspondence(Article 26), freedom of press and publication(Article 27), and freedom of association and assembly.(Article 28) The constitution, therefore, provides what seems like a comprehensive list of fundamental rights and freedoms. The question, however, is to what extent are those rights protected and implemented by the courts? How should the courts adjudicate disputes arising from fundamental rights provisions? What are the advantages of having a constitutional court in Oman?

Oman Human Rights Commission was established in 2008 by the promulgation of Royal Decree 124/2008. Article 1 in the royal decree no. 10/2010 identified the commission's members that represent various governmental and non-governmental institutions.[651] The

[651] Oman Human Rights Commission law, Royal Decree 124/2008, Official Gazette, Oman

commission consists of fourteen members representing the State Council, Consultative Council, Oman Chamber of Commerce and Industry, General Federation of Oman Trade Unions, a member from the field of law, three representatives from non-governmental organisations, and representatives from Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Social Development, Ministry of Justice, Ministry of Manpower, and Ministry of Civil Services. Article 7 of the royal decree no. 124/2008 defined the commission's specializations as follows: (1) Observe human rights protection in Oman in line with the basic statute of the State and the international charters and conventions, (2) Follow up with the observations of foreign governments and international governmental and non-governmental organizations in relation to human rights in Oman and coordinate with the specified authorities to take the required actions, (3) Provide guidance to related authorities in the country in the issues related to human rights and freedoms and prepare the reports that discuss this field, (4) Monitor human rights violations in the country and take the necessary procedures for their settlement, and (5) Propose an annual plan that includes the procedures of disseminating the culture of human rights, present it to the Council of Ministers for approval and coordinate with the specified authorities for the implementation.[652]

The compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 for Oman, published in November 2015, highlighted few concerns regarding the situation of Human Rights in the Sultanate.

Among those concerns was the constitutional and legislative framework of the Sultanate regarding the protection of freedom of peaceful assembly. The Special Rapporteur on the rights to freedom of peaceful assembly stated that the rights of peaceful assembly and non-discrimination were guaranteed only to Omani citizens. Furthermore, he stated that a number of laws placed limits on assembly rights that were vague and susceptible to misuse by the authorities. Oman replied to the comments by stating that the law prioritized public convenience over disturbance, and peace and quiet over commotion or the use of a device that might annoy bystanders or other practices going beyond the bounds of peaceful assembly or freedom of expression. Moreover, UNESCO recommended that Oman introduce an access to information law that is in accordance with international standards. Also, UNHRC recommended that Oman adopt national asylum legislation.

[652] ibid

Another concern was the institutional and human rights infrastructure and policy measures adopted in Oman. The Committee on the Elimination of Discrimination against Women noted the lack of awareness about CEDAW among the judiciary. It called on Oman to disseminate CEDAW and to train the judiciary and members of the legal profession on its implementation. Furthermore, the Committee was concerned that in Omani legislation there was no explicit prohibition of de jure and de facto discrimination against women in all areas of life, and that equality between women and men was limited to the area of public rights and did not extend to the private-sphere relations of the family and marriage.

Regarding the right to life, liberty and security of the person, the UNHRC recommended that Oman: (a) ensure that unidentified victims of trafficking are not punished for acts committed as a direct result of being subjected to human trafficking, such as immigration violations or prostitution; (b) enacted and enforced strict penalties for employers withholding their employees' passports, including government officials; (c) increased and enforced legal protections for domestic workers; (d) continue to train government officials to recognise and respond appropriately to human trafficking crimes; (e) implement public awareness campaigns and other prevention programs to reduce the demand for forced labour and commercial sex acts; and (f) establish a formal mechanism for cooperation between the International Organization for Migration and the Public Prosecution to investigate cases of labour trafficking and prosecute those involved in such trafficking.

In order to guarantee the rule of law and separation of powers, including judicial independence, and to protect the supremacy of the Constitution and the rights embodied in it, the establishment, the composition and jurisdiction of, and access to, a Constitutional Court should be thoroughly considered.

6.6 The Role of Constitutional Supervision in Protecting Fundamental Rights

To ensure that the legislator respects the principles of constitutional law, there should be means and mechanisms supervising and monitoring any encroachments to the fundamental rights guarantees. Constitutional supervision is one of the means to achieving that. Such supervision is sufficient to ensure that the legislation does not violate the core constitutional

principles.[653]

Global interest in fundamental rights was accompanied by an equivalent interest to the constitutional supervision on the constitutionality of the legislation, particularly after the second world war. In France on 16/7/1971, the French Constitutional Council decided on considering the preamble of the 1946 constitution and the core principles found within it, whether it was political, economic or social, with a constitutional value equivalent to that of the Declaration of the Rights of Man and Citizen 1789. It went even further in its decision made on 15/01/1985 when it considered all the texts that refers to the preamble of the 1958 constitution with constitutional value[654].

In the United States of America, and in spite that the constitution outlined the individual rights and freedoms and gave it constitutional protection[655], the intellectual developments proved that those measures are not enough to protect the individual rights and freedoms. This led to the demand for ratifying many economic and social rights in order for every citizen to practice those rights freely. From the early 1970's, the rulings of the Federal Supreme Court came in line with the modern intellectual trends when it decided that the rulings made in the 14th amendment of the American Constitution circulates around one thought that include all interests with humanitarian value.

In *Mississippi 70 Chambers* (1973) case, the Federal Supreme Court decided not to restrict the requirement of Due process of law with the guarantees outlined in the Bill of Rights. From the viewpoint of Federal Supreme Court, the meaning of Rights and Freedoms is not limited to what have been outlined in the constitution and its amendments or the Bill of Rights but extends to include all what the term "Appropriate Legal Norms" means in achieving the principle of Rule of law. This allows the constitutional justice to extract more rights and freedoms at the individual, political, social and economic level[656].

In Egypt, the Constitutional Court defines the principles linked to individual rights and freedoms outlined in the constitution with the principles outlined in the international declarations and Treaties, including the Universal declaration of Human Rights[657]. On the

[653] Gubbay, Anthony R. *"The Protection and Enforcement of Fundamental Human Rights: The Zimbabwean Experience."* Human Rights Quarterly, vol. 19, no. 2, 1997, pp. 227–254.
[654] Roder, G, *Constitutionalism in Islamic Countries*, Oxford University press, 2012
[655] ibid
[656] ibid
[657] ibid

20th of June 1994, the constitutional Court considered the preamble of the 1971 Egyptian Constitution a crucial part of the constitution and an access to understand its content and what it tries to achieve[658].

In Oman, the majority of the individual rights and freedoms received constitutional protection by outlining those rights in the Basic Statute of the State 1996 (The Constitution). This means that the legislator cannot violate the constitution. The constitution incriminates any assault to those rights and freedoms whether by a public body or another individual[659]. Article 59 of the constitution states that the principle of the Rule of Law is the basis of governance in the State. This opens the doors for the Omani judiciary to extend its interpretations in all issues related to individual rights and freedoms and the protection of human dignity and his/her fundamental rights.

The integration of the texts outlined in the international declarations and treaties with the text of the constitution resulted in reinforcing the role of the supervisory body in checking the compatibility of the legislation with the constitution. Constitutional supervision ensures to establish a harmony between any individual rights with that of the public benefit. Such harmony requires certain restrictions to some rights, in particular social and economic rights.

6.7 Establishing a Constitutional Court in Oman

Before the issuance of the Basic Statute of the State 1996, there was no legal reason to start questioning the constitutionality of the laws and establishing a constitutional supervisory body. Cases were heard by the three different categories of courts: Criminal, Commercial and Shariah (‘*Al Mahkamah Al Shari’ah’)*. However, and after the issuance of the constitution, the issue of constitutional supervision was brought up.

Following the public protests that occurred in Oman in 2011, there were demands by the public to establish a constitutional court. This request was taken on board by the government. On January 12, 2012, the State Council Legal Office met to discuss the feasibility of establishing such a court.[660] The committee later decided that it was not worth establishing such an institution at the time being.

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[658] ibid
[659] ibid
[660] Online Newspaper Source, Oman, Al Roya: https://alroya.om/post/32378

6.7.1 Current situation

According to Article 70 of the Constitution, *"The Law shall define the judicial body entrusted with the settlement of disputes pertaining to the extent of conformity of laws and regulations with the Basic Statute of the State…."*.[661] Article 10, Chapter 2, of the Judicial Authority Law No. 90/99, states that:

"The Supreme Court shall as necessary, form a panel consisting of the President of the Supreme Court, and the five most senior of his deputies or the most senior of the judges of the court to which shall be joined the President of the Administrative Court, his deputy and the most senior three counsellors of the court, such panel to have jurisdiction to decide cases of conflict of positive and negative jurisdiction between each of the courts provided for in this law and the administrative court and other courts. It shall also have jurisdiction to determine the judgment to be enforced in the case of conflicting judgments.

In the event of the absence of any of the President or the members, or where an impediment subsists in relation to him, his place shall be taken by whoever who is next after him in either court.

The President of the Supreme Court shall preside over the panel, and in the event of his absence, or of an impediment subsisting in relation to him, his place shall be taken by the most senior of its members, and its judgments shall be rendered by a majority of at least seven members". [662]

Article 11 of the same law states that: "*The panel provided for in Article 10 shall be the judicial body having jurisdiction to determine disputes relating to the extent of the conformity of laws and regulations with the Basic Statute of the State and their not being in conflict with the provisions thereof. A Sultani decree shall be promulgated stating its competences and the procedures which it follows".*[663]

Despite the clear indication of the Sultans intent to have a constitutional supervisory body, there has been no serious attempt to establish one.

[661] Oman Basic Statute of the State 1996, Official Gazette, Oman
[662] Judicial Authority Law (90/99), Official Gazette, Oman
[663] ibid

6.7.2 Theories on Constitutional Courts

According to Kelsen, the constitution that governs the institutions of the state and legislation made remains defective if not enforced to those institutions by an independent court providing 'guarantee of legality' to the legislation issued by those institutions[664].

On the other hand, Carl Schmitt regarded the Constitutional Court as an uncertain and unwise solution to the problem of guarantees. Carl Schmitt regarded the head of the State as the natural guardian for the constitution. According to Schmitt, the constitutional court would have to take highly political decisions when arbitrating constitutional conflicts. Such decisions are not existing within constitutional law. Courts, however, cannot legitimately take such decisions. In a democracy, the popular sovereign has the final power to interpret the constitution. As a result, Schmitt believed that the settlement of deep constitutional conflicts cannot be reasonably assigned to a court[665]. A.V Dicey believed that the best guardian for the fundamental rights was the Courts and not a codified set of rights and freedoms[666].

The Ibadi imamate system is based on a core institution known as the institution of '*Ahl Al Hil Wal Aqid'*. It is formed from the Ibadi scholars representing the Supreme Legislative Authority and the political, sectorial and fundamental rights reference. It was under this institution to which the Imam was appointed or repealed. It was further responsible for insuring the application of consultation. Finally, it was considered to be the spiritual and ethical reference of society. It is worth noting that unlike the Shii sect, there is no hierarchy between the scholars representing the members of the institution. Such an institution could be equivalent to the role of the constitutional court in our modern times. It carries within it the same core value and principles that the constitutional court seeks to protect[667].

6.7.3 Role, Function and the Members of the Prospective Omani Constitutional Court

The court mentioned in Article 70 of the constitution should be competent to assess the compliance of laws with the constitution. Referral of draft laws to the court by the Sultan should be made mandatory for laws amending the constitution, laws relating to the ratification of international conventions and draft laws. The court should have the power to

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[664] Vinx, *Hans Kelsen's Pure Theory of Law*, Oxford University press, 2008
[665] Scheppele K, *Guardians of the Constitution*, University of Pennsylvania Law Review, 2006
[666] ibid
[667] Ghubash, H., Oman: al-Dimokratiya al-Islamiya wa al-Tarikh al-Siyasi al-hadith. Beirut, Dar alJadid, 1997

assess laws referred to it by other courts, where these courts decide on their own accord to refer the case or when the parties to a conflict request a referral.[668]

In addition, the Constitutional Court must review the constitutionality of the internal regulations of the consultative council and can receive disputes concerning the conflict of competences between the legislative and the executive power. Moreover, the court should be competent to examine matters relating to states of emergency and other exceptions as well as changes brought against the Sultan for high treason or violation of the constitution. Finally, the court should be competent to review final judicial decisions violating the rights and freedoms recognized by the constitution and after going through all other forms of review.

In addition to this comprehensive jurisdiction, there should be meaningful guarantees for the independence of the Constitutional Court, mainly by limiting the role of the executive in nominating its members and President. The number of the members of the court should be set according to the number of regions and districts in Oman, through which each region is represented by one member. There are eleven regions in Oman, therefore having 11 members in the Constitutional Court. The President of the court should be elected by the members of the court. The members of the court must have judicial, social and religious experience, to be a well-known figure in his society for his good ethics and intellect. A vote should take place in each region to vote for the candidate representing them in the Constitutional Court.

The members of the Constitutional Court are judges and should be subject to the same constitutional provisions relating to the rest of the judiciary. The constitution should ensure that the decisions of the Constitutional Court are binding on other branches of the government and that they are enforced.

6.7.4 Article 2 of the Constitution and its Controversy

Article 2 of the 1996 constitution states that the religion of the state is Islam and Islamic Shariah is the basis for legislation.[669] Article 1 of the Civil Transactions Code (29/2013) states that in the absence of a provision in the 2013 law, the Court should rule according to Islamic jurisprudence rules, if it did not manage then by the general principles of Islamic Shariah, if it did not manage then rule according to the custom. There has been no indication to a certain sect or school of thought.[670]

[668] Oman Basic Statute of the State 1996, Official Gazette, Oman
[669] Oman Basic Statute of the State 1996, Official Gazette, Oman
[670] Oman Civil Transactions Law, Royal Decree (29/2013), Official gazette, Oman

Having such constitutional provisions suggest a very different legal order. Some interpretations to this Article imply that Shariah supersedes the positive legal order, including the constitution. If Shariah is the basis of legislation, then this means that it forms the fundamental legal framework[671].

The constitutional texts tend to refer to Shariah as the basis of legislation, which includes laws, decrees, administrative regulations, and arguably the constitution. If it was to be referred to Shariah as the basis of laws (*qawanin*), it will only refer to a specific category of legislation. The existence of such provision makes it possible to challenge legislation that does not seem to be in conformity with Shariah on constitutional grounds[672].

There have been no cases in Oman on the grounds of Article 2 of the Basic Statute, however, it is advised that the Constitutional Court have a liberal interpretation to Islam that is progressive.

6.7.5 The Constitutional Court and Article 2 of the Constitution

The Omani Judiciary has no experience on issues regarding the unconstitutionality of the laws and legislation with Article 2 of the Basic Statute. In fact, the Omani Judiciary has very little experience in cases where the unconstitutionality of a law or legislation to the constitution is being questioned.

The rulings of the Supreme Constitutional Court of Egypt could be a good example to learn from. The rulings of the Court establish three fundamental assumptions to which the meaning of Shariah principles are based on. The first is that Article 2 and the remaining Articles of the 1971 constitution form an organic whole. The second is that the constitutional obligation upon the legislature to adhere to Shariah in accordance to Article 2 of the constitution is prospective and not retrospective in nature. Finally, the application of Shariah in constitutional litigation must be made by distinguishing between its definitive and non-definitive sources[673].

[671] Roder, G, *Constitutionalism in Islamic Countries*, Oxford University press, 2012
[672] ibid
[673] ibid

A) The Constitution's Unity

The first constitution in Oman was promulgated in 1996. There was a failed attempt to enact the first constitution in the 1970's by the Sultans uncle and Prime Minister, Tariq bin Timour Al Said.

The Supreme Constitutional Court of Egypt ruled that the power of Judicial Review requires a rigid constitution that has and ensures its supremacy over other rules and laws. The constitution is seen as a living instrument that can cope with a modern democratic system, sets the rights and duties of the citizens, sets the checks and balances between the branches of the government and advances openness, human talent and scientific research. In the court's view, the constitution does not only set mandatory norms, but it also substantiates advanced concepts, which when taken together are expected to establish a new form of social order that adheres to the Rule of Law. Furthermore, the constitution is seen by the court as the supreme law of the land. Such a view leads the court to reject the supremacy of any constitutional text over the constitution. The court insisted that the constitutional provisions do not clash with one another but work together to find the best fusion in order to protect society-oriented values. The court views the provisions of the constitution as a coherent set of rules that support each other. Such rule extends to Article 2 of the constitution, therefore, Shariah should be interpreted in a way that ensures harmony with other constitutional provisions. Article 2 should not be used to undermine the constitution, instead it should be in harmony with the other provisions.[674]

B) Definitive and Non- Definitive Norms of Shariah

Another important principle developed by the court is making a distinction between definitive and non-definitive norms of Shariah. According to the Supreme Constitutional Court, Shariah based norms have different values that are either definitive or non-definitive. The definitive norms are the ones that are not debatable and must be applied. The non-definitive norms are susceptible to different interpretations, and therefore, could be norms that may change to adopt to the development and tend to be more elastic. This flexibility shows that Shariah norms are progressive provided that they are interpreted liberally. [675]

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[674] ibid

[675] Brown, Nathan J. and Clark B. Lombardi, *"The Supreme Constitutional Court of Egypt on Islamic Law, Veiling and Civil Rights: An Annotated Translation of Supreme Constitutional Court of Egypt Case No. 8 of Judicial Year 17 (May 18, 1996)."* American University International Law Review 21, no.3 (2006), p.437-460.

To reach the best non-definitive rule, the principle of *ijtihad* should be exercised by the Constitutional Court. Ijtihad differs from both Qur'an and Sunnah in the way that it could be continuously developed and altered, while the primary and secondary sources cannot be altered. Ijtihad is further defined as the "total expenditure of effort made by a jurist to infer with a degree of probability, the rules of Islamic law".[676] In other words, it is the expending on the part of the interpreter of all that he is capable to seek knowledge from the injunctions of Islamic law[677].

There are three ways to conduct Ijtihad: *Ijtihad Bayani*, *Ijtihad Qiyasi* and *Ijtihad Istislahi*. *Ijtihad Bayani* is applied to cases that are mentioned explicitly in the Qur'an and Hadeeth literature but requires further explanation. In cases that are mentioned in the two primary sources of Islam but have a sort of similarity to cases that are mentioned in either of them, *Ijtihad Qiyasi* is applied. In cases that cannot be solved by analogical reasoning, the benefit of the society is considered to be the bases of legal decisions, as long as they do not contradict with the main believes of Islam. This is called *Ijtihad Istislahi*.[678]

It is through Ijtihad that Muslims understand and practice Shariah in line with human nature and characteristics, which is underlining that form of flexibility.[679] This proves that Islam could be effectively and accurately practiced in all ages.

6.7.6 Survey Results

Based on the survey conducted, Oman scored (0.58) on the factor of Fundamental rights. Although Oman is ranked 1st in the region, it is in the bottom of the table in income table and in the middle of the table globally. Efforts should be made to further enhance and protect the citizens fundamental rights. The lowest scoring sub-factor in factor 4 (Fundamental Rights) was 'Right to privacy' (0.44). The highest score was the subfactor relating to 'Right to life and Liberty' (0.81). The respect of due process of law, especially that associated to the freedoms of expression and association is perceived negatively. In addition, sub-factor 1 (Publicized law and government data) under factor 3 (Open government) scored an average of (0.32) and sub-factor 2 (Right to information) (0.47). Order and security in Oman is very high, putting Oman in the top 30 positions in the Index.

From the results, the main areas that need attention include discrimination, respect to due

[676] Ghubash, H., Oman: al-Dimokratiya al-Islamiya wa al-Tarikh al-Siyasi al-hadith. Beirut, Dar al-Jadid, 1997.
[677] ibid
[678] ibid
[679] ibid

process of law, freedom of expression, right to privacy, freedom of association, availability and clarity of legislations and government data, and the right to information. Those are fundamental human rights recognized in all international treaties and declarations. Adherence to them is important to better enhance the situation of the rule of law in Oman. It also ensures equality, impartiality and justice.

6.8 The Universal Periodic Review (UPR) as a Mechanisms for Ensuring the Protection of Human Rights in Oman

The Universal Periodic Review (UPR) of the UN Human Rights Council is a peer-review mechanism through which states make recommendations to one another regarding best practices for Human Rights.

According to resolution 5/1 of the United Nations Human Rights Council (HRC), the aims of the UPR are as follows [680]:

1) Enhance the situation of Human Rights in practice.
2) Ensure the commitment of member states to its obligations in the field of human rights and asses the positive developments and the challenges facing the concerned member state.
3) Increase the capacities of member states and the technical assistance provided.
4) Exchange best practices between member states.
5) Encourage cooperation in the field of enhancing and protecting human rights.

The recommendations given by member states to the others can be a good mechanism for enforcing human rights globally. The Universal Declaration of Human Rights (UDHR) is not a legally binding document, and therefore, the UPR could be a good mechanism to enforce the Declaration on non-compliant member states [681].

Although the recommendations made by the HRC member states are universally accepted rights, some of them do clash with the culture and norms of other member states. This is evident with regards to LGBT rights and some preservations regarding women and children rights. Further, civil and political rights are rights not included in many member states, as they regard them unsuitable to their political environment. This is a weak argument that

[680] Resolution 5/1, Institution-building of the United Nations Human Rights Council, 7 June 2007
[681] McMahon, Edward, and Marta Ascherio. *"A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council." Global Governance* 18, no. 2, 2012, pp. 231-248

needs attention, as civil and political rights include the right of expression, assembly and association. Such rights are enshrined in many constitutions of member states that did not ratify this covenant. Oman is one of few member states that did not ratify the Covenant for Civil and Political rights and has many civil and political rights enshrined in its constitution.

Some scholars argued that the universality of human rights is a far-fetched dream, as there are competing definitions as to what the concept encompasses. The values on which societies derive the fundamental rights of a person are classified as Western values, Asian values, Islamic values, African values, etc.[682]

Although this is the case, most societies have their values inspired from their culture, norms and religion. The researcher argues that all religions call for similar fundamental Human Rights that can be the starting point for attempting to make human rights universal. Member states can choose to accept or reject the recommendations proposed by the HRC member states during the UPR sessions. If such recommendations are a clear violation of certain norms and cultural beliefs, then the concerned member state should clearly explain the reason for not accepting the proposals and the cultural/religions clash that is in question.

The Constitutional Court, if established in Oman, can take the role of ensuring the adherence of national legislations to Human Rights international obligations. It can further interpret the laws in a way that is suitable for the Omani society's peculiarity. Finally, it can ensure that international human rights legislations are in line with the constitution.

Adhering to international human rights standards can have economic benefits to states. States and companies are usually hesitant to invest in countries with weak human rights records. This can affect the economic development of the state concerned. The UPR acts as a scrutiny platform, informing the world about the human rights situation in member states, and what is discussed can have economic, social and political impacts.

Among the recommendations given to Oman in its last UPR in 2015 were the following: [683]

1) Consider ratifying the International Covenant on Civil and Political Rights.

2) Aim at abolishing the death penalty.

3) Adopt measures to combat discrimination on the ground of sexual orientation.

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[682] Donnelly J., *Universal Human Rights in Theory and Practice,* USA, Cornell University Press, 2003.
[683] UN UPR, Online Source: https://www.upr-info.org/sites/default/files/document/oman/session_23_-_november_2015/recommendations_and_pledges_oman_2016.pdf

4) Accede to the International Convention on the Protection of the Rights of All Migrant workers and members of their families.

5) Consider ratifying the Rome Statute of the International Criminal Court.

6) Ensure the independence of the National Human Rights Commission.

7) Improve the protection of the rights to freedom of expression, assembly and association.

Although Oman adopted the majority of the recommendations, in the last two years, regarding the elimination of all types of discrimination against women and the protection of Children rights, other fields of human rights needs attention and action.

Abolishing the death penalty and ratifying the convention on LGBT rights are areas of cultural difference [684]. Although the death penalty is only implemented for cases of treason and first-degree murder, it was never applied in Oman since the year 2001. The case of abolishing the death penalty is big and heavily protested. Nonetheless, certain societies, including some western societies, agree with it and apply it. Oman is no exception. Although the government of Oman rarely apply the death penalty, having the sentence in the penal code has negative correlations to many member states of the HRC. It is advisable that the government explain the reason behind having such a sentence thoroughly, indicating that Islamic values are different from western values. Also, it is important to indicate that the abolishment of the death sentence in not a universally accepted action [685].

LGBT rights started appearing in the international arena during the 20th century. Many countries opposed accepting those rights in their national legislations. Oman too does not accept those rights included in its national legislation, as they are in conflict with the culture and religion of the country. Introducing such rights to the Omani society may lead to a clash and the non-acceptance of such rights by the people.

On the other hand, there are recommendations made to Oman that are not breaching the Omani culture and religion. Ratifying the International Covenant on Civil and Political Rights is a recommendation that the government of Oman should consider. The government's reason for not ratifying the covenant was the non-application of many of the articles of the Covenant to the political system and situation in Oman. Although Oman is a monarchy and

[684] Bae, Sangmin. *"International Norms, Domestic Politics, and the Death Penalty: Comparing Japan, South Korea, and Taiwan." Comparative Politics*, vol. 44, no. 1, 2011, pp. 41–58
[685] ibid

has no political parties in its political system, it does have a fully elected consultative council, which acts as a parliament with limited powers. Further, rights of expression, assembly and association are all rights included in the covenant and included in the 1996 constitution. It is necessary to ratify this covenant, and if the government believes that the time is not right to do so yet, it is advisable to ratify and accept what is applicable at the time being and to place the reservations on the articles that might be reviewed at a later stage. This can be a way to ensure the global community that Oman has the political will to change towards an Islamic Arabian democracy inspired by liberal and global values of democracy and human rights.

Another area that needs attention by the government in Oman is that regarding the rights of migrants and their family members. The demographics of Oman consists of 48% expatriates (around 2 million people), mainly from the sub-Indian continent, east Asia and Africa. Although Oman is seen as being more progressive in terms of the protection of Labour rights when compared to the other countries in the region [686], efforts should be made to accede to the International Convention on the Protection of the Rights of All Migrant workers and members of their families. Despite the fact the convention contains many articles that Oman confirms with, areas of equal pay, residency, migrant's family members and their rights are areas of great concern. Adhering to labour rights can encourage foreign investment and trade. This was evident when Qatar and UAE faced heavy criticisms for not adhering to labour rights and the absence of protection of migrants in the national legislations of those countries by the global community. The government of Oman should work hard in addressing those rights and ensure the protection of migrants in the national legislations of the land.

Ratifying the Rome Statute is another contested area [687]. There are 122 countries that are state parties to the statute, among them are states that signed the Statute but did not ratify it. There are also countries such as the US, that signed the statue but later withdrew from it. Further, there are few countries that refuse to sign it, which include: Bahrain, Israel, Kuwait, United States of America, Ukraine, Thailand and India [688]. Ratifying the Rome Statute is seen by some as a tool that undermines the sovereignty of nations. Hence, countries like Russia, China, India and the US did not accept it. Although the aim of such treaties is to protect the world from crime against humanity, the statute can undermine the sovereignty of nations.

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[686] Online Source: https://www.economist.com/middle-east-and-africa/2016/09/08/open-doors-but-different-laws

[687] Frédéric Mégret, *Epilogue to an Endless Debate: The International Criminal Court's Third-Party Jurisdiction and the Looming Revolution of International Law*, European Journal of International Law, Volume 12, Issue 2, April 2001, Pages 247–268

[688] International Criminal Court website: https://www.icc-cpi.int

Oman's foreign policy is one that refuses the interference on other nation affairs and refuses the interference by others in its internal affairs. Considering the ratification of the Rome Statute can undermine the position of Oman in the international stage as a regional and world mediator.

Finally, there has been several recommendations made during the UPR of Oman by the HRC member states to ensure the independence of the National Human Rights Commission of the country. At the time being, the Commission is fully appointed by a Royal decree. This can severely undermine the independence and impartiality of it. Although the Commission members are appointed from governmental and non-governmental sectors, this does not ensure its independence and impartiality. The Commission was established in 2008, and the researcher argues that it is time to have the Commission independent from the executive and have its members elected. This can ensure the continued confidence in the commission by the citizens and the global community alike.

To conclude, the UPR can be one of the mechanisms of ensuring the adherence to the fundamental human rights. Although some recommendations made by member states during the UPR sessions are in clash with the cultures of the states under review, benefits could be gained from the recommendations made on areas that are not. Oman was last under review in 2015 and has the upcoming review in 2019. Oman could take on board the recommendations that are not in clash with the sovereignty, culture and religion of the state. This includes the ratification of the International Covenant on Civil and Political Rights, acceding to the International Convention on the Protection of the Rights of All Migrant workers and members of their families, ensuring the independence of the National Commission of Human Rights and improving the protection of the freedom of expression, association and assembly.

6.9 Conclusion and Recommendations

In conclusion, it is difficult to give a comprehensive definition for Fundamental Rights, however, the attempts to give a universal definition for the term is still in progress worldwide. Fundamental rights and its protection are a key component for any government that seeks to adhere to the principle of the Rule of law. Fundamental rights have been associated with human civilisation since the Mesopotamian times and is still a hot topic in international and national arenas today.

All religions worldwide seek to achieve the protection and adherence to the basic fundamental rights, and as mentioned previously in this chapter, most religions have a mutual understanding and acceptance to those rights. The sources of human rights could be divided into international legal sources, national legal sources and religious sources. Those include customs, the judiciary, jurisprudence and international conventions.

The Human rights situation in Oman is currently on the right track. However, there have been many challenges to the constitution and to the government powers during the protests that happened in Oman in 2011. Such an incident should be reviewed, and necessary measures should be taken to ensure the supremacy of the constitution and that the government is working in line with it. More efforts should be focused on reviewing the Universal Periodic Review recommendations. Such recommendations should be reviewed and analysed carefully and consider them provided that they are in line with norms and customs of the state. A full independent Human Rights Commission is necessary. Participation should include a wider range of members and reduce the number of members appointed by the government. Raising awareness about Human Rights in Oman should continue and the education on this area should be considered.

Establishing a constitutional court in Oman may be the best way to protect fundamental rights enshrined in the 1996 constitution. The imamate system of Oman had a similar institution with a similar function to that of a modern Constitutional Court. This institution was known as 'the people who can make and break' (*Ahl Al Hil Wal Aqid*). Such an institution could be reintroduced to the system of governance, and as a result, establishing an indigenous home-grown constitutional court. The importance of having such an institution was highlighted by many international institutions and different legal scholars. Despite criticisms made by some scholars on the effectiveness of such a court, it is crucial for Oman to have such an institution to provide stability, clarity and progressiveness for the legislation promulgated in Oman.

Finally, Article 2 of the constitution may be seen by many as being controversial. The fact that Shariah is mentioned as the basis of legislation contradicts with many laws and regulations enacted. It also contradicts with the provisions found in the constitution. An example is the allowance of charging interests to loans by the banks. Nonetheless, all the articles of the constitution, including Article 2, should be interpreted in line with other constitutional provisions. Furthermore, Shariah should be interpreted in a liberal and progressive manner that fits the time we live in at the moment.

The researcher argues that for fundamental rights to be protected, they should be morally justified. The best moral justification for such rights is associating them to religion. The divine source can then be utilised to ensure promulgation and adherence to universal human rights that are in line with the culture peculiarity of each nation. The researcher agrees with Aquinas view that a law can be invalid because of morally perverse content (a law contradicts with either divine or natural law), or because a human agent acted in *ultra vires*. The researcher argues that this can help better protect fundamental rights if judges interpreted law in this manner.

When invoking Shariah, the court is advised to first search for the definitive norms. If it does not exist, it should consider *ijtihad* (interpretation) that is consistent with the legislation in question and serves the interests of the people. The Court should then examine the goal of the legislation in question. Finally, the Court should then determine whether or not the legislation challenged is consistent with the interests of the people and determines its constitutionality based on the conclusion reached.

The UPR can be one of the mechanisms for ensuring the adherence to the fundamental human rights. Although some recommendations made by member states during the UPR sessions are in clash with the cultures of the states under review, benefits could be gained from the recommendations made on areas that are not. Oman was last under review in 2015 and has the upcoming review in 2019. Oman could take on board the recommendations that are not in clash with the sovereignty, culture and religion of the state. This includes the ratification of the International Covenant on Civil and Political Rights, acceding to the International Convention on the Protection of the Rights of All Migrant workers and members of their families, ensuring the independence of the National Commission of Human Rights and improving the protection of the freedom of expression, association and assembly.

Moreover, reform efforts should involve ensuring the non-discrimination across all sectors of the state. The respect of due process of law and the protection of the freedoms of expression and association should be ensured. Further, the right to privacy is perceived as hijacked and the government should make efforts to be more transparent and change this perception. Moreover, the government should work hard in promoting legal awareness and ensure the easy availability and accessibility of legal materials. Government data and information related to the performance and functions of the state institutions should be available. Having an open government will increase the confidence on it by the citizens and help promote the fundamental rights and reduces the levels of corruption in the state. Finally, civic

participation in decision making should be introduced gradually in Oman. Civic participation is rare in Oman and is usually limited to charitable events. A more effective role by civil society organisations should be introduced to act as a guarantor for fundamental rights and a method of accountability on the different organs of the state.

Chapter 7

Conclusion and Reform Proposals of the Study

7.0 Introduction

This chapter gives an overview of the research that focuses on reforming the judicial system in Oman by enhancing the adherence to the constitutional principal of the Rule of Law. The results of the survey conducted in Oman revealed the key areas of weakness in the current judicial system in Oman. Those areas fall under the four main pillars of the Rule of Law, namely: Government bound by the law, Equality before the law, Accessibility, Impartiality and Judicial independence, and Fundamental rights and how to better preserve them. Chapters four to seven analysed each pillar and the challenges facing the concepts in Oman. Proposals and recommendations have been outlined. The researcher tried to bring forward traditional Omani concepts of justice to act as a reference for future reforms. The researcher further tried to identify the similarities between the different cultures and societies and the necessity to learn from such experiences; provided they are suitable to that society. The reform proposals were categorised to short, medium and long-term goals.

This chapter is divided into four sections. The first section presents an overall summary of the research and the key findings. A discussion on the contribution of the study follows. The third section acknowledges the research limitations and the final section offers directions for future research.

7.1 Research Overview and the Main Findings

The study aimed at identifying the weaknesses in the current judicial system in Oman and the situation of the rule of law and propose reforms to address those weaknesses. The first chapter outlined the theoretical framework of the study. The research adopts the middle ground theory proposed by Dworkin for the understanding of justice and the rule of law. The researcher argues that the concept of the rule of law has positive and natural law components. The first three pillars of the universally accepted definition for the rule of law, namely: Government bound by the law, Equality before the law, and the accessibility, impartially and independence of the judiciary, require positive law to ensure adherence to them. Fuller and Rawls sets of procedures can apply here, as little moral consideration may be attached to those pillars. Further moral aspects under those pillars can be protected by positive law, and thus, the emergence of ‘hard cases’ is rare.

The researcher further argues that the fourth pillar of the rule of law, Fundamental rights and their protection, is better protected under the umbrella of Natural Law. Human rights and civil liberties are best protected when a judge describes the nature of the law based on the social understanding of justice and apply it accordingly.

The researcher argues that for fundamental rights to be protected, they should be morally justified. The best moral justification for such rights is associating them to religion. The divine source can then be utilised to ensure promulgation and adherence to universal human rights that are in line with the culture peculiarity of each nation. The researcher agrees with Aquinas view that a law can be invalid because of morally perverse content (a law contradicts with either divine or natural law), or because a human agent acted in *ultra vires*. The researcher argues that this can help better protect fundamental rights if judges interpreted law in this manner. This is further discussed in chapter 6 of the thesis.

A universal definition for the rule of law may be partially achieved, however, cultural clashes can lead to undermining such attempts. This is evident when looking into the pillar of Fundamental rights. Although the UDHR is signed by the majority of the nations of the world, some aspects of it is in clash with many cultures and societies. The researcher argues that that by applying the Natural Law understanding to law, such conflicts can be resolved. The peculiarity of each society and culture will be preserved, and a universal definition and application for the rule of law achieved.

The definition of the Rule of law by the UN secretary general is adopted in this study. The UN Secretary General defined the concept of rule of law as: “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

The definition of Legal culture by Friedman is adopted in the study. Friedman asserted that “by legal culture we mean the ideas, values, attitudes, and opinions people hold, regarding law and the legal system.” Friedman’s conception of legal culture considers legal systems as

having three components: (1) structural, such as the courts; (2) substantive, such as what the judges say; (3) public attitudes or values, which involves decisions made by society on when, what and how legal institutions will be used. Thus, law and societies interact and react to each other, and legal reform cannot be established without considering the society and its culture. The legal culture among Omani citizens is weak. This is due to the lack of familiarity of the rules and regulations concerning them or the inability to understand them. Defeat and accepting the problem is another reason. Many individuals waive their financial and civil claims as they prefer defeat and accepting the problem than going to court. In addition, the bureaucracy involved in the courts system push people away from going to them to avoid the sequential procedures. Moreover, the individual cannot benefit his full rights and claim for it if he/she is incapable of understanding the legal changes and developments. This is due to legal illiteracy, which requires legal awareness within the general culture.

The Culturalists view on legal transplantation is adopted. Culturalists view law as a product of culture, and it reflects the needs of the society. Therefore, transferred laws, in their opinion, are unlikely to exert the same behaviour in other societies. For Culturalists, legal systems are much more than mere rules, and has deeper underlying socio-political dynamics. Furthermore, Culturalists argue that law develops within itself and that modernisation must be achieved internally. They further argue that the norms and philosophy of the native society must be incorporated with the introduced foreign legal and political norms. The Middle ground theory is relevant to the study as well. The Middle Ground theory suggests that similar historical, legal, political, socio-cultural and legal-cultural experiences between nations can lead to a successful legal transplant.

There are various theories that provide answers to reasons for judicial reform. For this study, the Efficiency theory and the Development theories are adopted. In the Efficiency theory, judicial reform is explained with respect to introducing change in the personnel of the justice system and the high-ranking officials in the judiciary. It also considers changing some mechanisms to avoid backlogs of cases, expedite the process for adjudication and to fight against corruption. The Development theories link economic growth and the urgent need of a clear and efficient legal framework for economic development with judicial reform efforts.

Finally, Lamberts theory on comparative law is adopted. To per Lambert, Comparative Law is not a single scientific field, but contain within it two branches of science that differ in objectives and subject and only share the outer appearance in common and the use of

comparative method. For this, Lambert emphasised the need to distinguish between the two. The first is the science of legal phenomena. Its purpose is the disclosure and development of legal phenomena, whether in old legislations or modern ones, and whether they are civilised laws or uncivilised. Lambert called this 'Comparative History'. The second is the science that Lambert called 'Comparative Legislation', and it is an element of positive law. This field considers a set of rules that are already in place and have historical, social and political ties. Although the study does not examine the different legislations of other nations, it does, however, consider other countries judicial reform experiences. It also considers Shariah law and how it is interpreted in other Islamic countries. Lamberts view on comparative law will be helpful to understand this.

The second chapter started by giving a brief political history of Oman and the change of the state from an Imamate system of rule to a Monarchical Sultanate. It also outlined the historical development of the Ibadi sect and its introduction to Oman. It further discussed the Constitution of 1996 and the reason for adopting it then and not earlier. The next part gave a brief history of the development of the judicial system in the early stages of the Imamate state until the mid 20th century.. Judicial appointment, judges' salaries alongside the rights and duties of the judge were explained. Further, preserving the impartiality of the judge and the independence of the judiciary were discussed. Although the system dates back to more than 1250 years, the judicial experience that is inherit to Oman could be reincarcerated and modified to fit the 21st century understanding of justice. This has been established under the reign of HM Sultan Qaboos bin Said. The judiciary in Oman witnessed a rapid development from 1970, and parts of the imamate system experiences were adopted in the development efforts.

The third part of the chapter explained the development of the Omani justice system post 1970. It was in 1970 that Sultan Qaboos bin Said assumed power and transformed Oman from a medieval state to a modern state made of institutions. The judiciary was paid special attention, and the resources needed to ensure justice was provided. The first part of the second section outlined the judicial organisation in Oman currently. The second part explained the guarantees found in the Omani legislations to ensure the independence of the judiciary.

The fourth part of the chapter explained the methodology used for the survey that was conducted in Oman. The survey was an attempt to quantify the situation of the adherence to

the rule of law in Oman. The survey was designed by the World Justice project in the form of a Rule of law Index, which includes 113 countries. Oman was not part of the study, and the researcher added the scores of Oman to compare it with the other countries in the region and worldwide. Oman was ranked 43 globally and 3rd in the Middle East and North Africa region. The Index consists of eight factors which includes: Constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice. Each factor was explained and the scores of Oman explained.

When compared to other countries in the MENA region, Oman ranked 5th from 8 other countries in the region in the factor of restraints in government power. The reason for such a low rank is the nature of the political system in Oman. Oman is a Monarchy, and the Sultan has the final say in all matters. It is beyond the scope of this study to discuss the suitability of having a monarchy in Oman and whether it should be changed into a constitutional monarchy. Other sub-factors should be addressed such as: increasing the efficiency of the audit institutions in Oman and allowing non-governmental checks on the public and private sector. This will ensure accountability and enhances the performance of the institutions of the state. Oman was ranked 4th in the factors of: Absence of corruption, access to civil justice and access to criminal justice. It was ranked 2nd in the factors order and security and regulatory enforcement. Finally, Oman ranked 1st in the region in the factor of Fundamental rights. Although Oman is ranked 1st under this factor, it is not a positive indication fully. Oman is ranked 57th globally, and the region in general is ranked in bottom middle part of the ranking. Attention should be paid to enhance the protection of the fundamental rights of the citizens, as it is an important pillar of the Rule of law.

The chapter concludes by organising the reform proposals for Oman into short, medium and long-term goals. The short-term goals included the following factors: Open government, Access to civil justice and access to criminal justice. The medium-term goals included: Absence of corruption, Fundamental rights and Regulatory enforcement. Finally, the long-term goals included: constraints on government powers and order and security. The reason for such classification is to introduce the reform efforts gradually and based on importance. The scores helped identify the key areas that need attention.

Since the study was the first of its kind to be conducted in Oman, it lacked the comparison that the Rule of law Index had on the annual progress of countries that where part of the

research. Nonetheless, future research or survey endeavours to measure the adherence of the Rule of Law in Oman could be conducted and compared. This was an attempt by the researcher to give an overview to the situation of the Rule of Law in Oman, especially since the 2040 vision of the Sultanate has the principle a primary area for development. Oman moved slowly towards achieving justice and building the modern institutions that help serves it. However, Reforming the judiciary and enhancing the situation of the rule of law in Oman should be considered.

The first pillar identified as an area for reform is that of the concept 'Government bound by the Law'. The researcher recommends classifying those reform efforts as long-term goals. Efforts should be focused on enhancing the accountability measures available for the legislature and the judiciary to limit the abuse of power by the executive. Moreover, the State audit authority should be updated and developed. The human capacities should be trained and learn from the experiences of other state audit authorities and the methods of performing their tasks. The researcher also recommends having a more strict and transparent measures on the sanctioning of government officials for misconduct. Further, the researcher recommends addressing corruption perceived in the executive. Many respondents believe that government officials are involved in corrupt practices. This severally undermines the concept and the principal of the rule of law. Finally, it is recommended to allow non-governmental checks on the performance of the state institutions. This can usually be performed by international organisations or civil society institutions.

With regards to the second pillar, 'Equality before the law', which is classified as a short-term goal. It is proposed to focus the reform efforts on ensuring non-discrimination in the judiciary and in all sectors of the state. Discrimination in Oman occurs due to ethnicity and social status, and this should be addressed. Further, checks on the executive and ensuring that no improper influence by the government occurs on the judiciary or the legislature. Finally, it is recommended to have better mechanisms for judicial decisions enforcement. There is unreasonable delay in decision enforcement and this is often due to the lack of administration in the courts and the loopholes in the law that the lawyers find. Laws regarding this should be reviewed and administrative reforms for the courts should be considered.

The third pillar that the reform proposals are addressed too is the concept of 'Accountability, Impartiality and Judicial Independence'. It is recommended that the accessibility and affordability of the justice system be improved. Legal aid and legal clinics are not available to some, despite the legislations that covers such support. Further, the appointment process of

judges should be reviewed. At the current stage, judges are appointed after finishing a law or Shariah degree and go through a 2-year course in the Higher judicial institute to qualify as an assistant judge. The assistant judge is then promoted to a second primary judge after 2 to 3 years. Such judicial selection was suitable for Oman in the early days of the renascence, and the judiciary today is more complex than it used to be and requires a better qualified personnel and judges. Furthermore, the process in which judges are promoted should be reviewed. At the current stage, judges are promoted based on seniority. Although there are performance reports issued on the judges, the seniority remains the major driver for promotion. This can undermine the quality of the justice system and the decisions made. A merit-based system for promotion should be introduced, keeping in mind the impartiality and independence of the judge.

In addition, unreasonable delays in case adjudication should be addressed. The main reasons for such delays include: lack of judges, non-specialisation of judges and the weak qualification programmes designed for judges, low salaries for judges, lack of care and training for the judicial assistants, lack of modern technologies in court procedures, lack of clerics and assistance, finding loopholes in the law by the lawyers, and the lack of effective and efficient alternative dispute resolution institutions.

To solve these issues, the researcher recommends the following solutions. The judiciary should focus on increasing the number of qualified judges and enhance judicial education and training for judges. Further, specialisation of judges in specific areas of the law should be considered. Moreover, judges should continue to be appointed rather than elected, as the general public in Oman is not yet ready for such a move. It is beyond the scope of this research to explore this. Also, the salaries and bonuses of judges should be high to ensure the independence and impartiality of them. Further, training and development of judicial assistants should also be considered. Modern technologies and the digitalisation of court procedures should be considered and implemented, to help reduce case backlog. Moreover, laws should be revised and rephrased to avoid lawyers from using loopholes that they might find in the law. Finally, alternative dispute resolution institutions should be more effective and the promotion for their use should be made across the country.

Moreover, legal aid and legal clinics should be introduced into the judicial system. This would ensure the accessibility and affordability of the justice system to those who are considered to be of limited income. Although the legislations indicate this, in practice the

enforcement of such laws is weak. A more effective enforcement mechanisms for judicial decisions should be introduced and the legal terminology of some of the laws should be revised. This is to ensure that lawyers do not use the loopholes available to delay cases or divert the judge from ruling fairly. In addition, judicial inspection and judicial review should be more effective, and the methods of inspection must be enhanced.

Correctional institutions and prisons need development and improvement. Rehabilitation programs should be revised in order for those institutions to fulfil their tasks. Criminals and addicts that were incarcerated find it difficult to reintegrate back to society after serving their time. A better rehabilitation programme plus better administration of such institutions should be considered for reform. Finally, the independence of the judiciary should be enhanced by ensuring no improper government influence on the tasks of the judiciary or the legislature. The judicial independence in Oman is also undermined due to certain appointments. The public prosecutor and the head of the intelligence in Oman are brothers, so are the heads of the Consultative Council and the State Audit Authority. There is a clear clash in such appointments and the independence of the judiciary is undermined. Further, the concept of accountability is also under threat, as such appointments may lead to the interference of the executive on the work of the judiciary and the legislature.

The Human rights situation in Oman is currently on the right track. However, there have been many challenges to the constitution and to the government powers during the protests that occurred in Oman during 2011. Such an incident should be reviewed, and necessary measures should be taken to ensure the supremacy of the constitution and that the government is working in line with it. More efforts should be focused on reviewing the Universal Periodic Review recommendations. Such recommendations should be reviewed and analysed carefully and consider them provided that they are in line with norms and customs of the state. A full independent Human Rights Commission is necessary. Participation should include a wider range of members and reduce the number of members appointed by the government. Raising awareness about Human Rights in Oman should continue and the education on this area should also be considered.

Establishing a constitutional court in Oman might be the best way to protect fundamental rights enshrined in the 1996 constitution. The imamate system of Oman had a similar institution with a similar function to that of a modern Constitutional Court. This institution was known as ‘the people who can make and break’ (*Ahl Al Hil Wal Aqid*). Such an

institution could be reintroduced to the system of governance, and as a result, establishing an indigenous home-grown constitutional court. The importance of having such an institution was highlighted by many international institutions and different legal scholars. Despite criticisms made by some scholars on the effectiveness of such a court, it is crucial for Oman to have such an institution to provide stability, clarity and progressiveness for the legislations promulgated in Oman.

Finally, Article 2 of the constitution may be seen by many as being controversial. The fact that Shariah is mentioned as the basis of legislation contradicts with many laws and regulations enacted. It also contradicts with the provisions found in the constitution. An example is the allowance of charging interests to loans by the banks. Nonetheless, all the articles of the constitution, including Article 2, should be interpreted in line with other constitutional provisions. Further, Shariah should be interpreted in a liberal and progressive manner that fits the time we live in at the moment.

The researcher argues that for fundamental rights to be protected, they should be morally justified. The best moral justification for such rights is associating them to religion. The divine source can then be utilised to ensure promulgation and adherence to universal human rights that are in line with the culture peculiarity of each nation. The researcher agrees with Aquinas view that a law can be invalid because of morally perverse content (a law contradicts with either divine or natural law), or because a human agent acted in *ultra vires*. The researcher argues that this can help better protect fundamental rights if judges interpreted law in this manner.

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Moreover, reform efforts should involve ensuring the non-discrimination across all sectors of the state. The respect of due process of law and the protection of the freedoms of expression and association should be ensured. Further, the right to privacy is perceived as hijacked and the government should make efforts to be more transparent and change this perception. Furthermore, the government should work hard in promoting legal awareness and ensure the

easy availability and accessibility of legal materials. Government data and information related to the performance and functions of the state institutions should be available. Having an open government will increase the confidence on it by the citizens and help promote the fundamental rights and reduces the levels of corruption in the state. Finally, civic participation in decision making should be introduced gradually in Oman. Civic participation is rare in Oman and is usually limited to charitable events. A more effective role by civil society organisations should be introduced to act as a guarantor for fundamental rights and a method of accountability on the different organs of the state.

The UPR can be one of the mechanisms of ensuring the adherence to the fundamental human rights. Although some recommendations made by member states during the UPR sessions are in clash with the cultures of the states under review, benefits could be gained from the recommendations made on areas that are not. Oman was last under review in 2015 and has the upcoming review in 2019. Oman could take on board the recommendations that are not in clash with the sovereignty, culture and religion of the state. This includes the ratification of the International Covenant on Civil and Political Rights, acceding to the International Convention on the Protection of the Rights of All Migrant workers and members of their families, ensuring the independence of the National Commission of Human Rights and improving the protection of the freedom of expression, association and assembly.

7.2 Research Contributions and Significance

The thesis seeks to fill a wide gap in the literature in relation to enhancing the Rule of Law through judicial reform in the single country case of Oman. Accordingly, the contributions of the thesis are as follows.

The different judicial reform efforts demonstrated in Chapter three shows a somewhat less comprehensive approach to that proposed by the researcher. For example, the reforms in Chile were conducted to help make the judicial institutions more democratic. The weaknesses were identified and proposals for reform were made. This thesis, however, tried to identify the level of adherence to the Rule of Law by the state, and try to propose reforms to increase the level of adherence to the concept. Further, the reform efforts in Jordan were directed towards court reform and judicial personnel. This thesis covers this area and much more. The comprehensiveness of the method used by the researcher provides a unique approach to judicial reform initiatives that might be conducted in the future. It considers social, religious, political,

and economic peculiarities of the different societies and merge it with the Omani traditional doctrine of justice.

The survey conducted for the research was the first of its kind in Oman. It measured the level of adherence to the rule of law perceived by 1000 Omani citizens. Although the WJP Rule of Law Index included 113 countries in its study, Oman was not part of it. The researcher utilised the mythology used by the WJP and applied it to Oman. The results are the first quantitative data available measuring the level of adherence to the rule of law in Oman.

Further, this study is the first of its kind to outline the judicial history and development of the justice system in Oman starting from 751 A.D till present in the English language. The researcher also translated the majority of the Articles referenced in the thesis from Arabic to English. The survey questionnaires in **Appendix (A)** were translated by the researcher from English to Arabic.

Moreover, the researcher tried to identify the similarities between the religions in the concepts of justice and rule of law. The researcher aims by doing so to open a dialogue between all faiths and reminds us that our quest for justice is the same. The researcher also aims to establish a ground of harmony between all faiths and show that the similarities between the faiths is more than the differences. We should focus the interfaith dialogue, or 'Cultural dialogue', towards the similarities we share rather than the minor differences.

7.3 Research Limitations

During the research, there were few challenges, the biggest of which was conducting the survey in Oman. The main challenge was distributing and collecting more than 1500 survey across three different cities in Oman. Furthermore, many people were hesitant to participate or answer all the questions of the survey fearing prosecution due to the nature of privacy among the Omani society, despite providing them with all the government permissions and ethical forms.

Another important challenge is that related to primary sources and the lack of them in the topics of judicial history in Oman. Further, most of the books found referenced authors in theology, history and literature and never identified books dealing with the judiciary specifically.

Since the survey was the first of its kind to be conducted in Oman, it was not possible to compare the data to the previous year, as was the case with the WJP results. However, future research could facilitate this survey and compare the results accordingly.

Finally, since the political system in Oman is monarchical, it will not be possible to achieve a high level of adherence to the rule of Law, especially under the pillar of Government bound by the law. It is beyond the scope of this research to discuss this topic.

7.4 Future Research

Since the survey was the first of its kind to be conducted, further surveys could be conducted to compare the level of adherence to the rule of law in Oman in an annual basis. This could help the reformers measure the success of their reform efforts. Furthermore, the methodology for reform could be applied to the region and tailor it to fit its uniqueness. Moreover, the components of the rule of law pillars could be further explored and proposals for reform enhanced. Finally, the survey could be conducted in the different countries of the region, especially those that were not part of the WJP Rule of Law Index. The MENA region is the least represented region in the Index, and indigenous efforts to conduct the survey in the countries of this region are encouraged.

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APPENDIX A (I)

GPP Survey

يرجى الإجابة على الأسئلة التالية وفقا لتصورك لكيفية تطبيق القوانين في عمان. يرجى الإشارة الى إجابتك بوضع علامة (√) في الخانة المناسبة.

الأسئلة التالية تصف حالات افتراضية. في كل سؤال, ستقدم مجموعة من الفرضيات. يرجى تحديد الخيار الأمثل لوجهة نظرك.

1) أ) افترض ان اعمال انشاء طريق عام يتطلب هدم منازل خاصة في الحي الذي تسكن فيه. ما مدى احتمال تعويض اصحاب المنازل تعويضا عادلا من قبل الحكومة؟	
أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

افترض ان التعويض المالي الذي تقدمه الحكومة لهدم المنازل غير عادل أو غير كافي. ما مدى احتمال حدوث النتائج التالية؟					
	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
1) ب)1) رفع أصحاب المنازل لدعوى قضائية ضد الحكومة في المحاكم					
1) ب)2) غضب أصحاب المنازل وغلق الطرق من قبلهم والبحث عن حل بالقوة					
1) ب)3) لا يقوم أصحاب المنازل بفعل اي شيء ويستسلمون لأمر فقدان منازلهم					
1) ج) اذا قام اصحاب المنازل برفع دعوى ضد الحكومة في المحكمة, ما مدى احتمال حصولهم على تعويض عادل من المحكمة؟					

2) افترض ان سلطة حماية البيئة في عمان أخطرت منشة صناعية يقيامها بتلويث مجرى مياه خارج نطاق الحدود المسموح بها قانونا. أيا من النتائج التالية هي الأكثر احتمالا؟ **(يرجى اختيار اجابة واحدة فقط)**

أ) تلتزم الشركة بالقانون اما طوعا او عن طريق قرارات المحكمة او الغرامات او عقوبات أخرى.	
ب) تقوم الشركة بتقديم رشاوى او محاولة التأثير على السلطات للتغاضي عن المخالفة.	
ج) لا يحدث شئ بتاتا.	
د) لا أعرف/ لا جواب	

3) افترض ان احدى الشركات قامت بطرد عامل لديها لقيامه بالدعوة لإنشاء حزب عمالي في احد مصانعها. اذا قام العامل بتقديم شكوى لدى السلطات المختصة, اي من النتائج التالية هي الأرجح؟ **(الرجاء اختيار اجابة واحدة فقط):**

أ) يتم تجاهل الشكوى تماما من قبل السلطات	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تضمن السلطات ان تقوم الشركة بتعويض العامل او اعادة تعيينه في وظيفته	
د) تقوم الشركة بتقديم رشاوي او باستخدام وساطاتها لتجنب المعاقبة	
هـ) لا اعرف/ لا جواب	

4) افترض انه نتيجة لتفتيش اداري, تم العثور على موظف حكومي يصدر وبصورة غير قانونيه, تراخيص حكومية لمنفعة شخصية (كتصريح بناء لشركة يملكها أحد أقربائه). ايا من النتائج التالية هي الأرجح؟ **(يرجى اختيار اجابة واحدة فقط)**

أ) تتجاهل السلطات المخالفة تماما	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تتم محاكمة الموظف و معاقبته, اما بالحبس او الغرامة	
لا اعرف/ لا جواب	

5) افترض ان مسؤول حكومي رفيع المستوى يأخذ اموالا عامة لمنفعة شخصية و بصورة غير قانونية. افترض ان احد الموظفين لديه شهد هذا الفعل وابلغه للسلطات المختصة مع تقديم الادلة لادانته. افترض ان احد الصحف تلقّت الخبر وقامت بنشره. اي من النتائج التالية هي الأرجح؟ **(الرجاء اختيار اجابة واحدة فقط):**

أ) يتم تجاهل الادعاء تماما من قبل السلطات	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تتم ادانة المسؤول ومعاقبته (اما بدفع غرامة مالية او بالسجن)	
د) لا اعرف/ لا جواب	

6) افترض ان جيرانك في الحي ألقوا القبض على مجرم لإرتكابه جريمة خطيرة. أيا من النتائج التالية هي الأرجح؟ **(الرجاء إختيار إجابة واحدة فقط):**

أ) يتم ضرب المجرم من قبل الجيران	
ب) يتم تسليم المجرم للسلطات دون أذى	

7) من وجهة نظرك, يصدر القضاة أحكامهم وفق: **(الرجاء إختيار إجابة واحدة فقط):**

أ) ما تطلبه الحكومة منهم	
ب) ما تطلبه المصالح الشخصية لأصحاب النفوذ منهم	
ج) ما ينص عليه القانون	
د) لا أعرف/ لا جواب	

افترض ان السلطان قرر اصدار قانون يخالف النظام الأساسي للدولة.					
	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
8) أ) ما مدى احتمال تدخّل مجلسي الدولة و الشورى لوقف اصدار هذا القانون؟					
8) ب) ما مدى احتمال تدخّل المحاكم لوقف اصدار هذا القانون؟					
8) ج) ما مدى احتمال تدخّل المواطنين لوقف اصدار هذا القانون؟					

9) افترض ان موظفا حكوميا أصدر قرارا غير قانوني, و أن المواطنين تقدموا بشكوى رسمية للمحكمة ضد هذا القرار. عمليا, ما مدى احتمال تمكن القضاء من وقف هذا القرار؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
10) أ) إذا قام أحدهم بارتكاب جريمة قتل في الحي الذي تسكنه, ما مدى احتمال مقاضاة المجرم و معاقبته؟					
10) ب) إذا تم العثور على موظف حكومي يقوم بإصدار تراخيص حكومية لمصلحة شخصية, ما مدى احتمال فقدان هذا الموظف لوظيفته؟					
10) ج) إذا تم الكشف عن رئيس قسم للشرطة يأخذ أموالا من منظمة إجرامية, ما مدى احتمال معاقبة هذا الضابط؟					

من وجهة نظرك, ما مدى احتمال مخالفة التّجار الذين يملكون مؤسسات تجارية صغيرة إذا قاموا بالآتي:					
	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
11) أ) القيام بعمليات البيع و الشراء دون الحصول على التراخيص المطلوبة					
11) ب) عدم تسجيل النشاط التجاري لتجنب دفع الضرائب عندما تطلّب منهم ذلك					

من وجهة نظرك, ما مدى حسن أو سوء العمل من قبل المؤسسات الحكومية المحلية عند القيام بالإجراءات التالية:					
	جيد جدا	جيد	سيء	سيء جدا	لا اعرف/ لا جواب
12) أ) نشر معلومات عن نفقات الحكومة للمواطنين					
12) ب) نشر معلومات حول السياسات و الممارسات و عمليات صنع القرار الحكومية للمواطنين					
12) ج) توفير معلومات للمواطنين عن حقوقهم القانونية بلغة واضحة, ليتمكن الجميع من فهمها					
12) د) استشارة القادة التقليديين و المدنيين و المجتمعيين قبل اتخاذ القرارات التي تؤثر على المجتمع مباشرة					
12) هـ) توفير طرق فعّالة لتقديم الشكاوي عن الخدمات الأساسية العامة					
12) و) توفير طرق فعّالة لتقديم الشكاوي عن الموظفين الحكوميين					
12) ز) الإستجابة لشواغل الناس حول قضايا المجتمع					

ما مدى ثقتك بفئات المجتمع التالية:					
	جيد جدا	جيد	سيء	سيء جدا	لا اعرف/ لا جواب
13) أ) المواطنون و المقيمون في عمان					
13) ب) الموظفون العاملون في المؤسسات الحكومية المحلية					
13) ج) الموظفون العاملون في المؤسسات الحكومية المركزية					
13) د) الشرطة					

13) هـ) المحاكم					
يتواجد الفساد في جميع البلدان و المجتمعات بشكل أو بآخر. من وجهة نظرك, ما هو عدد الأشخاص المتورطون في ممارسات الفساد في عمان و الذين يشغرون الوظائف التالية:					
	لا أحد منهم	بعضهم	أغلبهم	كلهم	لا اعرف/ لا جواب
14) أ) الموظفون العاملون في المؤسسات الحكومية المركزية					
14) ب) الموظفون العاملون في المؤسسات الحكومية المحلية					
14) ج) أعضاء مجلسي الدولة و الشورى					
14) د) القضاة					
14) هـ) الشرطة					

افترض ان الشرطة ألقت القبض على شخصين متهمين بارتكابهما جريمة متشابهه. برأيك, ما مدى احتمال قيام العوامل التالية بوضع احد المتهمين في موقف سلبي امام الإستجواب/التحقيق؟	
أ) فقير	نعم ( ) لا ( ) لا أعرف ( )
ب) أنثى	نعم ( ) لا ( ) لا أعرف ( )
ج) من أقلية إثنية تختلف عن تلك للشرطي	نعم ( ) لا ( ) لا أعرف ( )
د) من أقلية دينية تختلف عن تلك للشرطي	نعم ( ) لا ( ) لا أعرف ( )
هـ) أجنبي/ وافد	نعم ( ) لا ( ) لا أعرف ( )
و) معاق	نعم ( ) لا ( ) لا أعرف ( )

الأسئلة التالية تتعلق بالمعلومات التي تنشرها بعض المؤسسات الحكومية عن الفعاليات و الخدمات المقدّمة للمواطنين.	
16) خلال الأشهر 12 الماضية, هل قمت بالبحث عن معلومات منشورة من قبل المؤسسات الحكومية إلكترونيا؟	نعم ( ) لا ( )..... إذهب الى سؤال رقم 18 لا أعرف ( )..... إذهب الى سؤال رقم 18

بالتفكير عن آخر مرة بحثت فيها عن تلك المعلومات:	
17) أ) ما نوع المعلومات التي بحثت عنها؟	
17) ب) ما مدى رضاك بالمعلومات التي وجدتها؟	راض جدا ( ).....إذهب الى سؤال رقم 18 راض ( ).....إذهب الى سؤال رقم 18 غير راض ( ) غير راض جدا ( ) لا أعرف ( ).....إذهب الى سؤال رقم 18
17) ج) ما هو السبب الرئيسي لعدم رضاك؟	

الأسئلة التالية تتعلق بطلبات الحصول على معلومات. هذه الطلبات مقدّمة الى المؤسسات الحكومية للحصول على معلومات عن أنشطتها, كطلب الحصول على سجلات عامة لمؤسسة حكومية أو التسجيل للإنتفاع ببرامج المنفعة العامة أو معلومات عن المشاريع المجتمعية, الخ. ملاحظة: السؤال لا يشمل طلب الحصول على معلومات متاحة للعامة مسبقا.	
18) خلال الأشهر 12 الماضية, هل قمت بتقديم طلب للحصول على معلومات تحتفظ بها مؤسسات حكومية, كالوزارات او البلديات او المحاكم؟	نعم ( )
	لا ( ).....إذهب الى سؤال رقم 19 (ك)
	لا أعرف ( )...إذهب الى سؤال رقم 20 (أ)

بالتفكير عن آخر مرة قدمت فيها طلبا للحصول على تلك المعلومات:	
19) أ) ما نوع المعلومات التي بحثت عنها؟	
19) ب) كيف قمت بتقديم الطلب؟	
19) ج) هل استلمت المعلومات التي طلبتها؟	نعم ( )... **اذهب الى سؤال 19 (و)** لا ( )... **اذهب الى سؤال 19 (د)** لا أعرف ( )... **اذهب الى سؤال 20 (أ)**
19) د) هل قام الموظف الحكومي/ المؤسسات الحكومية بتبرير عدم إعطائك للمعلومات التي طلبتها؟	نعم ( ) لا ( )... **اذهب الى سؤال 20 (أ)** لا أعرف ( )... **اذهب الى سؤال 20 (أ)**
19) هـ) ما هو السبب الرئيسي لعدم إعطائك المعلومات التي طلبتها من قبل الموظف الحكومي/ المؤسسة الحكومية؟	
19) و) كم من الوقت كان عليك الإنتظار للحصول على المعلومات التي طلبتها؟	أقل من أسبوع..... ( ) بين أسبوع و شهر..... ( ) بين الشهر و 3 أشهر..... ( ) بين 3 اشهر و 6 أشهر..... ( ) أكثر من 6 أشهر..... ( ) لا أعرف/ لا جواب..... ( )
19) ز) إذا طُلب منك دفع رسوم نظير الحصول على تلك المعلومات, ما هو المبلغ الذي دفعته؟ **<u>إذا لم تدفع شيئاً, اكتب "0".</u>**	**المبلغ:** _____ **ريال عماني**
19) ح) هل كان عليك دفع رشوة (أو مبلغ يزيد عن ما هو محدد قانونا) نظير الحصول على تلك المعلومات؟	نعم ( ) لا ( ) لا أعرف ( )
19) ط) ما مدى رضاك بالمعلومات التي استلمتها؟	راض جدا ( )..... **إذهب الى سؤال 20 (أ)** راض ( )..... **إذهب الى سؤال 20 (أ)** غير راض ( ) غير راض جدا ( ) لا أعرف ( )..... **إذهب الى سؤال 20 (أ)**

19) ي) ما هو السبب الرئيسي لعدم رضاك بالرد لطلبك المقدم؟	
19) ك) ما هي الأسباب لعدم تقديمك طلب لمعلومات من مؤسسة حكومية؟	

هذه قائمة بالمعلومات التي بحوزت المؤسسات الحكومية. إذا قمت بتقديم طلب للحصول على هذه الوثائق, ما مدى احتمال تسليمها لك من قبل المؤسسة؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
20) أ) ارقام تفصيلية لميزانية المؤسسة الحكومية					
20) ب) نسخ من العقود المبرمة للمؤسسة					
20) ج) نسخ من إقرارات الذمة المالية للمسؤلين الحكوميين					

من وجهة نظرك, ما مدى أهمية جعل المعلومات التالية متاحة للعامة؟

	مهم جدا	مهم الى حد ما	غير مهم	لا اعرف/ لا جواب
21) أ) ارقام تفصيلية لميزانية المؤسسة الحكومية				
21) ب) نسخ من العقود المبرمة للمؤسسة				
21) ج) نسخ من إقرارات الذمة المالية للمسؤلين الحكوميين				

من وجهة نظرك و بالتفكير عن المعلومات المتعلّقة بقضايا البيئة المنشورة في الصحف او المواقع الاكترونية الخاصة بالمؤسسات الحكومية, ما مدى سهولة الحصول على الآتي:					
	سهل جدا	سهل	صعب	صعب جدا	لا اعرف/ لا جواب
22) أ) معدل تلوث الهواء في مدينتك					
22) ب) معلومات عن جودة مياه الشرب في مدينتك					
22) ج) تقارير حكومية عن قضايا البيئة في عمان					

الأسئلة التالية تتعلق بمواقف قد شهدتها أو شهدها أحد أقربائك.	
23) هل انتفعت بأي خدمة صحية عامة خلال السنوات الثلاث الماضية؟	نعم ( )..... **إذهب الى سؤال رقم 24** لا ( ) لا أعرف ( )..... **إذهب الى سؤال رقم 24**
23) أ) هل كان عليك ان تدفع رشوة (او مبلغ فوق ما ينص عليه القانون) نظير الحصول على الرعاية الطبية في اي مستشفى حكومي او مركز صحي؟	نعم ( ) لا ( ) لا أعرف ( )
24) خلال السنوات الثلاث الماضية, هل تم حبسك أو حبس أحد أقربائك من قبل الشرطة؟	نعم ( ) لا ( )..... **اذهب الى سؤال 25** لا أعرف ( )..... **اذهب الى سؤال 25**
24) أ) بالتفكير عن آخر مرة تم فيها إيقافك/ حبسك أو ايقاف/حبس احد أقربائك, هل كان عليك دفع رشوة للشرطي؟	نعم ( ) لا ( ) لا أعرف ( )

25) خلال السنوات الثلاث الماضية، هل قمت أو قام أحد أقربائك بالتقدم بطلب الحصول على تصريح حكومي أو وثائق حكومية، كرخصة قيادة أو تصريح بناء، الخ. من مؤسسة حكومية محلية؟	نعم ( ) لا ( )..... **اذهب الى سؤال 26** لا أعرف ( )..... **اذهب الى سؤال 26**
25) أ) بالتفكير عن آخر مرة قمت فيها أو قام فيها أحد أقربائك بتقديم هذا الطلب، هل كان عليكم دفع رشوة أو مبلغ فوق ما ينص عليه القانون نظير الحصول على الخدمة؟	نعم ( ) لا ( ) لا أعرف ( )

26) خلال السنوات الثلاث الماضية، هل قام مزود الكهرباء بإنشاء أو غصلاح وصلة كهربائية في منزلك أو التحقق من قراءة عداد الكهرباء الخاص بك؟	نعم ( ) لا ( )..... **اذهب الى سؤال 27** لا أعرف ( )..... **اذهب الى سؤال 27**
26) أ) بالتفكير عن آخر مرة تم فيها ذلك، هل قام مقدم الخدمة الذي تتعامل معه بتغيير عداد الكهرباء أو عَرض عليك تغيير عداد الكهرباء لدفع فاتورة كهرباء أقل مما هو مطلوب نظير مبلغ من المال؟	نعم ( ) لا ( ) لا أعرف ( )

27) هل تملك سيارة؟	نعم ( ) لا ( )..... **اذهب الى سؤال 28** لا أعرف ( )..... **اذهب الى سؤال 28**
27) أ) خلال السنوات الثلاث الماضية، هل قمت بأخذ سيارتك لفحص الانبعاثات الكربونية التي تصدر منها؟	نعم ( ) لا ( )..... **اذهب الى سؤال 28** لا أعرف ( )..... **اذهب الى سؤال 28**
27) ب) بالتفكير عن آخر مرة قمت فيها بفحص سيارتك، هل كان عليك دفع رشوة لإجتياز الفحص؟	نعم ( ) لا ( ) لا أعرف ( )

28) خلال السنوات الثلاث الماضية، هل تعرضت أو تعرّض أحد أقربائك لإعتداء جسدي من قبل الشرطة أو الجيش؟	نعم ( ) لا ( )..... **اذهب الى سؤال 29** لا أعرف ( )..... **اذهب الى سؤال 29**
28) أ) بالتفكير عن آخر حادثة، هل قمت أو قام احد آخر بالتبليغ عن الحادثة عند الشرطة أو أي سلطة اخرى؟	نعم ( ) لا ( ) لا أعرف ( )

29) هل شعرت بالتمييزضدك عند البحث عن عمل أو في محيط عملك في عمان؟	نعم ( ) لا ( ) لا أعرف ( )

الأسئلة التالية تتعلق بجرائم قد تعرضت اليها او تعرض اليها احد اقربائك خلال السنوات الثلاث الماضية.	
30) خلال السنوات الثلاث الماضية، هل تعرّضت او تعرّض أحد أقربائك للسرقة أو محاولة السرقة؟	نعم ( ) لا ( )..... **اذهب الى سؤال 31** لا أعرف ( )..... **اذهب الى سؤال 31**
30) أ) بالتفكير عن آخر حادثة، هل قمت أو قام أحدهم بالتبليغ عن الحادثة عند الشرطة؟	نعم ( ) لا ( )..... **اذهب الى سؤال 31** لا أعرف ( )..... **اذهب الى سؤال 31**
30) ب) هل تم القبض على الفاعل؟	نعم ( ) لا ( )..... **اذهب الى سؤال 31** لا أعرف ( )..... **اذهب الى سؤال 31**
30) ج) هل تمت محاكمة الفاعل و معاقبته؟	نعم ( ) لا ( ) لا أعرف ( )

31) خلال السنوات الثلاث الماضية، هل تعرّضت أو تعرّض أحد أقربائك لعملية سطو مسلّح؟	نعم ( ) لا ( ).....**اذهب الى سؤال 32** لا أعرف ( ).....**اذهب الى سؤال 32**
31) أ) بالتفكير عن آخر حادثة، هل قمت أو قام أحدهم بالتبليغ عن الحادثة عند الشرطة؟	نعم ( ) لا ( ).....**اذهب الى سؤال 32** لا أعرف ( ).....**اذهب الى سؤال 32**
31) ب) هل تم القبض على الفاعل؟	نعم ( ) لا ( ).....**اذهب الى سؤال 32** لا أعرف ( ).....**اذهب الى سؤال 32**
31) ج) هل تمت محاكمة الفاعل و معاقبته؟	نعم ( ) لا ( ) لا أعرف ( )

32) خلال السنوات الثلاث الماضية، هل تعرّضت أو تعرّض احد أقربائك لعملية إبتزاز؟	نعم ( ) لا ( ).....**اذهب الى سؤال 33** لا أعرف ( ).....**اذهب الى سؤال 33**
32) أ) بالتفكير عن آخر حادثة، هل قمت أو قام أحدهم بالتبليغ عن الحادثة عند الشرطة؟	نعم ( ) لا ( ).....**اذهب الى سؤال 33** لا أعرف ( ).....**اذهب الى سؤال 33**
32) ب) هل تم القبض على الفاعل؟	نعم ( ) لا ( ).....**اذهب الى سؤال 33** لا أعرف ( ).....**اذهب الى سؤال 33**

32) ج) هل تمت محاكمة الفاعل و معاقبته؟	نعم ( ) لا ( ) لا أعرف ( )

33) خلال السنوات الثلاث الماضية، هل تعرّض احد أقربائك للقتل؟	نعم ( ) لا ( )..... **اذهب الى سؤال 34** لا أعرف ( )..... **اذهب الى سؤال 34**
33) أ) بالتفكير عن آخر حادثة، هل قمت أو قام أحدهم بالتبليغ عن الحادثة عند الشرطة؟	نعم ( ) لا ( )..... **اذهب الى سؤال 34** لا أعرف ( )..... **اذهب الى سؤال 34**
33) ب) هل تم القبض على الفاعل؟	نعم ( ) لا ( )..... **اذهب الى سؤال 34** لا أعرف ( )..... **اذهب الى سؤال 34**
33) ج) هل تمت محاكمة الفاعل و معاقبته؟	نعم ( ) لا ( ) لا أعرف ( )

34) ما مدى مستوى الأمان الذي تشعر به عند المشي ليلاً في حيّك؟	آمن جدا..... ( ) آمن..... ( ) غير آمن..... ( ) غير آمن جدا..... ( ) لا أعرف..... ( )

35) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) يمكن للمواطنين ان يجتمعوا للفت الانتباه الى قضية معينة او التوقيع على عريضة.					
ب) عمليا, يمكن للعمّال في عمان, وبحرّيّة, تشكيل نقابات عمالية ومفاوضة أصحاب العمل على حقوقهم.					
ج) يمكن للمواطنين و المقيمين في عمان أن يُعبّروا وبحرية عن آراءهم ضد سياسات الحكومة واجراءاتها دون خوف.					
د) يمكن للمواطنين و المقيمين تنظيم اجتماعات مجتمعية.					
هـ) يمكن لوسائل الاعلام عرض, وبحرية, قضايا الفساد ضد موظفي القطاع العام وذو المناصب الرفيعة دون تخوف.					
و) يمكن لمؤسسات المجتمع المدني ان تعبر وبحرية عن آراءها ضد سياسات الحكومة واجراءاتها دون خوف.					
ز) يمكن لأعضاء مجلس الشورى التعبير,وبحرية, عن آراءهم ضد سياسات الحكومة دون تخوف.					
ح) يمكن للاقليات الدينية ممارسة شعائر ها الدينية و اعيادها المقدسة بحرية					

36) خلال الأشهر 12 الماضية, هل تعرّضت أو تعرّض احد أقربائك لأي من النزاعات أو المشاكل التالية:		
رمز نوع الخلاف		
أ	منازعات الأراضي	نعم ( ) لا ( ) لا أعرف ( )
ب	مشاكل في الحصول على البطاقة الشخصية أو شهادة الميلاد	نعم ( ) لا ( ) لا أعرف ( )
ج	مشاكل في الحصول على شهادات الزواج أو الطلاق	نعم ( ) لا ( ) لا أعرف ( )
د	مشاكل في الحصول على ملكيات الأراضي	نعم ( ) لا ( ) لا أعرف ( )
هـ	مشاكل في الحصول على الخدمات العامة (تعليم , صحة , سكن, الخ.)	نعم ( ) لا ( ) لا أعرف ( )
و	الطّلاق	نعم ( ) لا ( ) لا أعرف ( )
ز	حضانة أو إعانة الأطفال	نعم ( ) لا ( ) لا أعرف ( )
ح	العنف المنزلي	نعم ( ) لا ( ) لا أعرف ( )
ط	خلافات تتعلق بالورث	نعم ( ) لا ( ) لا أعرف ( )

ي	خلافات مع الجيران	نعم ( ) لا ( ) لا أعرف ( )
ك	خلافات بين المؤجّر و المستأجر	نعم ( ) لا ( ) لا أعرف ( )
ل	خلافات في العمل (عدم دفع الرواتب المستحقة, اصابة في العمل, الخ.)	نعم ( ) لا ( ) لا أعرف ( )
م	خلافات حول اتفاق تجاري	نعم ( ) لا ( ) لا أعرف ( )
ن	خلافات حول دَيْن غير مدفوع	نعم ( ) لا ( ) لا أعرف ( )
س	خلافات حول بضائع أو خدمات لم تسلّم أو تنجز بالكامل	نعم ( ) لا ( ) لا أعرف ( )
ع	إعتداء جسدي	نعم ( ) لا ( ) لا أعرف ( )
ف	السرقة بكافة أنواعها	نعم ( ) لا ( ) لا أعرف ( )
ص	مخالفات مرورية	نعم ( ) لا ( ) لا أعرف ( )
ق	إعتقال أو إحتجاز دون سبب	نعم ( ) لا ( ) لا أعرف ( )
ر	إيذاء من قبل الشرطة	نعم ( ) لا ( ) لا أعرف ( )

ش	قضايا فساد أو ابتزاز أو رشوة	نعم ( ) لا ( ) لا أعرف ( )
ت	نزاعات أو مشاكل أخرى **(يرجى ذكر النزاع/المشكلة)**	

37) من بين هذه الخلافات/المشاكل التي شهدتها او شهدها احد افراد اسرتك, ما هي ابرز الخلافات/المشاكل من وجهة نظرك؟

رمز المشكلة: _____ (يرجى اختيار أحد الرموز المذكورة في السؤال السابق (من بين أ الى ت))

38) مع من كان الخلاف؟

39) خلال عملية حل النزاع, هل تلقّيت أو تلقّى أحد أقربائك لمشورة قانونية أو مساعدة قانونية من شخص آخر, كشيخ القبيلة أو محامي؟	نعم ( ) لا ( ).....**اذهب الى سؤال 41** لا أعرف ( ).....**اذهب الى سؤال 41**

38) مِن مَن تلقّيت أو تلقّى أحد أقربائك هذه المساعدة؟
40) لماذا لم تحاول البحث عن مشورة قانونية او مساعدة قانونية؟

41) هل لجأ أحد الطرفين للتهديد او اللجوء الى العنف خلال النزاع أو خلال عملية حل النزاع؟	نعم ( ) لا ( ) لا أعرف ( )

الأسئلة التالية تتعلق بإجابتك التي أشرت إليها في سؤال رقم 37, حول أبرز خلاف/مشكلة واجهتها أو واجهها أحد أقربائك.	
43) هل لجأتم الى شخص أو مؤسسة لحل النزاع/المشكلة؟	نعم ( )..... إذهب الى سؤال رقم 45 (أ) لا ( ) لا أعرف ( )... إذهب الى سؤال رقم 47 (أ)

44) لماذا لم تلجؤا الى شخص أو مؤسسة لحل النزاع؟

45) أ) الى أي جهة تم رفع النزاع لحله؟	
45) ب) من اختار جهة حل النزاع؟	
45) ج) ما هو السبب الرئيسي وراء اختيار هذه الجهة؟	
45) د) يرجى ذكر نتيجة واحدة كنت تأمل أن تتحقق نتيجة اختيار تلك الجهة.	
45) هـ) هل تمت اجراءات حل النزاع باللغة التي تفضلها؟	نعم ( )..... إذهب الى سؤال رقم 45 (ز) لا ( ) لا أعرف ( )
45) و) هل تم توفير مترجم لك؟	نعم ( ) لا ( ) لا أعرف ( )
45) ز) هل تمكّنت تلك الجهة في حل النزاع؟	نعم ( ) لا ( ) لا أعرف ( )
45) ح) ما هي المدة التي إستغرقها اتخاذ قرار او حكم, بدءا من لحظة تقديم الدعوى الى لحظة التوصل الى قرار او اتفاق	أقل من شهر..... ( ) بين الشهر و السنة..... ( ) بين سنة الى 3.....( ) أكثر من 3 سنوات.....( ) لا أعرف ..... ( )

45) ط) هل امتثلت لهذا القرار/الحكم؟	نعم ( ) لا ( ) لا أعرف ( )
45) ي) هل امتثل الطرف الآخر بالقرار/ الحكم؟	نعم ( ) لا ( ) لا أعرف ( )
45) ك) هل تعتقد بأن القرار/الحكم عادل؟	نعم ( ) لا ( ) لا أعرف ( )
45) ل) هل نشب خلاف بينك وبين الطرف الآخر مرة أخرى, حتى بعد فض النزاع؟	نعم ( ) لا ( ) لا أعرف ( )
45) م) هل طلب منك دفع رشوة خلال عملية فض النزاع؟	نعم ( ) لا ( ) لا أعرف ( )
45) ن) ما هو المبلغ الكلّي الذي دفعته نظير فض النزاع؟	**المبلغ: _____ ريال عماني**
45) س) بغض النظر عن النتيجة, هل تعتقد بأن العملية كانت عادلة؟	نعم ( ) لا ( ) لا أعرف ( )
45) ع) هل تعتقد بأن العملية كانت بطيئة؟	نعم ( ) لا ( ) لا أعرف ( )
45) ف) هل تعتقد بأن العملية كانت مُكلِفة؟	نعم ( ) لا ( ) لا أعرف ( )

هل يتعيّن على الناس في حيك بدفع رشاوى او حوافز مالية نظير القيام بالآتي:	
46) أ) تسجيل ملكية أرض أو بيت؟	نعم ( ) لا ( ) لا أعرف ( )

46) ب) استخراج رخصة قيادة؟	نعم ( ) لا ( ) لا أعرف ( )
46) ج) قبول الأبناء في مدرسة حكومية؟	نعم ( ) لا ( ) لا أعرف ( )
46) د) العلاج في مستشفى عام؟	نعم ( ) لا ( ) لا أعرف ( )
46) هـ) الإستفادة من خدمات الشرطة؟	نعم ( ) لا ( ) لا أعرف ( )
46) و) ربط المنزل بشبكة المياه؟	نعم ( ) لا ( ) لا أعرف ( )
46) ز) ربط أو صيانة مجمّع الكهرباء في بيتك؟	نعم ( ) لا ( ) لا أعرف ( )

من وجهة نظرك, ما مدى تكرار الأمثلة التالية من قبل المؤسسات الحكومية المحلية؟		
47) أ) تسجيل ملكية أرض أو بيت؟	دائما في معظم الحالات في بعض الحالات تقريبا بتاتا لا أعرف	( ) ( ) ( ) ( ) ( )
47) ب) احترام الشرطة للحقوق الأساسية للمتهمين	دائما في معظم الحالات في بعض الحالات تقريبا بتاتا لا أعرف	( ) ( ) ( ) ( ) ( )

47) ج) ضمان محاكمة عادلة للجميع من قبل المحاكم	دائما في معظم الحالات في بعض الحالات تقريبا بتاتا لا أعرف	( ) ( ) ( ) ( ) ( )
47) د) اهتمام المحاكم بالإجراءات الشكليّة أكثر من اهتمامها بتحقيق العدالة	دائما في معظم الحالات في بعض الحالات تقريبا بتاتا لا أعرف	( ) ( ) ( ) ( ) ( )
47) هـ) معاقبة رجال الشرطة المخالفين للقانون	دائما في معظم الحالات في بعض الحالات تقريبا بتاتا لا أعرف	( ) ( ) ( ) ( ) ( )

48) إلى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) عمليا, تتم صياغة القوانين بلغة واضحة حتى يفهمها جميع الناس في عمان					
ب) التشريعات القانونية متاحة للعامة وبجميع اللغات الرسمية					
ج) يمكن لوسائل الاعلام ان تعبر,وبحرية, عن آراءها ضد سياسات الحكومة دون خوف					
د) عمليا, يمكن للعامة في عمان ان يجتمعوا ببعضهم و يقدموا مقترحاتهم للحكومة حول السياسات الوطنية					
هـ) تتعاون الحكومة مع مؤسسات المجتمع المدني عند صياغة السياسات العامة					
و) عمليا, يتم ترشيح موظفي الحكومة بطريقة نزيهة					
ز) عمليا, يمكن للناس التصويت و بحرية وبدون اي ضغوطات أو مضايقات					
ح) يمكن للمواطنين الانضمام الى اي منظمة سياسية او حزب سياسي يختارونه					
ط) عمليا, يمكن للعامة في عمان ان يجتمعوا ببعضهم و يقدموا مقترحاتهم لعضو مجلس الشورى					
ي) عمليا, يمكن للعامة في عمان ان يجتمعوا ببعضهم و يقدموا مقترحاتهم للحكومة					
ك) عمليا, يمكن الاعتراض على قرارات الحكومة أمام المحكمة					

الأسئلة التالية تتعلق بأنشطة يقوم بها الناس غالبا. هل شاركت في أحد هذه الأنشطة؟	
49) أ) حضور اجتماع مجتمعي	نعم ( ) لا ( ) لا أعرف ( )
49) ب) المشاركة في مظاهرة سلمية و قانونية	نعم ( ) لا ( ) لا أعرف ( )
49) ج) المشاركة في أعمال منظمة أو حزب للنظر في مشاكل المجتمع	نعم ( ) لا ( ) لا أعرف ( )
49) د) تبليغ الجهات المختصة عن حادثة ذات اثر على المجتمع (جريمة, فساد اداري, الخ)	نعم ( ) لا ( ) لا أعرف ( )

من وجهة نظرك, ما هو حال المجالات التالية في عمان؟		
50) أ) تقليل الفساد	يتجه نحو الأفضل يتجه نحو الأسوء كما هو عليه لا أعرف	( ) ( ) ( ) ( )
50) ب) معاقبة موظفي الحكومة المخالفين للقانون	يتجه نحو الأفضل يتجه نحو الأسوء كما هو عليه لا أعرف	( ) ( ) ( ) ( )
50) ج) تقليل/ منع الجرائم	يتجه نحو الأفضل يتجه نحو الأسوء كما هو عليه لا أعرف	( ) ( ) ( ) ( )
50) د) تشجيع المؤسسات الحكومية على الشفافية	يتجه نحو الأفضل يتجه نحو الأسوء كما هو عليه لا أعرف	( ) ( ) ( ) ( )

50 هـ) حماية حقوق الإنسان	يتجه نحو الأفضل يتجه نحو الأسوء كما هو عليه لا أعرف	( ) ( ) ( ) ( )
50) و) مشاركة المواطنين في عملية اتخاذ القرارات الحكومية المهمة	يتجه نحو الأفضل يتجه نحو الأسوء كما هو عليه لا أعرف	( ) ( ) ( ) ( )

يتحدث البعض عن أهم الأهداف التي يجب على الدولة العمل على تحقيقها خلال العشر سنوات المقبلة. من وجهة نظرك, أيا من الأهداف التالية هي الأهم؟ **(الرجاء اختيار اجابة واحدة فقط):**

مكافحة الفساد	
مكافحة الجرائم	
حماية حقوق الإنسان	
نزاهة و حرية الإنتخابات	
رفع مستوى التعليم	
تقليل الفقر	
تحسين جودة الخدمات الصحية	
التوظيف و تحسين وضع الإقتصاد	
حماية البيئة	
مشاركة المواطنين في عملية اتخاذ القرارات الحكومية المهمة	

نهاية الإستبيان

[...]

شكرًا جزيلاً لوقتكم و تعاونكم!

APPENDIX A (II)

QRQ Public Health Survey

يرجى الإجابة على الأسئلة التالية وفقا لتصورك لكيفية تطبيق القوانين في عمان. يرجى الإشارة الى إجابتك بوضع علامة (√) في الخانة المناسبة.

القسم الأول

الأسئلة التالية تصف حالات افتراضية. في كل سؤال, ستقدم مجموعة من الفرضيات. يرجى تحديد الخيار الأمثل لوجهة نظرك.

سيناريو افتراضي (1)

1) افترض ان شخصا من ذوي الدخل المحدود تلقّى دما فاسدا من احد المستشفيات العامة, ونتيجة لذلك اصيب بداء الوباء الكبدي. ما مدى احتمال لجوء المريض الى احد الآليات التالية للحصول على تعويض عن اصابته؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) رفع دعوى قضائية					
ب) تقديم شكوى امام مؤسسة حكومية					
ج) اللجوء الى لجنة التوفيق و المصالحة					
د) تقديم القضية امام شيخ القبيلة					
هـ) عدم اتخاذ اي اجراء					

سيناريو افتراضي (2)

2) افترض انه نتيجة لتفتيش اداري, تم العثور على موظف حكومي يصدر وبصورة غير قانونية, تراخيص حكومية مقابل الحصول على مبالغ مالية من مستشفيات خاصة لا تمتثل لقوانين الصحة العامة. ايا من النتائج التالية هي الأرجح؟ **(يرجى اختيار اجابة واحدة فقط)**

أ) تتجاهل السلطات المخالفة تماما	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تتم محاكمة الموظف و معاقبته, اما بالحبس او الغرامة	
لا اعرف/ لا جواب	

سيناريو افتراضي (3)

3) افترض ان وزارة الصحة قامت بإخطار مصنع غذائي عن ارتباط تفشي السالمونيلا في السلطنة بسلسلة الإمدادات الغذائية من المصنع. أيا من النتائج التالية هي الأرجح؟ **(الرجاء اختيار اجابة واحدة فقط):**

أ) يلتزم المصنع بالقانون اما طوعا او عن طريق قرارات المحكمة او الغرامات او عقوبات أخرى.	
ب) يقوم المصنع بتقديم رشاوى او محاولة التأثير على السلطات للتغاضي عن المخالفة.	
ج) لا يحدث شئ بتاتا.	
د) لا أعرف/ لا جواب	

نهاية القسم الأول

[...]

القسم الثاني

4) من وجهة نظرك, ما مدى تكرار الأحداث التالية:

	دائما	في معظم الحالات	في بعض الحالات	تقريبا بتاتا	لا أعرف/ لا جواب
أ) عمليا, تلتزم جميع المستشفيات العامة بقوانين وتشريعات الصحة العامة.					
ب) عمليا, تلتزم جميع العيادات الطبية بقوانين و تشريعات الصحة العامة.					
ج) عمليا, تصل الإمدادات الغذائية المخصصة للأطفال الفقراء فعليّا					

5) يرجى الإجابة على الأسئلة التالية:

	%100	%75	%50	%25	%5	%0	لا أعرف/ لا جواب
أ) ما هي النسبة المئوية من الأموال العامة التي تنفق فعليا في المناطق الاقل نموا في السلطنة لتشييد المرافق الصحية الأساسية؟							
ب) ما هي النسبة المئوية من الأموال العامة المخصّصة لمشاريع الرعاية الصحية التي تم اختلاسها؟							
ج) ما هي النسبة المئوية من ساعات العمل المفقودة بسبب الغياب الغير مبرر من قبل الممرضين في المستشفيات والعيادات العامة؟							
د) ما هي النسبة المئوية من ساعات العمل المفقودة بسبب الغياب الغير مبرر من قبل الأطباء في المستشفيات والعيادات العامة؟							

6) افترض ان مريضا يسعى لعلاج مرض الحصبة في احد المستشفيات العامة. من وجهة نظرك, ما مدى احتمال قيام العوامل التالية بتلقي المريض لعلاج أقل جودة من غيره عند التسجيل في المستشفى؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) فقير					
ب) أنثى					
ج) من أقلية إثنية					
د) من أقلية دينية					
هـ) أجنبي/ وافد					
و) معاق					
ز) لا شيء مما ذكر					

7) يرجى اختيار العبارة الأقرب لوجهة نظرك حول آلية صرف ميزانية الصحة العامة في عمان.
(الرجاء اختيار اجابة واحدة فقط):

أ) يتم منح معظم العقود من خلال مناقصات مفتوحة و تنافسية	
ب) هناك اجراء رسمي لتقديم العروض للمناقصات المطروحة ولكنه مليء بالعيوب. كما يتم منح عدة عقود دون تنافس شريف, او خلال آليات مناقصة غير فعّالة, مما يتيح المجال لعمليات الفساد.	
ج) لا توجد اجراءات رسمية لتقديم عروض للمناقصات. او ان تلك الاجراءات سطحية و غير فعّالة. ويتم منح العقود للشركات التي تقدم رشاوي او يتم منحها لشركات مملوكة لموظفين حكوميين في مختلف الدرجات	
لا اعرف/ لا جواب	

8) ما مدى تكرار حاجة المواطنين الى تقديم رشاوى او حوافز مالية من أجل:

	دائما	في معظم الحالات	في بعض الحالات	بتاتا	لا اعرف/ لا جواب
أ) التطعيم في مستشفى عام					
ب) الحصول على أدوية					
ج) تسجيل الأطفال في حضانات					
د) الحصول على بطاقة صحية لتلقي العلاج في المستشفيات العامة					
هـ) تلقي العلاج في مستشفى خاص بالمجان على الرغم من توفر العلاج نفسه في مستشفى عام					
و) الحصول على وسائل منع الحمل					
ز) تلقي الرعاية اثناء الولادة					

9) يرجى الاجابة على الأسئلة التالية:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) ما مدى احتمال قيام وزارة الصحة بتدقيق او تفتيش المستشفيات العامة بشكل سنوي؟					
ب) ما مدى احتمال قيام وزارة الصحة بتدقيق او تفتيش العيادات الصحية بشكل سنوي؟					
ج) ما مدى احتمال قيام وزارة الصحة بفرض غرامات على المخالفات الصحية المكتشفة؟					
د) ما مدى احتمال طلب أو تلقي وزارة الصحة لرشاوى او حوافز مالية لغض الطرف عن المخالفات/الانتهاكات؟					

10) من وجهة نظرك, ما مدى تكرار الأحداث التالية:

	دائما	في معظم الحالات	في بعض الحالات	بتاتا	لا اعرف/ لا جواب
أ) عمليا, تقوم الحكومة بتوفير معلومات سهلة الفهم لمواضيع تتعلق بالصحة العامة					
ب) عمليا, تسعى الحكومة جاهدة لجعل معلومات الصحة العامة متاحة باللغات التي يتحدث بها شريحة كبيرة من السكان, حتى لو لم تكن لغة رسمية					
ج) عمليا, تنشر التشريعات و القرارات الصحية الوطنية في الوقت المناسب					
د) عمليا, يمكن الحصول على نسخ من القرارات الادارية بكلفة بسيطة/بدون كلفة عن طريق البريد/الانترنت					
هـ) عمليا, الانظمة و القوانين الصحية مستقرة بما فيه الكفاية للسماح للعامة بالتحقق من السلوكيات المسموح بها من عدمه.					

11) يرجى الإجابة على الأسئلة التالية:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) ما مدى احتمال قيام طالب بكلية الطب بإحدى الجامعات في عمان و الذي رسب في امتحاناته, بتقديم رشوى للحصول على الشهادة؟					
ب) ما مدى احتمال قيام العاملين بالجهاز الطبي وموظفي المستشفيات بالمطالبة بأموال من شركات التأمين لخدمات صحية لم تقدم أساسا؟					
ج) ما مدى احتمال تلقي الأطباء او موظفي المستشفيات لرشاوى من شركات الأدوية نظير تعزيز مبيعات أدويتهم؟					

12) ما مدى احتمال قيام الأطباء او موظفو العيادات العامة في الأحياء الفقيرة بسرقة المواد التالية, إما لاستخدام شخصي او لاستخدامها في الممارسات الطبية الخاصة او لإعادة بيعها؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) الأدوية					
ب) الإمدادات الطبية					
ج) اللقاحات					
د) المكمّلات الغذائية للأطفال					
هـ) وسائل منع الحمل					

13) ما مدى احتمال ضبط الأطباء او موظفو العيادات العامة في الأحياء الفقيرة بسرقة الأدوية او اللقاحات او الإمدادات الطبية؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

14) إذا تم ضبط المخالفين, ما مدى احتمال طردهم من وظائفهم؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

نهاية الإستبيان

[...]

شكرًا جزيلاً لوقتكم و تعاونكم!

APPENDIX A (III)

QRQ Labour Law Survey

يرجى الإجابة على الأسئلة التالية وفقا لتصورك لكيفية تطبيق القوانين في عمان. يرجى الإشارة الى إجابتك بوضع علامة (√) في الخانة المناسبة.

القسم الأول

الأسئلة التالية تصف حالات افتراضية. في كل سؤال, ستقدم مجموعة من الفرضيات. يرجى تحديد الخيار الأمثل لوجهة نظرك.

سيناريو افتراضي (1)
افترض ان شركة خاصة رفضت دفع راتب ثلاثة اشهر لأحد موظفيها. وعلى الرغم من ذلك, استمر الموظف بالقيام بمهامه كالمعتاد وكان تقييم أداءه في تلك الفترة مرضيا. بعد مضي ثلاثة اشهر من عدم دفع مرتب الموظف, قامت الشركة بفصله دون تقديم اي أسباب. افترض ان مجموع المبلغ المستحق للعامل **2400 ريال عماني**.

1) ما مدى احتمال لجوء الموظف الى الآليات التالية لحل هذا النزاع؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) رفع دعوى قضائية					
ب) تقديم شكوى امام مؤسسة حكومية					
ج) اللجوء الى لجنة التوفيق و المصالحة					
د) تقديم القضية امام شيخ القبيلة					
هـ) عدم اتخاذ اي اجراء					

2) عمليا, ما هي المدة التي يستغرقها اتخاذ قرار او حكم, بدءا من لحظة تقديم الدعوى الى لحظة التوصل الى قرار او اتفاق, في حال لجأ الموظف للآليات التالية؟

	أقل من شهر	بين الشهر و السنة	بين سنة الى 3	أكثر من 3 سنوات	أكثر من 5 سنوات	لا اعرف/ لا جواب
أ) محكمة ابتدائية						
ب) لجنة تظلمات						
ج) لجنة التوفيق و المصالحة						
د) مؤسسة حكومية						

3) عمليا, وبعد التوصل الى قرار او اتفاق, ما هو الوقت الذي سينتظره الموظف حتى يتمكن من تنفيذ القرار او الاتفاق و الحصول على المبلغ المستحق عند اللجوء الى احدى هذه الآليات؟

	أقل من شهر	بين الشهر و السنة	بين سنة الى 3	أكثر من 3 سنوات	أكثر من 5 سنوات	لا اعرف/ لا جواب
أ) محكمة ابتدائية						
ب) لجنة تظلمات						
ج) لجنة التوفيق و المصالحة						
د) مؤسسة حكومية						

4) بناءا على خبرتك, ما هي التكاليف المتوقعة التي سيتكبدها الموظف, كنسبة مئوية (%), من حجم المطالبة (2400 ر.ع) اذا لجأ الى الاجراءات آنفة الذكر؟

أ) حوالي 15% من حجم المطالبة	
ب) حوالي 30% من حجم المطالبة	
ج) حوالي 40% من حجم المطالبة	
د) أكثر من 50% من حجم المطالبة	
هـ) لا أعرف/ لا جواب	

5) بناءا على خبرتك, كم سيكلف الموظف تعيين محامي لتمثيله في قضية كهذه في المحكمة؟

المبلغ: _____ ر.ع

6) في قضية كهذه, ما مدى احتمال قيام الأشخاص الآتية ذكرهم, بطلب رشوة (أو اي حوافز مالية اخرى) من احد المتخاصمين للقيام بواجباتهم او تسريع العملية القضائية؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) القضاة					
ب) موظفو المحكمة					
ج) مفتش عمالي					
د) مُحكِّم					
ه) الشرطة					

7) أخيرا, افترض أن الموظف قام برفع دعوى على الشركة امام محكمة ابتدائية. ما مدى احتمال تعيين محام للموظف من قبل الدولة او اي منظمة اخرى, اذا لم يكن بمقدوره تحمل التكاليف المالية؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
ه) لا أعرف/ لا جواب	

سيناريو افتراضي (2)

8) افترض ان مدير احد المستشفيات يأخذ اموالا غير قانونية من الموظفين لديه نظير ترقيتهم. افترض ان احد الموظفين عنده شهد هذا الفعل وابلغه للسلطات المختصة مع تقديم الادلة لادانته. ايا من النتائج التالية هي الأرجح؟ **(الرجاء اختيار اجابة واحدة فقط):**

أ) يتم تجاهل الادعاء تماما من قبل السلطات	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تتم ادانة المدير ومعاقبته (اما بدفع غرامة مالية او بالسجن)	
د) لا اعرف/ لا جواب	

سيناريو افتراضي (3)

9) افترض ان احدى الشركات قامت بطرد عامل لقيامه بالدعوة لإنشاء حزب عمالي في احد مصانعها. اذا قام العامل بتقديم شكوى لدى السلطات المختصة, اي من النتائج التالية هي الأرجح؟ **(الرجاء اختيار اجابة واحدة فقط):**

أ) يتم تجاهل الشكوى تماما من قبل السلطات	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تضمن السلطات ان تقوم الشركة بتعويض العامل او اعادة تعيينه في وظيفته	
د) تقوم الشركة بتقديم رشاوي او باستخدام وساطاتها لتجنب المعاقبة	
هـ) لا اعرف/ لا جواب	

نهاية القسم الأول

[...]

القسم الثاني

10) يهدف هذا السؤال الى دراسة الأسباب التي تدفع ذوي الدخل المحدود في عمان الى عدم اللجوء الى القضاء لتسوية خلافاتهم. يرجى تحديد مدى أهمية العوامل التالية في التأثير على قرارات الأشخاص باللجوء الى المحاكم أولا لتسوية خلافاتهم في المدينة التي تعيش فيها:

	مهم جدا	مهم الى حد ما	ليس مهما	ليس مهما اطلاقا	لا اعرف/ لا جواب
أ) رسوم المحكمة عالية جدا					
ب) رسوم المحامي عالية جدا					
ج) الافتقار الى المساعدة القانونية المجانية.					
د) الافتقار الى مساعديين قانونيين أو عيادات قانونية					
هـ) الحواجز اللغوية وعدم توفر مترجمين.					
و) بعد مسافة المحاكم					
ز) تأخر اصدار القرارات من قبل المحاكم					
ح) التحيز ضد المهمشين في المجتمع					
ط) الاجراءات القضائية معقدة جدا					
ي) فساد القضاة والموظفين القضائيين.					
ك) نقص المعلومات العامة المتاحة عن اجراءات المحاكم					
ل) الافتقار الى الوعي بسبل الانتصاف المتاحة					

11) من وجهة نظرك, خلال العام الماضي, ما هي النسبة المئوية من القرارات التي تصدرها المحاكم الابتدائية تعكس النتائج التالية:

	%100	%75	%50	%25	%5	%0	لا أعرف/ لا جواب
أ) يعكس القرار النهائي تقييم القضاة الصادق للأدلة المتاحة والقانون الواجب التطبيق.							
ب) تأثر القرار بضغط خارجي من أحد الأطراف او تأثر بالفساد.							

12) من وجهة نظرك, من بين جميع القضايا التي كانت الحكومة طرفا فيها (كخصم او كطرف ثالث):

	%100	%75	%50	%25	%5	%0	لا أعرف/ لا جواب
ما هي النسبة المئوية من تلك القضايا مارست الحكومة فيها نفوذ غير قانوني للتأثير علة نتيجة القرار							

13) من وجهة نظرك, ما مدى احتمال قيام العوامل التالية بوضع شخص في موقف سلبي امام المحكمة؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) فقير					
ب) أنثى					
ج) من أقلية إثنية					
د) من أقلية دينية					
هـ) أجنبي/ وافد					
و) معاق					
ز) لا شيء مما ذكر					

14)

	مدرك جدا	مدرك	غير مدرك	غير مدرك بتاتا	لا اعرف/ لا جواب
من وجهة نظرك, ما مدى ادراك عامة الناس بآليات القضاء الرسمية التي يمكن اللجوء اليها؟					

15) يرجى اختيار العبارة الأقرب لوجهة نظرك حول فعّالية وزارة القوى العاملة بالاستجابة على انتهاكات العمل التالية:

	فعّالة جدا [الوزارة فعالة بالتحقيق في تلك المخالفات, وان اي مخالفة مكتشفة يتم اتخاذ اللازم حيالها]	**فعّالة الى حد ما** [يمكن ان تقوم الوزارة بفتح تحقيق عن المخالفات التي تم التبليغ عنها و لكن فعالية الوزارة محدودة عند وقت تنفيذ العقوبات. البطئ في قيام العمل وعدم الرغبة بمباشرته قد تكون احد الاسباب ايضا]	**غير فعّالة مطلقا** [لا تقوم الوزارة بفتح تحقيق عن تلك المخالفات]	لا اعرف/لا جواب
أ) مخالفات السلامة في مكان العمل				
ب) انتهاكات عمل الأطفال				
ج) انتهاكات العمل القسري				
د) انتهاكات حق العمال بالمشاركة في المفاوضات الجماعية				
هـ) انتهاكات حرية العمال بتشكيل جمعيات عمالية				

نهاية القسم الثاني

[...]

القسم الثالث

16) افترض ان شخصا مؤهلا تاهيلا جيدا تقدم لوظيفة حكومية شاغرة. من وجهة نظرك, ما مدى احتمال قيام العوامل التالية بوضع الشخص في موقف سلبي اثناء عملية التوظيف؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) فقير					
ب) أنثى					
ج) من أقلية إثنية					
د) من أقلية دينية					
هـ) أجنبي/ وافد					
و) معاق					
ز) لا شيء مما ذكر					

17) ما مدى تكرار قيام الاشخاص او الشركات الخاصة بتقديم رشاوى او حوافز مالية من أجل:

	دائما	في معظم الحالات	في بعض الحالات	بتاتا	لا اعرف/ لا جواب
أ) استلام معونات الرعاية الاجتماعية من الحكومة (المعاقين/المسنين ,الخ.)					
ب) استلام مستحقات التقاعد من الحكومة					
ج) نشر بلاغ استدعاء للمحكمة					
د) استخراج رخصة قيادة					
هـ) تسريع عملية تسليم تصاريح الصحة و السلامة المهنية					

18) يرجى الاجابة على الأسئلة التالية:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) ما مدى احتمال قيام وزارة القوى العاملة بتدقيق او تفتيش شركات التصنيع نتيجة بلاغ من احد الموظفين بوجود مخالفة بالسلامة في العمل؟					
ب) ما مدى احتمال قيام وزارة القوى العاملة بمراجعة او تفتيش شركات التصنيع بشكل روتيني؟					
ج) ما مدى احتمال قيام وزارة القوى العاملة بفرض غرامات على المخالفات المهنية المكتشفة؟					
د) ما مدى احتمال طلب أو تلقي وزارة القوى العاملة لرشاوى او حوافز مالية لغض الطرف عن المخالفات/الانتهاكات؟					

19) عمليا, تحترم الاجراءات القانونية الأصولية في المعاملات الادارية التي يعمل بها في عمان من قبل:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) وزارة القوى العاملة					
ب) وزارة البيئة و الشؤون المناخية					
ج) وزارة المالية					
د) الهيئات الحكومية المختلفة					

20) يرجى اختيار العبارة الأقرب الى وجهة نظرك حول مدى سهولة الوصول الى المعلومات التالية:

	سهل الوصول اليها [يمكن الحصول على جميع الاحصائيات و المعلومات الاخرى من قبل المواطنين/الصحفيين/المنظمات غير الحكومية] و الاستثناءات تكون مبررة	**سهل الوصول اليها بعض الشيء** [يمكن الحصول قانونيا على جميع الاحصائيات و المعلومات , ولكن يصعب الوصول اليها او انها تكون غير محدّثة او غير مكتملة	**لا يمكن الوصول اليها** [لا يمكن الوصول الى الاحصائيات و المعلومات, إمّا بسبب السرية في العمل او لوجود حواجز للوصول لتلك المعلومات او لعدم كفاءة الجهة الحكومية	لا اعرف/لا جواب
أ) الميزانية العامة للجهات الحكومية				
ب) نُسخٌ من العقود الحكومية				
ج) مصادر تمويل الحملات الانتخابية للمجالس البلدية/مجلس الشورى				
د) الافصاح عن ممتلكات كبار المسؤلين الحكوميين				
هـ) تقارير لجنة حقوق الانسان				
و) نسخ من القرارات الادارية العامة التي تصدر من قبل المؤسسات الحكومية				
ز) نسخ من القرارات الادارية العامة التي تصدر من قبل المؤسسات الحكومية البلدية				
ح) اللوائح التنفيذية الحكومية				

21) من وجهة نظرك, ما مدى تكرار الأحداث التالية:

	دائما	في معظم الحالات	في بعض الحالات	بتاتا	لا اعرف/ لا جواب
أ) عمليا, تقوم الحكومة بتوفير معلومات سهلة الفهم عن الحقوق القانونية للأشخاص					
ب) التشريعات القانونية متاحة للعامة وبجميع اللغات الرسمية					
ج) عمليا, تسعى الحكومة جاهدة لجعل القوانين متاحة باللغات التي يتحدث بها شريحة كبيرة من السكان, حتى لو لم تكن لغة رسمية					
د) عمليا, تنشر التشريعات الوطنية في الوقت المناسب					
هـ) عمليا, يمكن الحصول على نسخ من القرارات الادارية بكلفة بسيطة/بدون كلفة عن طريق البريد/الانترنت					
و) عمليا, تنشر القرارات القضائية الصادرة عن المحكمة العليا في الوقت المناسب					
ز)عمليا, الانظمة و القوانين التجارية مستقرة بما فيه الكفاية للسماح للشركات الصغيرة بالتحقق من السلوكيات المسموح بها من عدمه.					
ح) عمليا, يتاح للعامة الاطلاع على مسودات القوانين التي ستناقش في مجلس الشورى في الوقت المناسب					
ط) عمليا, تبث الاجراءات التشريعية للعامة عن طريق الاذاعة او التلفزيون					
ي) عمليا, يمكن للعامّة في عمان ان يجتمعوا ببعضهم و يقدموا مقترحاتهم للحكومة					
ك) عمليا, تنفذ القرارات الادارية على الصعيد الوطني دون تأخير					
ل) عمليا, تنفذ القرارات الادارية على الصعيد البلدي دون تأخير					

نهاية القسم الثالث

[...]

القسم الرابع

22) يرجى اختيار العبارة الاقرب لوجهة نظرك حول مدى التزام شركات التصنيع في عمان بشروط الصحة والسلامة المهنية. **(الرجاء اختيار اجابة واحدة فقط):**

أ) توفر معظم شركات التصنيع مكان عمل آمن و صحي. الوفيات والاصابات المهنية نادرة	
ب) تلتزم شركات التصنيع بقواعد السلامة و الصحة الأساسية, غير ان العديد من العمال لا يزالوا معرضين لمعدات وآلات خطيرة و مواد كيميائية ضارة. رغم ان الوفيات نادرة, الا ان الاصابات في مكان العمل متكررة	
ج) يعمل معظم العمال الفنيين في ظروف غير آمنة وغير صحية. تتكرر حالات الوفاة و الاصابات في مكان العمل	
لا اعرف/ لا جواب	

23) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) يمكن للعاملين في قطاع الصناعة تأسيس نقابات عمالية					
ب) يمكن للعاملين في قطاع الصناعة التفاوض مع اصحاب الأعمال على حقوقهم					
ج) يمكن للعاملين في قطاع الصناعة الاضراب عن العمل دون تخوّف					
د) يمكن للعاملين في قطاع الزراعة تأسيس نقابات عمالية					
هـ) يمكن للعاملين في قطاع الزراعة التفاوض مع اصحاب الأعمال على حقوقهم					
و) يجري إنفاذ حظر عمل الأطفال تنفيذا فعّالا					
ز) يجري إنفاذ حظر العمل الجبري تنفيذا فعّالا					

24) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) لا تتركز سلطات الدولة في يد شخص واحد, ولكنها مستقلة وموزعة على مختلف سلطات الدولة الثلاث (التشريعيةوالتنفيذيةوالقضائية)					
ب) لا تتأثر المحكمة العليا بأي نفوذ سياسي أثناء القيام بواجباتها					
ج) لا تتأثرالمحاكم بأي نفوذ سياسي أثناء القيام بواجباتها					
د) تلتزم الحكومة بقرارات المحاكم دائما, حتى وان كانت لا توافق هذه القرارات					
هـ) تؤخذ التقارير الصادرة عن جهاز الرقابة على محمل الجد من قبل السلطات, ويباشر في اتخاذ الاجراءات اللازمة فورا					
و) يعاقب اعضاء مجلس الشورى الذين يسيئون استخدام السلطة الممنوحة اليهم					
ز) يعاقب اعضاء السلطة القضائية الذين يسيئون استخدام السلطة الممنوحة اليهم					
ح) يعاقب عضو مجلس الشورى في حال ارتكابه لجريمة					

25) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) انتخب سلطان البلاد خلال عملية تصويت نزيهة					
ب) انتخب سلطان البلاد وفقا للاجراءات والقواعد المنصوص عليها في الدستور					
ج) نتائج الانتخابات التفصيلية متاحة وبسهولة للتدقيق من قبل العامة					
د) محاكم الاستئناف الانتخابية تخلو من اي نوع من التاثير السياسي عند قيامها بواجباتها					
هـ) تتوافر الادوات الرقابية اللازمة للحفاظ على ثقة المواطنين بالعملية الانتخابية					
و) يتم تعيين الموظفين الحكوميين بطريقة نزيهة					
ز) يمكن للمواطنين التصويت بحرية ومن دون اي مضايقات او تأثيرات.					
ح) يحكم سلطان البلاد دون النظر الى قرارات او اجراءات السلطة التشريعية					

26) يرجى الاجابة على الأسئلة التالية:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) ما مدى احتمال قيام الشرطة بضرب مواطن دون سبب أثناء مشاركته في مظاهرة سلمية؟					
ب) ما مدى احتمال قيام الشرطة بالتعدي على صحفي دون سبب اثناء تغطيته لمظاهرة سلمية؟					
ج) ما مدى احتمال تجنب شخص ذا نفوذ/مسؤول حكومي كبير لعقوبات تأديبية لانتهاك القانون؟					
د) ما مدى احتمال رفض احدى الصحف المحلية نشر قضايا فساد موثّقة وبالأدلة خشية تهديدات مختلفة؟					
هـ) ما مدى احتمال قيام مسؤول حكومي كبير بتحويل اموال عامة الى حسابه الشخصي بصورة غير قانونية؟					
و) ما مدى احتمال طلب أو تلقي اعضاء مجلس الشورى لرشاوي/حوافز مالية نظير التاثير على قرارات المجلس او مشاريع القوانين؟					
ز) ما مدى احتمال قيام شركات كبرى بتقديم رشاوي لموظفي الحكومة نظير الحصول على مناقصات حكومية؟					

27) افترض انك قمت بتقديم طلب للحصول على الميزانية السنوية التفصيلية لوزارة التربية و التعليم. ما مدى احتمال الآتي:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) توافق الوزارة على الطلب وتسلّم البيانات المطلوبة شريطة ان يكون الطلب قد قدّم بشكل صحيح					
ب) البيانات المقدمة تكون حسب الطلب وبدون نقصان					
ج) تمنح الوزارة البيانات بتكلفة معقولة او بالمجان					
د) تمنح الوزارة البيانات في غضون فترة زمنية قصيرة					
هـ) تمنح الوزارة هذه البيانات دون طلب رشوة مقابل ذلك					

28) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) **بموجب القانون**, اذا رفضت مؤسسة حكومية تقديم طلب حصول على بيانات من قبل المواطنين, فان للمواطن الحق في الطعن على هذا القرار إما امام مؤسسة حكومية اخرى او امام القضاء					
ب) **عمليا**, اذا رفضت مؤسسة حكومية تقديم طلب حصول على بيانات من قبل المواطنين, فان للمواطن الحق في تحدي هذا القرار إما امام مؤسسة حكومية اخرى او امام القضاء					

نهاية الإستبيان

[...]

شكرًا جزيلاً لوقتكم و تعاونكم!

APPENDIX A (IV)

QRQ Criminal Justice System Survey

يرجى الإجابة على الأسئلة التالية وفقا لتصورك لكيفية تطبيق القوانين في عمان. يرجى الإشارة الى إجابتك بوضع علامة (√) في الخانة المناسبة.

القسم الأول

الأسئلة التالية تصف حالات افتراضية. في كل سؤال ستقدم مجموعة من الفرضيات. يرجى تحديد الخيار الأمثل لوجهة نظرك.

سيناريو افتراضي (1)

افترض ان شخصا فقيرا تم إلقاء القبض عليه بتهمة السرقة، وانه تم احتجازه في مركز الشرطة الواقع في المدينة التي تعيش فيها.

1) ما مدى احتمال قيام محقّقي الشرطة بإلحاق أضرار بدنية **طفيفة** على المشتبه به المحتجز للإعتراف بالجريمة؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

2) ما مدى احتمال قيام محقّقي الشرطة بإلحاق أضرار بدنية **شديدة** على المشتبه به المحتجز للإعتراف بالجريمة؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

3) إذا طَلب المشتبه به المحتجز الحصول على مشورة قانونية, ما مدى احتمال حصوله على المشورة القانونية الكافية من محامي:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) أثناء الإحتجاز الأولي لدى الشرطة					
ب) اثناء الإحتجاز قبل المحاكمة					
ج) أثناء المحاكمة					

4) أذا لم يتكلم المشتبه به المحتجز أيا من اللغات الرسمية في عمان, ما مدى احتمال حصوله على مترجم ؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

5) ما مدى احتمال محاكمة المتهم به وإداناته في محاكمة سرية؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

6) ما مدى احتمال أن يظل المشتبه به قيد الإحتجاز دوت توجيه او ادانته بأي اتهام من قبل المدعي العام/ السلطة القضائية/السلطة التنفيذية؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) لأكثر من ثلاثة أشهر					
ب) لأكثر من سنة					
ج) لأكثر من ثلاث سنوات					

7) افترض ان المدعي العام/ القاضي قرر بأن هنالك سبب لإحتجاز المشتبه به. ما مدى احتمال إبقاء المشتبه به قيد الإحتجاز دون إدانة رسمية؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) لأكثر من ثلاثة أشهر					
ب) لأكثر من سنة					
ج) لأكثر من ثلاث سنوات					

سيناريو افتراضي (2)

8) افترض ان ضابط شرطة ألحق ضررا شديداً على أحد المتهمين للحصول على اعتراف منه. إذا قدم المتهم شكوى رسمية للسلطة المختصة و قدم معها الأدلة الكافية لإثبات قضيته, أيا من النتائج التالية هي الأرجح؟ **(الرجاء اختيار إجابة واحدة فقط):**

أ) تتجاهل السلطات المخالفة تماما	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تتم محاكمة ضابط الشرطة و معاقبته, إما بالحبس او الغرامة	
لا اعرف/ لا جواب	

سيناريو افتراضي (3)

افترض ان صحفيا اكتشف ضابط شرطة رفيع المستوى يقوم باخذ اموال من منظمة إجرامية. إذا كان هناك أدلة كافية لمحاكمة و إدانة الضابط, أيا من النتائج التالية هي الأرجح؟ **(الرجاء اختيار إجابة واحدة فقط):**

أ) تتجاهل السلطات المخالفة تماما	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تتم محاكمة ضابط الشرطة و معاقبته, إما بالحبس او الغرامة	
لا اعرف/ لا جواب	

10) ما مدى احتمال تعرض الصحفي للتهديد أو السجن من قبل الشرطة أو المنظمة الإجرامية؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

سيناريو افتراضي (4)

11) افترض ان الشرطة قامت بإلقاء القبض على مشتبه به لإنتمائه لمنظمة إجرامية خطيرة. ما مدى احتمال الآتي:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) قيام الشرطة بإلحاق ضرر بدني شديد على المشتبه به أثناء التحقيق					
ب) إعدام المتهم من قبل الشرطة دون محاكمة مسبقة					

سيناريو افتراضي (5)

12) افترض ان الشرطة تحتجز شخصا يشتبه به بارتكابه جريمة . برأيك, ما مدى احتمال قيام العوامل التالية بوضع الشخص في موقف سلبي امام الإستجواب/التحقيق؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) فقير					
ب) أنثى					
ج) من أقلية إثنية					
د) من أقلية دينية					
هـ) أجنبي/ وافد					
و) معاق					
ز) لا شيء مما ذكر					

سيناريو افتراضي (6)

افترض ان جيرانك في الحي ألقوا القبض على مجرم لإرتكابه جريمة خطيرة. أيا من النتائج التالية هي الأرجح؟ **(الرجاء إختيار إجابة واحدة فقط):**

أ) يتم ضرب المجرم من قبل الجيران	
ب) يتم تسليم المجرم للسلطات دون أذى	

سيناريو افتراضي (7)

14) افترض ان شخصا ما في الحي الذي تسكن فيه على نزاع مع شخص آخر حول دَيْنٍ لم يُدفع. ما مدى احتمال لجوء أحد الطرفين او كلاهما للعنف لحل النزاع؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

نهاية القسم الأول

[...]

القسم الثاني

15) يهدف السؤال التالي الى تحديد المشاكل الرئيسية التي يواجهها نظام التحقيق الجنائي في عمان. يرجى الاشارة الى مدى خطورة المشاكل التالية على إجراءات التحقيق الجنائي في المدينة التي تعيش فيها. **(10 تعني مشكلة خطيرة و 1 ليست مشكلة خطيرة)**:

	10 مشكلة خطيرة	9	8	7	6	5	4	3	2	1 ليست مشكلة خطيرة	لا اعرف/ لا جواب
أ) عدم وجود أنظمة استخباراتية فعّالة لدعم المحقّقين الجنائيين.											
ب) الافتقار الى أساليب التحقيق الإستباقية ٍ كعمليات التحريات.											
ج) ضعف آليات جمع المعلومات و تحليل الأدلة.											
د) الافتقار الى النظم الكافية لحماية الشهود و المبلّغين عن المخالفات / الجرائم.											
هـ) الافتقار الى آليات نظم ملائمة لتبادل المعلومات بين مختلف دوائر التحقيق الجنائي.											
و) عدم وجود عدد كافي من المحققين الجنائيين.											
ز) عدم كفاءة المحققين الجنائيين.											
ح) الإفتقار الى التكنولوجيا و الموارد الكافية.											
ط) عدم استقلالية المدعين العموم (غير قادرين على التصرف ضد المسؤولين الحكوميين ذوي النفوذ/أطراف خاصة اخرى).											
ي) فساد المحققين أو الشرطة.											
ك) فساد المدعين العموم.											

16) يهدف السؤال التالي الى تحديد المشاكل الرئيسية التي تواجهها المحاكم الجنائية في عمان. يرجى الاشارة الى مدى خطورة المشاكل التالية على المحاكم الجنائية في المدينة التي تعيش فيها. **(10 تعني مشكلة خطيرة و 1 ليست مشكلة خطيرة)**:

	10 مشكلة خطيرة	9	8	7	6	5	4	3	2	1 ليست مشكلة خطيرة	لا اعرف/ لا جواب
أ) طول الفترة الزمنية للحبس الذي يسبق المحاكمة والافراط في استخدامه											
ب) البطء في عملية الحكم على القضايا الجنائية											
ج) ازدحام عمل المحاكم وعدم وجود قضاة كافيين											
د) تأخّر تقديم العدالة الجنائية بسبب كثرة الطعون الغير مبررة											
هـ) قرارات سيئة من قبل القضاة الجنائيين											
و) الافتقار الى آليات لتعيين و تدريب القضاة والكتّاب بالعدل											
ز) قلة الرواتب والحوافز المالية التي يتلقّاها القضاة وموظفي المحاكم											
ح) الإفتقار الى عدد كافي من القضاة وموظفي المحاكم											
ط) الافتقار الى الموارد الرئيسية الكافية											
ي) عدم وجود عدد كافي من المحامين التي توفرهم الدولة للجناة من ذوي الدخل المحدود											
ك) عدم كفاءة المحامين التي توفرهم الدولة للجناة من ذوي الدخل المحدود											
ل) فساد القضاة او موظفي المحاكم											
م) الافتقار الى آليات تعقب فاعلية المحاكم الجنائية											

ن) عدم استقلالية السلطة القضائية عن باقي سلطات الدولة											
س) الافتقار الى مترجمين للجناة الأجانب											
ع) التحيز ضد المهمشين في المجتمع											
ف) عدم كفاءة لجان التوفيق و المصالحة لحل النزاعات خارج المحاكم											

17) يهدف السؤال التالي الى تحديد المشاكل الرئيسية التي تواجهها المؤسسات الاصلاحية (السجون) في عمان. يرجى الاشارة الى مدى خطورة المشاكل التالية على المؤسسات الاصلاحية (السجون) في المدينة التي تعيش فيها. **(10 تعني مشكلة خطيرة و 1 ليست مشكلة خطيرة)**:

	10 مشكلة خطيرة	9	8	7	6	5	4	3	2	1 ليست مشكلة خطيرة	لا اعرف/ لا جواب
أ) بيئة قاسية واكتظاظ السجون											
ب) سوء الرعاية الصحية و التغذية المقدّمة للمساجين											
ج) الإعتداء الجسدي من قبل الحراس											
د) الاعتداءات الجسدية بين المساجين											
هـ) ضعف برامج اعادة تأهيل المساجين											
و) عدم وجود آليات لتلقي شكاوي المساجين											
ز) عدم وجود مرافق منفصلة للمجرمين الخطرين والأقل خطورة											
ح) سوء أمن السجون مما يسهل عملية الهروب											
ط) الاستخدام المفرط لعقوبة السجن للجرائم البسيطة التي يمكن معالجتها عن طريق الاقامة الجبرية											

نهاية القسم الثاني

[...]

القسم الثالث

18) من وجهة نظرك, خلال العام الماضي, ما هي النسبة المئوية التقريبية من القضايا الجنائية تعكس النتائج التالية للمشتبه بهم:

	100%	75%	50%	25%	5%	0%	لا أعرف/ لا جواب
أ) المشتبه بهم كانوا على علم بالتهم الموجهة اليهم							
ب) إفتُرِض ان المشتبه بهم بريئون اثناء سير التحقيق الجنائي							
ج) أُجبروا على الإعتراف بجريمة							
د)إفتَرَض القاضي ان المشتبه بهم بريئون اثناء المحاكمة الى ان تُقدّم جميع الأدلة الكافية لإدانتهم							
هـ) سُمِحَ للمشتبه بهم بالطعن على اللأدلة المستخدمة ضدهم في المحكمة							

19) من وجهة نظرك, خلال العام الماضي, ما هي النسبة المئوية التقريبية من القضايا الجنائية تعكس النتائج التالية:

	100%	75%	50%	25%	5%	0%	لا أعرف/ لا جواب
أ) تواجد قاضي أثناء سير عمل جميع إجراءات المحكمة							
ب) السماح للدفاع بالوصول الى جميع الأدلة المكتشفة							

20) من وجهة نظرك, خلال العام الماضي, ما هي النسبة المئوية التقريبية من القرارات التي تصدرها المحاكم الابتدائية في القضايا الجنائية تعكس النتائج التالية:

	100%	75%	50%	25%	5%	0%	لا أعرف/ لا جواب
أ) يعكس القرار النهائي تقييم القضاة الصادق للأدلة المتاحة والقانون الواجب التطبيق.							
ب) تأثر القرار بضغط خارجي من أحد الأطراف او تأثر بالفساد.							

21) من وجهة نظرك, خلال العام الماضي, ما هي النسبة المئوية التقريبية من القضايا التي قام فيها نظام العدالة الجنائي بـ :

	100%	75%	50%	25%	5%	0%	لا أعرف/ لا جواب
أ) إدانة أو اتهام الجناة الفعليين للجريمة/ الجرائم بشكل صحيح							
ب) إدانة أو اتهام الجناة الفعليين للجريمة/ الجرائم بشكل خاطئ							

22)

	مدرك جدا	مدرك	غير مدرك	غير مدرك بتاتا	لا اعرف/ لا جواب
من وجهة نظرك، ما مدى ادراك عامة الناس بحقوقهم القانونية في حالات الإستجواب أو الإعتقال؟					

23) من وجهة نظرك، يرجى تحديد الآتي:

	أقل من شهر	بين الشهر و 6 أشهر	بين 6 أشهر و السنة	بين السنة و 3 سنوات	أكثر من 3 سنوات	لا اعرف/ لا جواب
أ) عملياً، ما هي المدة الزمنية المستغرقة لإدانة متهم بارتكاب جريمة خطيرة؟						
ب) عملياً، ما هي المدة الزمنية المستغرقة لإدانة متهم بارتكاب جريمة بسيطة؟						

24) يرجى الإجابة على الآتي:

	100%	75%	50%	25%	5%	0%	لا أعرف/ لا جواب
برأيك، ما هي النسبة المئوية من المجرمين المدانين و الذين تم الإفراج عنهم، يعاودوا السلوك الإجرامي مرة أخرى؟							

25) ما مدى احتمال قيام الشرطة بالآتي:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) اعتقال تعسفي للمواطنين دون أي مبرّرات					
ب) استخدام القوة المفرطة أثناء الإعتقالات					

26) يرجى الإجابة على الآتي:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) ما مدى احتمال قيام ضباط الشرطة بجمع رشاوي من التجار للسماح لهم بمواصلة نشاطهم التجاري؟					
ب) ما مدى احتمال تلقي الشرطة على رشاوي من منظمات اجرامية لغض الطرف عن أنشطتها الغير قانونية؟					
ج) ما مدى احتمال قيام الشرطة باعتقال مواطنين أبرياء وتحويلهم الى المحاكم بتهم باطلة من أجل الحصول على حوافز مالية؟					
د) ما مدى احتمال سجن المعارضين السياسيين او قتلهم سرا من قبل الحكومة؟					
هـ) ما مدى احتمال قيام الجهات الحكومية بالتنصت على الإتصالات الهاتفية او الإكترونية الخاصة بالمواطنين العاديين دون إذن قضائي؟					

و) ما مدى احتمال قيام الجهات الحكومية بالتنصت على الإتصالات الهاتفية او الإكترونية الخاصة بأعضاء مجلس الشورى دون إذن قضائي؟					
ز) ما مدى احتمال هروب أحد السجناء من سجن مشدّد أمنيا؟					
ح) ما مدى احتمال هروب أحد السجناء من سجن عادي؟					

27) ما مدى تأثير المنظمات الإجرامية كعصابات المخدرات او الأسلحة على سياسات و أعمال المؤسسات التالية في عمان؟

	تأثير قوي جدا	تأثير قوي	تأثير ضئيل	لا تأثير	لا اعرف/ لا جواب
أ) موظفو الحكومة					
ب) موظفو المحاكم					
ج) الشرطة					
د) الجيش					

28) ما مدى تكرار قيام رجال الشرطة أو موظفو المحاكم العاملين في نظام العدالة الجنائي بتلقي أو طلب رشاوي لـ :

	دائما	في معظم الحالات	في بعض الحالات	بتاتا	لا اعرف/ لا جواب
أ) القيام بالتحقيق في جريمة مرتكبة					
ب) القيام بمحاكمة المجرم					
ج) إسقاط التهم الموجهة أو منح كفالة للخروج من الحجز					
د) إتلاف أو العبث بالأدلة					
هـ) تعجيل إجراءات المحكمة					

29) من وجهة نظرك, ما مدى تكرار الأحداث التالية:

	دائما	في معظم الحالات	في بعض الحالات	بتاتا	لا اعرف/ لا جواب
أ) عمليا, تقوم الحكومة بتوفير معلومات سهلة الفهم عن حقوق المشتبه بهم جنائيا					
ب) التشريعات القانونية متاحة للعامة وبجميع اللغات الرسمية					
ج) عمليا, تسعى الحكومة جاهدة لجعل القوانين متاحة باللغات التي يتحدث بها شريحة كبيرة من السكان, حتى لو لم تكن لغة رسمية					
د) عمليا, تنشر القرارات القضائية الصادرة عن المحكمة العليا في الوقت المناسب					
هـ) عمليا, القوانين الجنائية مستقرة بما فيه الكفاية للسماح لعامة الناس بالتحقق من السلوكيات المسموح بها من عدمه.					

30) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) عمليا, يتم التحقيق مع رجال الشرطة الذين يرتكبون جريمة وتتم معاقبتهم.					
ب) عمليا, يعاقب رجال الشرطة الذين يسيئون سلطتهم.					
ج) عمليا, تؤخذ التقارير الصادرة عن اللجنة الوطنية لحقوق الإنسان على محمل الجد من قبل السلطات, ويباشر في اتخاذ الاجراءات اللازمة فورا.					
د) عمليا, تكون البرامج التي تخدم احتياجات ضحايا الإغتصاب فعّالة.					

31) يرجى اختيار العبارة الاقرب لوجهة نظرك حول كيفية عمل اللجنة الوطنية لحقوق الإنسان في عمان **(الرجاء اختيار اجابة واحدة فقط):**

أ) اللجنة الوطنية فعّالة في التحقيق في انتهاكات حقوق الإنسان	
ب) تقوم اللجنة بالتحقيق في انتهاكات حقوق الإنسان ولكن فاعليتها محدودة. كما أن اللجنة قد تكون غير راغبة في تناول قضايا حساسة سياسيا.	
ج) لا تقوم اللجنة بتحقيق فعّال في انتهاكات حقوق الإنسان.	
د) لا اعرف/ لا جواب	

32) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) يمكن لمؤسسات المجتمع المدني ان تعبر وبحرية عن آراءها ضد سياسات الحكومة واجراءاتها دون خوف					
ب) تتعاون الحكومة مع مؤسسات المجتمع المدني عند صياغة السياسات العامة					
ج) يمكن للمواطنين ان يجتمعوا للفت الانتباه الى قضية معينة او التوقيع على عريضة					
د) يمكن للمواطنين الانضمام الى اي منظمة سياسية او حزب سياسي يختارونه					
هـ) يمكن للمواطنين تنظيم مظاهرات سلمية دون تخوّف من الحكومة					
و) لا يخضع الغير ملتزمين دينيا للاحكام و القوانين الدينية					
ز) يمكن للاقليات الدينية ممارسة شعائرها الدينية و اعيادها المقدسة بحرية					
ح) يمكن لوسائل الاعلام عرض, وبحرية, قضايا الفساد ضد موظفي القطاع العام وذوي المناصب الرفيعة دون تخوف					

ط) يمكن لوسائل الاعلام ان تعبر,وبحرية, عن آراءها ضد سياسات الحكومة دون خوف					
ي) لا تمنع الحكومة المواطنين من تصفح الانترنت					
ك) يمكن للأحزاب المعارضة ان تعبر,وبحرية, عن آراءها ضد سياسات الحكومة دون خوف					
ل) يمكن لأعضاء مجلس الشورى التعبير,وبحرية, عن آراءهم ضد سياسات الحكومة دون تخوف					

33) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) لا تتركز سلطات الدولة في يد شخص واحد, ولكنها مستقلة وموزعة على مختلف سلطات الدولة الثلاث (التشريعيةوالتنفيذيةوالقضائية)					
ب) لا تتأثر المحكمة العليا بأي نفوذ سياسي أثناء القيام بواجباتها					
ج) لا تتأثرالمحاكم بأي نفوذ سياسي أثناء القيام بواجباتها					
د) تلتزم الحكومة بقرارات المحاكم دائما, حتى وان كانت لا توافق هذه القرارات					
هـ) تؤخذ التقارير الصادرة عن جهاز الرقابة على محمل الجد من قبل السلطات, ويباشر في اتخاذ الاجراءات اللازمة فورا					
و) يعاقب اعضاء مجلس الشورى الذين يسيئون استخدام السلطة الممنوحة اليهم					
ز) يعاقب اعضاء السلطة القضائية الذين يسيئون استخدام السلطة الممنوحة اليهم					
ح) يعاقب اعضاء مجلس الشورى في حال ارتكب عضو منهم جريمة					

34) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) انتخب سلطان البلاد خلال عملية تصويت نزيهة					
ب) انتخب سلطان البلاد وفقا للاجراءات والقواعد المنصوص عليها في الدستور					
ج) نتائج الانتخابات التفصيلية متاحة وبسهولة للتدقيق من قبل العامة					
د) محاكم الاستئناف الانتخابية تخلو من اي نوع من التاثير السياسي عند قيامها بواجباتها					
هـ) تتوافر الادوات الرقابية اللازمة للحفاظ على ثقة المواطنين بالعملية الانتخابية					
و) يتم تعيين الموظفين الحكوميين بطريقة نزيهة					
ز) يمكن للمواطنين التصويت بحرية ومن دون اي مضايقات او تأثيرات.					
ح) يحكم سلطان البلاد دون النظر الى قرارات او اجراءات السلطة التشريعية					

35) يرجى الاجابة على الأسئلة التالية:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) ما مدى احتمال قيام الشرطة بضرب مواطن دون سبب أثناء مشاركته في مظاهرة سلمية؟					
ب) ما مدى احتمال قيام الشرطة بالتعدي على صحفي دون سبب اثناء تغطيته لمظاهرة سلمية؟					
ج) ما مدى احتمال نقل ناشط سياسي من منزله الى مركز احتجاز دون صدور أمر قضائي بالقبض عليه؟					
د) ما مدى احتمال قيام الشرطة بتفتيش منزل ناشط سياسي دون إذن قضائي؟					
هـ) ما مدى احتمال تجنب شخص ذا نفوذ/مسؤول حكومي كبير لعقوبات تأديبية لانتهاك القانون؟					
و) ما مدى احتمال رفض احدى الصحف المحلية نشر قضايا فساد موثّقة وبالأدلة خشية تهديدات مختلفة؟					
ز) ما مدى احتمال قيام مسؤول حكومي كبير بتحويل اموال عامة الى حسابه الشخصي بصورة غير قانونية؟					
ح) ما مدى احتمال طلب أو تلقي اعضاء مجلس الشورى لرشاوي/ حوافز مالية نظير التاثير على قرارات المجلس او مشاريع القوانين؟					

نهاية الإستبيان

APPENDIX A (V)

QRQ Civil and Commercial Justice System

يرجى الإجابة على الأسئلة التالية وفقا لتصورك لكيفية تطبيق القوانين في عمان. يرجى الإشارة الى إجابتك بوضع علامة (√) في الخانة المناسبة.

القسم الأول

الأسئلة التالية تصف حالات افتراضية. في كل سؤال, ستقدم مجموعة من الفرضيات. يرجى تحديد الخيار الأمثل لوجهة نظرك.

سيناريو افتراضي (1)

افترض ان سلطة حماية البيئة في عمان أخطرت منشأة صناعية يقيامها بتلويث مجرى مياه خارج نطاق الحدود المسموح بها قانونا.

1) أيا من النتائج التالية هي الأكثر احتمالا؟ **(يرجى اختيار اجابة واحدة فقط)**

أ) تلتزم الشركة بالقانون اما طوعا او عن طريق قرارات المحكمة او الغرامات او عقوبات أخرى.	
ب) تقوم الشركة بتقديم رشاوى او محاولة التأثير على السلطات للتغاضي عن المخالفة.	
ج) لا يحدث شئ بتاتا.	
د) لا أعرف/ لا جواب	

سيناريو افتراضي (2)

أحمد و محمد جاران يعيشان في حي سكني في مسقط. في يوم ما, قام أحمد بالبدء بأعمال انشائية في منزله. اثناء سير العمل, سقط جزء من الجدار على منزل محمد نتج عنه تهدم جزء من منزله. بعد نقاش طويل, رفض أحمد دفع تعويض للضرر الذي نتج. افترض ان كلا الطرفين لا يملك تأمينا و يبلغ حجم الضرر **2400 ر.ع**.

2) ما مدى احتمال لجوء محمد الى الآليات التالية لحل هذا النزاع؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) رفع دعوى قضائية					
ب) تقديم شكوى امام مؤسسة حكومية					
ج) اللجوء الى لجنة التوفيق و المصالحة					
د) تقديم القضية امام شيخ القبيلة					
هـ) عدم اتخاذ اي اجراء					

3) عمليا, ما هي المدة التي يستغرقها اتخاذ قرار او حكم, بدءا من لحظة تقديم الدعوى الى لحظة التوصل الى قرار او اتفاق, في حال لجأ محمد للآليات التالية؟

	أقل من شهر	بين الشهر و السنة	بين سنة الى 3	أكثر من 3 سنوات	أكثر من 5 سنوات	لا اعرف/ لا جواب
أ) محكمة ابتدائية						
ب) لجنة التوفيق و المصالحة						
ج) مؤسسة حكومية						
د) شيخ القبيلة						

4) عمليا, وبعد التوصل الى قرار او اتفاق, كم من الوقت الذي سيستغرق محمد حتى يتمكن من تنفيذ القرار او الاتفاق و الحصول على التعويض المستحق عند اللجوء الى احدى هذه الآليات؟

	أقل من شهر	بين الشهر و السنة	بين سنة الى 3	أكثر من 3 سنوات	أكثر من 5 سنوات	لا اعرف/ لا جواب
أ) محكمة ابتدائية						
ب) لجنة التوفيق و المصالحة						
ج) مؤسسة حكومية						
د) شيخ القبيلة						

5) بناءا على خبرتك, ما هي التكاليف المتوقعة التي سيتكبدها محمد, كنسبة موية (%), من حجم المطالبة (2400 ر.ع) اذا لجأ الى الاجراءات آنفة الذكر؟

أ) حوالي 15% من حجم المطالبة	
ب) حوالي 30% من حجم المطالبة	
ج) حوالي 40% من حجم المطالبة	
د) أكثر من 50% من حجم المطالبة	
هـ) لا أعرف/ لا جواب	

6) بناءا على خبرتك, كم سيكلف محمد تعيين محامي لتمثيله في قضية كهذه؟

المبلغ: _____ ر.ع

7) في قضية كهذه, ما مدى احتمال قيام الأشخاص الآتية ذكرهم, بطلب رشوة (أو اي حوافز مالية اخرى) من أحمد او محمد للقيام بواجباتهم او تسريع العملية القضائية؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) القضاة					
ب) موظفو المحكمة					
ج) مُحكِّم تجاري					
د) الشرطة					
هـ) شيخ القبيلة					

8) أخيرا, افترض أن محمد قام برفع دعوى على أحمد امام محكمة ابتدائية. ما مدى احتمال تعيين محام الى احمد من قبل الدولة او اي منظمة اخرى, اذا لم يكن بمقدوره تحمل التكاليف المالية؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

سيناريو افتراضي (3)
افترض ان الحكومة قررت انشاء محطة قطار في حي سكني في مسقط, و يتوقع ان تؤثر اعمال الانشاء سلبيا على مستوى المعيشة في الحي.

(9

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) عمليا, ما مدى احتمال حصول سكان الحي على اخطار مسبق بالبدأ بأعمال الانشاء؟					
ب) اذا طلب السكان نسخة من الوثائق و التصاميم للمشروع قبل بدأ الأعمال الانشائية, ما مدى احتمال قيام السلطات الحكومية المختصة بتزويدها؟					
ج) عمليا, ما مدى احتمال منح السكان الفرصة لعرض اعتراضاتهم او تعليقاتهم للسلطات المختصة قبل البدأ بالأعمال الانشائية؟					

افترض ان اعمال انشاء محطة القطار تتطلب هدم منازل خاصة في الحي.
10) عمليا, ما مدى احتمال تعويض اصحاب المنازل تعويضا عادلا من قبل الحكومة؟

أ) محتمل جدا	
ب) محتمل	
ج) غير محتمل	
د) غير محتمل جدا	
هـ) لا أعرف/ لا جواب	

(11

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) عمليا, اذا قام اصحاب المنازل برفع دعوى ضد الحكومة للمطالبة بالحصول على تعويض جراء هدم منازلهم, ما مدى احتمال حصولهم على تعويض عادل؟					
ب) عمليا, اذا قدم عدد كبير من سكان الحي التماسا عاجلا يقترح خطة بناء بديلة للسلطة الحكومية المختصة, ما مدى احتمال قيام السلطة بتعليق المشروع والنظر في المقترح؟					
ج) عمليا, ما مدى احتمال منح السكان الفرصة لعرض اعتراضاتهم او تعليقاتهم للسلطات المختصة قبل البدأ بالأعمال الانشائية؟					

12) هل يمكن تقديم دعوى قضائية واحدة او عريضة نيابة عن مئات او الآف السكان المتضررين للحصول على تعويض, بدلا من تقديم دعاوى فردية؟

نعم	
لا	
لا اعرف/ لا جواب	

سيناريو افتراضي (4)

افترض ان مؤسسة حكومية شرعت في تنفيذ مشروع رصف طريق جديد بعدما تعاقدت مع شركة خاصة للقيام بالأعمال الانشائية . وبعد مضي فترة قصيرة, تكبد المقاول خسائر فادحة ادت الى تاخر سير الأعمال. افترض انه تم اعادة تشكيل الموظفين العاملين في المؤسسة الحكومية قبل الانتهاء من سير اعمال المشروع, وان الموظفين الجدد الغوا المشروع ورفض دفع المقاول المبلغ المستحق له وفق العقد. اذا رفع المقاول دعوى قضائية ضد الحكومة امام المحاكم المحلية:

13) ما المدة الزمنية التي ستستغرقها عملية البت في القضية في المحاكم المحلية وانفاذها, بدءا من تقديم القضية ولغاية سداد المبلغ المستحق؟

سنة او اقل	
بين سنة و 3	
بين 3 سنوات و 5 سنوات	
أكثر من 5 سنوات	
لا أعرف/ لا جواب	

عوضا عن اللجوء الى المحاكم المحلية, افترض ان الطرفين وافقا على عرض النزاع امام لجنة تحكيم, وان لجنة التحكيم قررت ان المؤسسة الحكومية ملزمة بدفع المبلغ المتنازع عليه. ولكن, وبالرغم من القرار الصادر, الا ان المؤسسة الحكومية لا زالت مصرة على موقفها من عدم الدفع.

14) عمليا, ما مدى احتمال ان يكون المقاول قادرا على انفاذ قرار التحكيم الصادر ضد المؤسسة الحكومية لدى المحاكم المحلية:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) القرار من لجنة تحكيم محلية					
ب) القرار من لجنة تحكيم دولية					

سيناريو افتراضي (5)

15) افترض انه نتيجة لتفتيش اداري, تم العثور على موظف حكومي يصدر وبصورة غير قانونية, تراخيص حكومية لمنفعة شخصية (كتصريح بناء لشركة يملكها أحد أقربائه). ايا من النتائج التالية هي الأرجح؟ **(يرجى اختيار اجابة واحدة فقط)**

أ) تتجاهل السلطات المخالفة تماما	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تتم محاكمة الموظف و معاقبته, اما بالحبس او الغرامة	
لا اعرف/ لا جواب	

نـهاية القسم الأول

[...]

القسم الثاني

16) من وجهة نظرك, ما مدى تكرار الأحداث التالية:

	دائما	في معظم الحالات	في بعض الحالات	تقريبا بتاتا	لا أعرف/ لا جواب
أ) عمليا, يحصل الفلاحون و ذو الدخل المحدود على تعويض عادل عند قيام الحكومة بمصادرة الأراضي و الممتلكات الخاصة لمشاريع المنفعة العامة.					
ب) عمليا, تحصل الشركات و المستثمرين على تعويض عادل عند مصادرة الحكومة للمتلكات الخاصة بهم لمشاريع الممنفعة العامة.					
ج) تتم مصادرة الأراضي و الممتلكات الخاصة لهدف اقامة مشاريع للمنفعة العامة و تتم وفق القانون والآليات الموضوعة بهذا الشأن من قبل الحكومة.					
د) عمليا, يحصل المستثمرون على تعويض عادل عند اتخاذ الحكومة تدابير لها آثار مشابهة كتلك المرتبطة بنزع الملكية (كالتدخل غير المبرر في طرق استخدام او صرف فوائد الاستثمارات).					
هـ) عمليا, يتلقّى المستثمرون الاجانب معاملة عادلة و منصفة من قبل الحكومة.					
و) عمليا, يجرى فرض قيود قانونية على الاستثمار الأجنبي بصورة موحَّدة و متَّسِقة.					
ز) عمليا, يتم تطبيق قوانين الملكية الفكرية (العلامات التجارية, حقوق النشر, براءات الاختراع) في عمان بشكل فعّال.					

17) يهدف هذا السؤال الى دراسة الأسباب التي تدفع ذوي الدخل المحدود في عمان الى عدم اللجوء الى القضاء لتسوية خلافاتهم. يرجى تحديد مدى أهمية العوامل التالية في التأثير على قرارات الأشخاص باللجوء الى المحاكم أولا لتسوية خلافاتهم في المدينة التي تعيش فيها:

	مهم جدا	مهم الى حد ما	ليس مهما	ليس مهما اطلاقا	لا اعرف/ لا جواب
أ) رسوم المحكمة عالية جدا					
ب) رسوم المحامي عالية جدا					
ج) الافتقار الى المساعدة القانونية المجانية.					
د) الافتقار الى مساعديين قانونيين أو عيادات قانونية					
هـ) الحواجز اللغوية وعدم توفر مترجمين.					
و) بعد مسافة المحاكم					
ز) تأخر اصدار القرارات من قبل المحاكم					
ح) التحيز ضد المهمشين في المجتمع					
ط) الاجراءات القضائية معقدة جدا					
ي) فساد القضاة والموظفين القضائيين.					
ك) نقص المعلومات العامة المتاحة عن اجراءات المحاكم					
ل) الافتقار الى الوعي بسبل الانتصاف المتاحة					

18) من وجهة نظرك, خلال العام الماضي, ما هي النسبة المئوية من القرارات التي تصدرها المحاكم الابتدائية تعكس النتائج التالية:

	%100	%75	%50	%25	%5	%0	لا أعرف/ لا جواب
أ) يعكس القرار النهائي تقييم القضاة الصادق للأدلة المتاحة والقانون الواجب التطبيق.							
ب) تأثر القرار بضغط خارجي من أحد الأطراف او تأثر بالفساد.							

19) من وجهة نظرك, من بين جميع القضايا التي كانت الحكومة طرفا فيها (كخصم او كطرف ثالث):

	%100	%75	%50	%25	%5	%0	لا أعرف/ لا جواب
ما هي النسبة المئوية من تلك القضايا مارست الحكومة فيها نفوذ غير قانوني للتأثير علة نتيجة القرار							

20) من وجهة نظرك, ما مدى احتمال حصول شخص فقير يواجه الحالات الآتية على استشارة قانونية من محامي, او عيادة قانونية أو مساعد قانوني؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) مستأجر يواجه إخلاء سكنه					
ب) خلاف على وصاية طفل					
ج) نزاع مع مقدمي الخدمات العامة (مياه/ كهرباء)					

21) من وجهة نظرك, ما مدى احتمال قيام العوامل التالية بوضع شخص في موقف سلبي امام المحكمة؟

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) فقير					
ب) أنثى					
ج) من أقلية إثنية					
د) من أقلية دينية					
هـ) أجنبي/ وافد					
و) معاق					
ز) لا شيء مما ذكر					

22)

	مدرك جدا	مدرك	غير مدرك	غير مدرك بتاتا	لا اعرف/ لا جواب
من وجهة نظرك, ما مدى ادراك عامة الناس بآليات القضاء الرسمية التي يمكن اللجوء اليها؟					

23) يرجى اختيار العبارة الاقرب لوجهة نظرك حول كيفية عمل القضاء في عمان **(الرجاء اختيار اجابة واحدة فقط):**

أ) عندما تثار مسائل قانونية او انتهاكات محتملة من طرف السلطة التنفيذية, فإن السطة القضائية تستخدم صلاحياتها لإعلان أن الاجراءات المنفّذة غير قانونية/ غير دستورية.	
ب) يراجع الجهاز القضائي الاجراءات التنفيذية, ولكن لا يتناول قضايا حساسة و/أو فاعليّته محدودة.	
ج) لا يراجع الجهاز القضائي السياسات التنفيذية بشكل فعّال.	
د) لا أعرف/لا جواب	

24) يرجى الاشارة الى مدى خطورة المشاكل التالية في نظام القضاء في المدينة التي تعيش فيها. **(10 تعني مشكلة خطيرة و 1 ليست مشكلة خطيرة)**:

	10 **مشكلة خطيرة**	9	8	7	6	5	4	3	2	1 **ليست مشكلة خطيرة**	لا اعرف/ لا جواب
أ) المدة الزمنية للحكم في القضايا تأخذ وقتًا طويلاً											
ب) آليات تنفيذ الاحكام غير فعّالة											
ج) الافتقار الى عدد كافي من القضاة أو موظفي المحاكم											
د) الافتقار الى الموارد الكافية للقيام بالعمل القضائي											
هـ) الافتقار الى آليات اختبار او تدريب مناسبة للقضاة وموظفي المحاكم											
و) عدم وجود نظام ردع لمنع التقاضي التافه											
ز) عدم كفاءة لجان التوفيق و المصالحة لحل النزاعات خارج المحاكم											
ح) فساد القضاة و موظفي المحاكم											
ط)محدودية رواتب القضاة و موظفي المحاكم											
ي) الافتقار الى آليات مراجة كفاءة المحاكم											
ك) عدم استقلالية السلطة القضائية عن السلطة التنفيذية											

25) يرجى اختيار العبارة الاقرب لوجهة نظرك حول كيفية اختيار العقود/ المناقصات الحكومية في عمان. **(الرجاء اختيار اجابة واحدة فقط):**

أ) يتم منح معظم العقود من خلال مناقصات مفتوحة و تنافسية	
ب) هناك اجراء رسمي لتقديم العروض للمناقصات المطروحة ولكنه مليء بالعيوب. كما يتم منح عدة عقود دون تنافس شريف, او خلال آليات مناقصة غير فعّالة, مما يتيح المجال لعمليات الفساد.	
ج) لا توجد اجراءات رسمية لتقديم عروض للمناقصات. او ان تلك الاجراءات سطحية و غير فعّالة. ويتم منح العقود للشركات التي تقدم رشاوي او يتم منحها لشركات مملوكة لموظفين حكوميين في مختلف الدرجات	
لا اعرف/ لا جواب	

26) ما مدى تكرار قيام الاشخاص او الشركات الخاصة بتقديم رشاوى او حوافز مالية من أجل:

	دائما	في معظم الحالات	في بعض الحالات	بتاتا	لا اعرف/ لا جواب
أ) تسجيل الممتلكات الخاصة, كالمنازل و الأراضي					
ب) تسجيل نشاط تجاري جديد					
ج) تسريع عملية تسليم رخص البناء					
د) تمرير البضائع خلال الجمارك					
هـ) تسريع النطق بالحكم في قضايا المحاكم					
و) استخراج رخصة قيادة					

27) يرجى الاجابة على الأسئلة التالية:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) ما مدى احتمال قيام وزارة البيئة والشؤون المناخية بتدقيق او تفتيش شركات التصنيع نتيجة بلاغ من قبل السكان عن تلوث ناتج عن تلك الشركات؟					
ب) ما مدى احتمال قيام وزارة البيئة و الشؤون المناخية بمراجعة او تفتيش شركات التصنيع بشكل روتيني؟					
ج) ما مدى احتمال قيام وزارة البيئة و الشؤون المناخية بفرض غرامات على المخالفات البيئية المكتشفة؟					
د) ما مدى احتمال طلب أو تلقي وزارة البيئة لرشاوى او حوافز مالية لغض الطرف عن المخالفات/الانتهاكات؟					

28) عمليا, تحترم الاجراءات القانونية الأصولية في المعاملات الادارية التي يعمل بها في عمان من قبل:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) وزارة البيئة و الشؤون المناخية					
ب) وزارة المالية					
ج) الهيئات الحكومية المختلفة					

29) يرجى اختيار العبارة الأقرب الى وجهة نظرك حول مدى سهولة الوصول الى المعلومات التالية:

	سهل الوصول اليها [يمكن الحصول على جميع الاحصائيات و المعلومات الاخرى من قبل المواطنين/الحصفيين/المنظمات غير الحكومية] و الاستثناءات تكون مبررة	**سهل الوصول اليها بعض الشيء** [يمكن الحصول قانونيا على جميع الاحصائيات و المعلومات , ولكن يصعب الوصول اليها او انها نكون غير محدّثة او غير مكتملة	**لا يمكن الوصول اليها** [لا يمكن الوصول الى الاحصائيات و المعلومات, إمّا بسبب السرية في العمل او لوجود حواجز للوصول لتلك المعلومات او لعدم كفاءة الجهة الحكومية	لا اعرف/لا جواب
أ) الميزانية العامة للجهات الحكومية				
ب) نُسخ من العقود الحكومية				
ج) مصادر تمويل الحملات الانتخابية للمجالس البلدية/مجلس الشورى				
د) الافصاح عن ممتلكات كبار المسؤيلين الحكوميين				
هـ) تقارير لجنة حقوق الانسان				
و) نسخ من القرارات الادارية العامة التي تصدر من قبل المؤسسات الحكومية				
ز) نسخ من القرارات الادارية العامة التي تصدر من قبل المؤسسات الحكومية البلدية				
ح) اللوائح التنفيذية الحكومية				

30) من وجهة نظرك, ما مدى تكرار الأحداث التالية:

	دائما	في معظم الحالات	في بعض الحالات	بتاتا	لا اعرف/ لا جواب
أ) عمليا, تقوم الحكومة بتوفير معلومات سهلة الفهم عن الحقوق القانونية للأشخاص					
ب) التشريعات القانونية متاحة للعامة وبجميع اللغات الرسمية					
ج) عمليا, تسعى الحكومة جاهدة لجعل القوانين متاحة باللغات التي يتحدث بها شريحة كبيرة من السكان, حتى لو لم تكن لغة رسمية					
د) عمليا, تنشر التشريعات الوطنية في الوقت المناسب					
هـ) عمليا, يمكن الحصول على نسخ من القرارات الادارية بكلفة بسيطة/بدون كلفة عن طريق البريد/الانترنت					
و) عمليا, تنشر القرارات القضائية الصادرة عن المحكمة العليا في الوقت المناسب					
ز)عمليا, الانظمة و القوانين التجارية مستقرة بما فيه الكفاية للسماح للشركات الصغيرة بالتحقق من السلوكيات المسموح بها من عدمه.					
ح) عمليا, يتاح للعامة الاطلاع على مسودات القوانين التي ستناقش في مجلس الشورى في الوقت المناسب					
ط) عمليا, تبث الاجراءات التشريعية للعامة عن طريق الاذاعة او التلفزيون					
ي) عمليا, يمكن للعامّة في عمان ان يجتمعوا ببعضهم و يقدموا مقترحاتهم للحكومة					
ك) عمليا, تنفذ القرارات الادارية على الصعيد الوطني دون تأخير					
ل) عمليا, تنفذ القرارات الادارية على الصعيد البلدي دون تأخير					

31) يرجى اختيار العبارة الاقرب لوجهة نظرك حول كيفية عمل جهاز الرقابة المالية و الادارية للدولة في عمان **(الرجاء اختيار اجابة واحدة فقط):**

أ) جهاز الرقابة فعال في التحقيق في المخالفات المالية الحكومية	
ب) يقوم جهاز الرقابة بالتحقيق في المخالفات الادارية والمالية ولكن فاعليته محدودة	
ج) لا يقوم جهاز الرقابة بالتحقيق في المخالفات المالية/الادارية على نحو فعال ويخفق بالكشف عن المخالفين	
د) لا اعرف/ لا جواب	

32) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) يمكن لمؤسسات المجتمع المدني ان تعبر وبحرية عن آراءها ضد سياسات الحكومة واجراءاتها دون خوف					
ب) تتعاون الحكومة مع مؤسسات المجتمع المدني عند صياغة السياسات العامة					
ج) يمكن للمواطنين ان يجتمعوا للفت الانتباه الى قضية معينة او التوقيع على عريضة					
د) يمكن للمواطنين الانضمام الى اي منظمة سياسية او حزب سياسي يختارونه					
هـ) يمكن للمواطنين تنظيم مظاهرات سلمية دون تخوّف من الحكومة					
و) لا يخضع الغير ملتزمين دينيا للاحكام و القوانين الدينية					
ز) يمكن للاقليات الدينية ممارسة شعائرها الدينية و اعيادها المقدسة بحرية					
ح) يمكن لوسائل الاعلام عرض, وبحرية, قضايا الفساد ضد موظفي القطاع العام وذو المناصب الرفيعة دون تخوف					
ط) يمكن لوسائل الاعلام ان تعبر,وبحرية, عن آراءها ضد سياسات الحكومة دون خوف					
ي) لا تمنع الحكومة المواطنين من تصفح الانترنت					
ك) يمكن للأحزاب المعارضة ان تعبر,وبحرية, عن آراءها ضد سياسات الحكومة دون خوف					
ل) يمكن لأعضاء مجلس الشورى التعبير,وبحرية, عن آراءهم ضد سياسات الحكومة دون تخوف					

33) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) لا تتركز سلطات الدولة في يد شخص واحد, ولكنها مستقلة وموزعة على مختلف سلطات الدولة الثلاث (التشريعيةوالتنفيذيةوالقضائية)					
ب) لا تتأثر المحكمة العليا بأي نفوذ سياسي أثناء القيام بواجباتها					
ج) لا تتأثرالمحاكم بأي نفوذ سياسي أثناء القيام بواجباتها					
د) تلتزم الحكومة بقرارات المحاكم دائما, حتى وان كانت لا توافق هذه القرارات					
هـ) تؤخذ التقارير الصادرة عن جهاز الرقابة على محمل الجد من قبل السلطات, ويباشر في اتخاذ الاجراءات اللازمة فورا					
و) يعاقب اعضاء مجلس الشورى الذين يسيئون استخدام السلطة الممنوحة اليهم					
ز) يعاقب اعضاء السلطة القضائية الذين يسيئون استخدام السلطة الممنوحة اليهم					

34) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) انتخب سلطان البلاد خلال عملية تصويت نزيهة					
ب) انتخب سلطان البلاد وفقا للاجراءات والقواعد المنصوص عليها في الدستور					
ج) نتائج الانتخابات التفصيلية متاحة وبسهولة للتدقيق من قبل العامة					
د) محاكم الاستئناف الانتخابية تخلو من اي نوع من التاثير السياسي عند قيامها بواجباتها					
هـ) تتوافر الادوات الرقابية اللازمة للحفاظ على ثقة المواطنين بالعملية الانتخابية					
و) يتم تعيين الموظفين الحكوميين بطريقة نزيهة					
ز) يمكن للمواطنين التصويت بحرية ومن دون اي مضايقات او تأثيرات.					
ح) يحكم سلطان البلاد دون النظر الى قرارات او اجراءات السلطة التشريعية					

35) يرجى الاجابة على الأسئلة التالية:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) ما مدى احتمال تجنب شخص ذا نفوذ/مسؤول حكومي كبير لعقوبات تأديبية لانتهاك القانون؟					
ب) ما مدى احتمال رفض احدى الصحف المحلية نشر قضايا فساد موثّقة وبالأدلة خشية تهديدات مختلفة؟					
ج) ما مدى احتمال قيام مسؤول حكومي كبير بتحويل اموال عامة الى حسابه الشخصي بصورة غير قانونية؟					
د) ما مدى احتمال طلب أو تلقي اعضاء مجلس الشورى لرشاوي/حوافز مالية نظير التاثير على قرارات المجلس او مشاريع القوانين؟					
هـ) ما مدى احتمال قيام شركات كبرى بتقديم رشاوي لموظفي الحكومة نظير الحصول على مناقصات حكومية؟					

36) افترض ان والي مدينة صغيرة يأخذ اموالا عامة لمنفعة شخصية و بصورة غير قانونية. افترض ان احد الموظفين لديه شهد هذا الفعل وابلغه للسلطات المختصة مع تقديم الادلة لادانته. افترض ان احد الصحف تلقّت الخبر وقامت بنشره. اي من النتائج التالية هي الأرجح؟ **(الرجاء اختيار اجابة واحدة فقط):**

أ) يتم تجاهل الادعاء تماما من قبل السلطات	
ب) يتم فتح تحقيق دون التوصل الى نتائج	
ج) تتم ادانة الوالي ومعاقبته (اما بدفع غرامة مالية او بالسجن)	
د) لا اعرف/ لا جواب	

37) افترض انك قمت بتقديم طلب للحصول على الميزانية السنوية التفصيلية لوزارة التربية و التعليم. ما مدى احتمال الآتي:

	محتمل جدا	محتمل	غير محتمل	غير محتمل جدا	لا اعرف/ لا جواب
أ) توافق الوزارة على الطلب وتسلّم البيانات المطلوبة شريطة ان يكون الطلب قد قدّم بشكل صحيح					
ب) البيانات المقدمة تكون حسب الطلب وبدون نقصان					
ج) تمنح الوزارة البيانات بتكلفة معقولة او بالمجان					
د) تمنح الوزارة البيانات في غضون فترة زمنية قصيرة					
هـ) تمنح الوزارة هذه البيانات دون طلب رشوة مقابل ذلك					

38) الى أي مدى توافق مع العبارات التالية:

	أوافق جدا	اوافق	لا اوافق	لا اوافق جدا	لا اعرف/ لا جواب
أ) **بموجب القانون**, اذا رفضت مؤسسة حكومية تقديم طلب حصول على بيانات من قبل المواطنين, فإن للمواطن الحق في الطعن على هذا القرار إما امام مؤسسة حكومية اخرى او امام القضاء					
ب) **عمليا**, اذا رفضت مؤسسة حكومية تقديم طلب حصول على بيانات من قبل المواطنين, فإن للمواطن الحق في تحدي هذا القرار إما امام مؤسسة حكومية اخرى او امام القضاء					

نهاية الإستبيان

[...]

شكرًا جزيلاً لوقتكم و تعاونكم!

APPENDIX B

The Omani NCSI Permit to Conduct the Survey in Oman

المركز الوطني للإحصاء والمعلومات
NATIONAL CENTRE FOR STATISTICS & INFORMATION
تعزيز المعرفة
ENHANCING KNOWLEDGE

الرقم: م و إ م/٢٠١٧/١٦٠٢
التاريخ: ١٣/ ٣ /١٤٣٩ هـ
الموافق: ١٣/ ١٢/ ٢٠١٧ م

الفاضل / **محمد بن محمود الهنائي** **المحترم**
طالب دكتوراه في جامعة سانت أندروز بالمملكة المتحدة

تحية طيبة وبعد،،،

الموضوع: تنفيذ استطلاع عن وضع القضاء في عمان و آليات تطبيق القوانين

بالإشارة إلى طلبكم الوارد بتاريخ ٦ ديسمبر ٢٠١٧ ، حول طلب الموافقة على إجراء المسح المذكور أعلاه ، نود إفادتكم **بالموافقة في تنفيذ المسح**، وذلك بعد أجراء التعديلات المطلوبة على الاستمارة ، مع تأكيدنا لكم بضرورة المحافظة على سرية البيانات وعدم نشر أي معلومات تخص الأفراد أو المؤسسات بصورة مفردة.
متمنين لكم التوفيق والسداد.

وتفضلوا بقبول فائق الاحترام والتقدير،،،

عبدالله بن ثابت المحروقي
مدير دائرة قياس الرأي العام

المركز الوطني للإحصاء والمعلومات
NATIONAL CENTRE FOR STATISTICS & INFORMATION
Enhancing Knowledge
SULTANATE OF OMAN

المركز الوطني للإحصاء والمعلومات
ص.ب ٨٤٨، | مسقط ر.ب ١٣٣، سلطنة عُمان
هاتف: ٢٤٢١٦٩٠٠ (٩٦٨+)
فاكس: ٢٤٢١٠٠٥٢ (٩٦٨+)

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APPENDIX C

The University of St Andrews Ethical Approval to Conduct the Survey

University of St Andrews | FOUNDED 1413

University Teaching and Research Ethics Committee

15 March 2018

Dear Mohammed Mahmood Zahir Al Hinai,

Thank you for submitting your ethical application which was considered at the School of Divinity Ethics Committee meeting on 13 March 2018, when the following documents were reviewed:

1. Utrec fieldwork form
2. Ethics application form
3. Anonymous data consent form (Arabic)
4. Anonymous data consent form (English)
5. Commercial survey (Arabic)
6. Commercial survey (English)
7. Criminal survey (Arabic)
8. Criminal survey (English)
9. Debriefing form (Arabic)
10. Debriefing form (English)
11. Health survey (Arabic)
12. Health survey (English)
13. Labour survey (Arabic)
14. Labour survey (English)
15. National Center for Statistics and Information (Arabic)
16. National Center for Statistics and Information (English)
17. Participant information sheet (Arabic)
18. Participant information sheet (English)

The School of Divinity Ethics Committee has been delegated to act on behalf of the University Teaching and Research Ethics Committee (UTREC) and has granted this application ethical approval. The particulars relating to the approved project are as follows -

Approval Code:	DI13295	**Approved on:**	13 March 2018	**Approval Expiry:**	13 March 2023
Project Title:	Enhancing the rule of law in Oman through judicial reform: Fusing Ibadi with western judicial thought				
Researcher(s):	Mohammed Mahmood Zahir Al Hinai				
Supervisor(s):	Prof. Mario Aguilar				

Approval is awarded for five years. Projects which have not commenced within two years of approval must be re-submitted for review by your School Ethics Committee. If you are unable to complete your research within the five-year approval period, you are required to write to your School Ethics Committee Convener to request a discretionary extension of no greater than 6 months or to re-apply if directed to do so, and you should inform your School Ethics Committee when your project reaches completion.

If you make any changes to the project outlined in your approved ethical application form, you should inform your supervisor and seek advice on the ethical implications of those changes from the School Ethics Convener who may advise you to complete and submit an ethical amendment form for review.

Any adverse incident which occurs during the course of conducting your research must be reported immediately to the School Ethics Committee who will advise you on the appropriate action to be taken.

Approval is given on the understanding that you conduct your research as outlined in your application and in compliance with UTREC Guidelines and Policies (http://www.st-andrews.ac.uk/utrec/guidelinespolicies/). You are also advised to ensure that you procure and handle your research data within the provisions of the Data Provision Act 1998 and in accordance with any conditions of funding incumbent upon you.

Yours sincerely,

on behalf of
Convener of the School of Divinity Ethics Committee

cc Supervisor

APPENDIX D*

WJP Rule of Law Index Country Scores for the Hashemite Kingdom of Jordan

* *See WJP Rule of Law Index 2017/2018 for full Report*. Available at: https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017–2018

Jordan

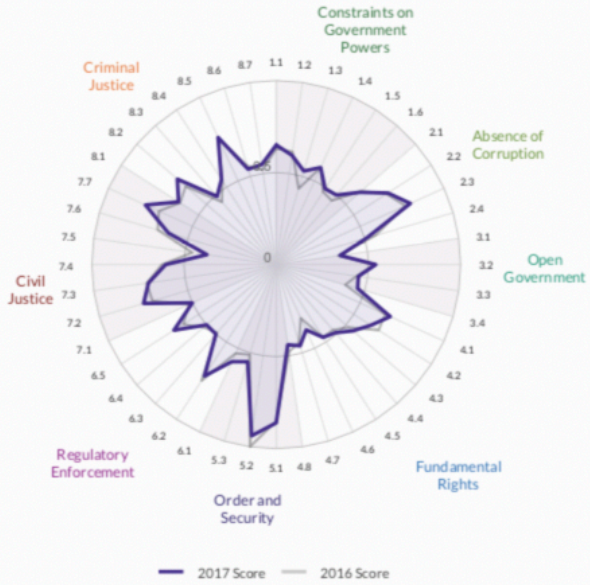
Region: Middle East & North Africa
Income Group: Lower Middle

Overall Score	Regional Rank	Income Rank	Global Rank
0.6	2/7	2/30	42/113

Score Change	Rank Change
0.01 ▲	—

	Factor Trend	Factor Score	Regional Rank	Income Rank	Global Rank
Constraints on Government Powers	—	0.56	3/7	7/30	56/113
Absence of Corruption	—	0.66	2/7	2/30	32/113
Open Government	—	0.45	2/7	16/30	79/113
Fundamental Rights	—	0.51	2/7	11/30	76/113
Order and Security	—	0.78	2/7	4/30	38/113
Regulatory Enforcement	—	0.59	2/7	1/30	31/113
Civil Justice	—	0.62	2/7	2/30	34/113
Criminal Justice	—	0.60	2/7	1/30	27/113

▲ Trending up ▼ Trending down Low Medium High



Jordan Middle East & North Africa Lower Middle

Constraints on Government Powers

1.1	Limits by legislature	0.65
1.2	Limits by judiciary	0.60
1.3	Independent auditing	0.53
1.4	Sanctions for official misconduct	0.58
1.5	Non-governmental checks	0.49
1.6	Lawful transition of power	0.50

Absence of Corruption

2.1	In the executive branch	0.60
2.2	In the judiciary	0.72
2.3	In the police/military	0.80
2.4	In the legislature	0.51

Open Government

3.1	Publicized laws & gov't data	0.35
3.2	Right to information	0.54
3.3	Civic participation	0.45
3.4	Complaint mechanisms	0.46

Fundamental Rights

4.1	No discrimination	0.68
4.2	Right to life & security	0.61
4.3	Due process of law	0.55
4.4	Freedom of expression	0.49
4.5	Freedom of religion	0.47
4.6	Right to privacy	0.39
4.7	Freedom of association	0.46
4.8	Labor rights	0.44

Order and Security

5.1	Absence of crime	0.86
5.2	Absence of civil conflict	0.94
5.3	Absence of violent redress	0.55

Regulatory Enforcement

6.1	Effective regulatory enforcement	0.58
6.2	No improper influence	0.72
6.3	No unreasonable delay	0.50
6.4	Respect for due process	0.50
6.5	No expropriation w/out adequate compensation	0.66

Civil Justice

7.1	Accessibility & affordability	0.50
7.2	No discrimination	0.75
7.3	No corruption	0.70
7.4	No improper gov't influence	0.60
7.5	No unreasonable delay	0.38
7.6	Effective enforcement	0.61
7.7	Impartial & effective ADRs	0.78

Criminal Justice

8.1	Effective investigations	0.63
8.2	Timely & effective adjudication	0.71
8.3	Effective correctional system	0.49
8.4	No discrimination	0.55
8.5	No corruption	0.76
8.6	No improper gov't influence	0.54
8.7	Due process of law	0.55