

# Minors' Crimes in Saudi Arabia



# Minors' Crimes in Saudi Arabia:

*An Analytical Study on the Saudi  
Juvenile Justice*

By

Hajed A. Alotaibi

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## ABSTRACT

As a paralegal in Saudi Arabia for some years, I observed a number of thematic problems related to the Saudi Arabian juveniles' system. These problems concern the lack of codification/consolidation or *Tadwin*, unclear determination of the age of puberty, misclassification of juveniles' crimes, and gross inconsistency in the penalties meted out. This study employs a mixed methodology, which involves analytical and statistical approaches to the problem. Judicial applications from three courts in Riyadh were examined to clarify the traditional classification for juveniles' crimes (i.e. *Hudud*, *Qisas* and *Ta'zir* crimes). Specifically, under the *Hudud* crimes, I investigated four crimes: adultery, drugs and alcohol offences, *Hirabah* (armed robbery), and theft. Additionally, details of 271 cases within the period from June 2010 until June 2015 were gathered.

The purpose of this research is to identify the extent to which the Saudi juvenile justice system recognises minors in the courthouse. In so doing, it identifies four substantial problems: the codification of the Saudi juvenile system, determining the age of criminal liability, categorisation of juvenile crimes, and inconsistency in punishment. The results show some important outcomes. First, cases of *Zina* (adultery and fornication) are unclearly archived under the term '*Fahishah*' in a number of verdicts in my records. However, the term *Fahishah* is used interchangeably in these cases to indicate *Zina* (adultery), *Liwa't* (homosexuality), or prostitution in general. This means that there is no quality control over the classification of crimes. Similarly, the term *Hirabah* (highway/armed robbery) involves many sub-types that are classified as *Hirabah* without any specific criteria given. The researcher found just 17 types already titled as *Hirabah* crimes. Consequently, misclassifying juveniles and their punishment can be one reason for mixing juveniles' and adults' legal affairs, such as when juvenile cases are transferred to the General or Criminal Courts without logical reason.

Secondly, none of the laws pertaining to juveniles in Saudi (namely, the law requiring the provision of social observation houses for boys (SOH), and care institutions for girls (CIG), which was passed in 1975) has addressed the problem of the codification of the juvenile system. The judges in juvenile cases have never depended on the alleged juvenile

*Nizam* (i.e. law), let alone its irrelevance to juvenile legal and judicial matters. Therefore, some juveniles were subject to capital punishment, which occurred at least three times in 2014. Thirdly, huge variations exist between statutes (for example, the age of puberty is 18 years old for boys, while it is 30 years old for girls) and what is happening in reality (15 years old, or even earlier). Therefore, we see contradictory practices, such as people older than 18 years of age being prosecuted as juveniles. Moreover, juveniles were prosecuted without mentioning their ages of puberty. Further, women over 18 years old were criminally prosecuted as juveniles.

Fourthly, there is no different classification for juvenile crimes from those committed by adults in Saudi Arabia, because the scale behind the classification is the punishment. Hence, the applications clearly reflect the complexity of the juvenile system, and have led to unexpected verdicts from juvenile case judges where, for instance, they exceeded the fixed number of lashes (i.e. if the fixed crimes' conditions were not met). Last but not least, I only found jailing and flogging in the judicial applications related to *Ta'zir* crimes. Other penalties such as admonition, reprimand, threat, fine, and seizure of property, were dismissed, or only mentioned in very rare cases (statistically they are not sufficient in number to be mentioned, or to have been included in the SPSS analysis for this book). Accordingly, the tables herewith show that great inconsistencies exist in the discretionary lashes and jail punishments with regard to both genders, except with regard to fixed lashes. There were considerable differences between the discretionary lashes, fixed lashes, and jail penalties, with regard to the juveniles' associates, the four discretionary crimes, and age groupings. However, there were no statistical differences in those three punishments with regard to the juveniles' previous convictions. Thus, I would strongly suggest that the juvenile justice system (e.g. crime classification and punishment) should be reorganised into distinct procedures, rather than focusing only on the penalty.

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# CHAPTER ONE

## INTRODUCTION AND LITERATURE REVIEW

### 1.1 Preface

In 2005, ten boys harassed two girls at a place called the Al-nahda Tunnel in Riyadh, Saudi Arabia. According to *Alarabiya News* (2006), the boys filmed and shared their wrongdoings via Bluetooth and internet websites.<sup>1</sup> The Saudi Press Agency<sup>2</sup> reported that the group of boys was detained based on strong suspicions which resulted from those films. This was done in order to investigate them. Consequently, one of the boys admitted that he had committed the harassment, and had done so with three other people. Through comparing the voices and pictures with those in the videos, positive matches were established with the defendants. Subsequently, in front of the General Court, the Prosecutor-General accused these four boys, in addition to another six defendants involved in the case (No. 000,271).

To elaborate, the Prosecutor-General accused the first defendant of harassing the two girls and appearing throughout the videos. Additionally, while the second defendant was accused of filming the incident, the third, fourth, and seventh defendants were accused of standing by and watching the harassment. The fifth and sixth defendants were accused of touching the girls, while the eighth defendant was accused of giving his telephone number to one of the girls. Finally, the ninth and tenth boys were accused of attending the scene and mocking the girls. At the General Court, the first defendant admitted that the picture which had appeared in the media was him, but claimed it was a fake, because he did not attend the incident. Similarly, the second, sixth, and tenth defendants denied the allegations,

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<sup>1</sup> - Which can still be found here on YouTube at <https://www.youtube.com/watch?v=E29TTDuHifl>

<sup>2</sup> - Known as WAS among Saudi society.

arguing that they were far away from the Al-Nahda tunnel at that time.<sup>3</sup> As a result, the court decided that since pornographic crimes are increasing in Saudi – a fact that necessitates strong penalties for perpetrators – there would be 12 years' jail and 600 discretionary lashes for the first boy; 10 years' jail and 300 lashes for the second defendant; seven years' jail and 400 lashes for the third defendant, and four months' jail and 300 discretionary lashes for the fourth defendant. However, because the fourth defendant had a heart condition, the judges minimized the prison time. Finally, six years' jail and 400 corrective lashes was the punishment given to each of the rest of the defendants.

*Alarabiya News* was in close contact with the defendants' lawyers. The head of the defence team, Saad Alzuair, claimed that these verdicts were harsh, because the judges had depended on suspicions without clear and accurate evidence, such as voluntary confessions from the defendants. The accused denied the allegations and also suggested that the accusations were based on minor matters, such as giving their numbers to the girls or just watching/attending the incident, and therefore, did not deserve strong punishment. This incident had a great impact on Saudi society, particularly amongst religious (*Sharia*) and legal people.<sup>4</sup> According to an *Alriyadh* newspaper report (2006), there were many varied reactions to this incident. Some researchers, such as Zaid Alzaid, the former dean of the Higher Judicial Institute (Alobaikan 2005), the former MP of the Saudi Shura council (Almugaid 2006), a Professor at the Naif Arab University for Security Sciences, argued that this crime must be punished by severe *Ta'zir* sentences because *Sharia* is appropriate for each person, place and time. In contrast, other practitioners such as those who defended the case in front of the General Court,<sup>5</sup> believed that the call for severe punishment was a matter of circumstance.<sup>6</sup> Consequently, there has been a demand by

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<sup>3</sup> - They were not at the Al-Nahda tunnel when the crime happened.

<sup>4</sup> - For example, Azizah Al-Mane (2015) reported that "the incident in which some reckless youths harassed several female shoppers in one of the malls in the Eastern Province has also had an impact on everyone. It brought to mind the shameful incident that took place several years ago in Riyadh (i.e. Al-Nahda Tunnel) ... The occurrence of such incidents has led many people, especially writers in newspapers and those who use Twitter, to call for strict regulations to combat harassment and for the punishment of perpetrators. They say that ignoring the matter will create a hostile environment in which a woman's safety cannot be guaranteed."

<sup>5</sup> - For example, Saad Alzuair.

<sup>6</sup> - i.e. we should focus on what is beneficial for juveniles.

some within the legal community and some *Sharia* scholars in Saudi<sup>7</sup> for the Government to create and establish clear and consistent rules pertaining to juveniles, that are appropriate to *Sharia*. Saudi judges do not think that these issues have any rules in *Sharia* law because they are left open to their own discretion (*Ijtihad*). However, Alshathry (2007), and the General Presidency of Scholarly Research and *Iftaa* (2015) argue that legislating or codifying rules is prohibited in Islam. One reason for this, is that such a process has not happened since the Prophet's time, or during the four schools of Islamic jurisprudence.

The supporters for establishing clear rules related to juveniles claimed, after hearing the judicial decision upon those juveniles at the Al-Nahda Tunnel, that they were surprised that different punishments were given, despite the fact that the offence was equally shared (Alhwaiqil 2006). In addition, intriguingly, this case was transferred to the General Court, which is generally reserved for dangerous crimes, such as killing, cutting, or stoning. However, there was not any killing, cutting, or stoning in this case, which means that the case should have been overseen by the Juvenile Circle Court at the Social Observation House (SOH), or the Care Institution for Girls (CIG) in Riyadh. From this, it can be argued that there are no clear classifications for juvenile crimes and their penalties, and that there is a lack of determined thematic procedures (i.e. procedures which regulate juvenile crimes in four important systematic aspects, including codification, or *Tadwin*, age of criminal liability, crime classification, and punishment.

For instance, criminal responsibility requires the judges, as well as the prosecutor, to mention those juveniles' ages. Yet, we have not seen any declaration of their ages, so does that mean that the judge can decide about puberty<sup>8</sup> according to his own discretion? What is the age of criminal liability in the Saudi juvenile system? Is it 18 years old for boys and 30 years old for girls, according to the laws of the SOH and the CIG, or is it 15 years old according to *Hanbali* doctrine, which Saudi judges, basically, apply?<sup>9</sup>

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<sup>7</sup> - For example, Zaid Alzaid, Ali Alshibel and Abdulrahman Alsanad. cited in Alshathri and Aljumaih, (2006).

<sup>8</sup> - The age of criminal liability.

<sup>9</sup> - Fulfilling the commands of King Abdulaziz passed on 10/9/1928 which imposed the *Hanbali* doctrine to judge by, because its books are easy to revise and also keen on mentioning evidence from the *Qur'an* and *Sunnah* (Aljura'y 2015).

This chapter introduces the reader to the problem of this book, including its nature, historical developmental background, context, and design. In addition, the chapter provides an overview of the chapters included in this book. Accordingly, this preliminary chapter identifies the nature of the problem as it relates to Saudi, and supplies some judicial examples to rationalize investigation of the topic. In addition, there is a reflection on the literature presently available on this subject, and the methodological approaches used to conduct the research that underpinned the writing of this book.

## 1.2 Research problem

To understand the research problem properly, there is a need to recap some critical points from the above case; the Al-Nahda Tunnel incident. For example, no specific ages of criminal liability for those boys were declared, and nor was classification given for the crime and its penalties. This meant that the judges at the General Court never relied on the alleged juveniles' *Nizam* (i.e. law), let alone their own unsuitability to address juveniles' legal and judicial matters.<sup>10</sup> Another judicial example is that of case no.18/300/11/31 (2008), which concerned a man aged 20 years old and a juvenile girl,<sup>11</sup> who was also 20 years old, who were accused of committing adultery. The story started when the girl's father formally notified Riyadh police that his daughter was absent from her house and her husband. After a while, the police arrested the girl alongside the man; both voluntarily admitted that the girl was in close contact with the man before she left her house, and hence she had cheated on her husband. Subsequently, the man offered his services to accommodate her, and had sex with the girl at his family house. However, the man was not *Muhsan*,<sup>12</sup> while the girl was formally *Muhsan*.<sup>13</sup>

After that, the Prosecutor-General accused both of them of committing adultery due to their confessions throughout the investigation. Therefore, the man deserved the fixed punishment for fornication which is mentioned in the *Qur'an* (24:2), while the girl deserved the fixed penalty of adultery, that is, stoning to death. Subsequently, the three judges at the General

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<sup>10</sup> - e.g. determining the age of criminal responsibility, classifying their crimes and punishments, codifying their legal-judicial issues.

<sup>11</sup> - She is arguably juvenile despite the fact that her age is 20 years old, according to the Saudi law of Care Institution for Girls (CIG) Article 1.

<sup>12</sup> - Legally unmarried.

<sup>13</sup> - Married to a different man.

Court questioned the man and the girl about this allegation, and the girl denied any sexual intercourse, claiming instead that she was absent from home for a week or so, and had exchanged kisses with the man. The man denied everything except that he was in touch with the girl by mobile phone only. As a result, the judges decided as follows: The accused denied the allegation of adultery which requires, if proven, the fixed penalty of *Zina*. However, they both admitted that they were in touch for a while. Additionally, because the girl further confessed that she was absent from her husband's house, as well as that she had exchanged kisses with a man in an illegal relationship, the judges decided to remove the fixed penalty of adultery and fornication due to their denials, because *Hudud* penalties in Islam can be removed by suspicion.<sup>14</sup> However, they both deserved discretionary punishments so as to protect the community's safety. Therefore, the man was jailed for ten months, and given 98 lashes of the whip, while the girl was jailed for 18 months, with 250 corrective lashes.

To analyse the above cases, a number of critical points are discussed. First, both cases were archived under the term *Fahishah*, which, in turn, can be applied to many things in Islamic law. For example, the term *Fahishah* in these cases is interchangeably used to indicate *Zina* (i.e. adultery), and *Liwa't* (i.e. homosexuality), or prostitution in general. In other words, there was no quality control over classifying the crimes. Additionally, we can find applications where *Fahishah* was misleadingly applied to *Zina*, prostitution or homosexuals in cases numbered 23, 38, 82, 83, 159, 208 and 209. Similarly, the term *Hirabah* (i.e. highway armed robbery) involves many sub-types that are classified as *Hirabah* without any given specific criteria. For example, the researcher found 17 types of crime already titled as *Hirabah* crime.<sup>15</sup> Consequently, the researcher argues that misclassifying juveniles' crimes and punishments can be the reason for mixing up legal affairs between juveniles and adults. For example, this may result in transferring juvenile cases to the General or Criminal Courts without a logical reason.

The second point is related to juveniles' criminal responsibility. In the case numbered 18/300/11/31 (2008), both of the defendants<sup>16</sup> were 20 years

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<sup>14</sup> - For example, the defendants' denials.

<sup>15</sup> - Such as kidnapping and attempted sodomy, looting and theft, theft and gun-shooting, kidnapping and sodomy, shooting only, theft only, multiple theft, sodomy only, theft and drinking alcohol, armed robbery, adultery only, armed killings, armed sodomy, adultery for non-*Muhsan* (i.e. fornication), sodomy and *Hirabah* only, finally kidnapping, sodomy and drinking wine.

<sup>16</sup> - i.e. the man and the girl.

old. However, the girl was the one who was considered a juvenile according to the law of the Care Institution for Girls (CIG).<sup>17</sup> Muhammad Alsyigh, a judge from the General Court, argued that the age of criminal liability for both genders is fixed at 15 years old, according to *Hadith* (Ibn Omar<sup>18</sup> 2010, 13). In short, we can clearly see there are huge variations between what is written as a law and what is happening in reality (i.e. in the courts). In other words, while the age of criminal liability for boys is 18 years, the age for girls is 30 years. These are the statutory ages which are already written in the law of the Social Observation House (SOH) and the law of the Care Institution for Girls (CIG). Practically, in front of the courts (General, Criminal or Juvenile Circle Courts), judges apply 15 years old as being the age of puberty, depending on the *Hanbali* doctrine. Yet, the judges can actually decide that puberty has taken place even before the age of 15, if the natural physical signs of puberty have appeared. This is exactly what is argued throughout *Hanbali* and some other doctrines. Thus, for example, Alharthi (2012), Alna'iem (2011), Alhariqy (2001), and Ma'bdah (2011) have reported that this opinion is followed by almost all Muslim *Ulema*, except Abu Hanifa and some *Maliki* scholars, such as Alhattab (2003) and Ibn Hazm.<sup>19</sup>

The third point is that, unfortunately, no articles have addressed these critical issues related to the juvenile system in Saudi Arabia in a thematic way.<sup>20</sup> Instead, the researcher found columnists' articles, that were generally wide-ranging and non-specific, or the comments of a few interested judges and officers of the religious police (e.g. Alharthi 2012, 87, 90) who regurgitated the views on prosecuting juveniles in Saudi, that already exist.

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<sup>17</sup> - i.e. the girls' criminal age of responsibility in Saudi is 30 years old according to the law of the CIG.

<sup>18</sup> - For more discussion, please refer to Chapter Three, p.76, 80

<sup>19</sup> - Ibn Hazm supports his view through logic, despite that fact that he is against logical analogies, arguing that the normal nature of the human being includes some norms that are agreed by all folks. Furthermore, one of these agreed norms can be that there is a certain age which anybody reaches where he/she will be regarded as an adult without doubt. However, there is also a particular age that any child may reach yet he/she will not be an adult. In addition, this should not be 15 nor 18 years old, because folks are different in these ages. Yet, the age of 19 years old is the stage of maturity without any controversial doubt. The view of Ibn Hazm (1988) may be criticized by saying that it is not supported by any sources of Islamic law other than custom. It is noted that the source of custom highly differs from time to time as well as according to different people and locations.

<sup>20</sup> - i.e. in an academic style that resolves the problem in specific themes, e.g., the age of criminal liability, classification for juveniles' crimes and their punishments.

This, again, means supporting distorting perceptions, for example, calling for the application of fixed penalties on juveniles, such as *Hudud* retribution; fixed lashes for adultery, *Khamr*, and *Hirabah* crimes. There were no thematic connections between the legal sector (e.g. lawyers, judges) and academia (e.g. university researchers, professors and so on) to address vital topics related to the Saudi juvenile system. For instance, some religious police<sup>21</sup> (Alshammary 2012, Ala'jam 2013, Alna'iem 2011, Alhariqy 2001, Alharthi 2012, Almadhi 1994) have conducted research on investigational procedures within the Saudi juvenile system. However, these researches did not differ from what had already been mentioned in the justice ministerial decree of 1969,<sup>22</sup> which contained only seven general directions by which juveniles can be investigated and judged. Yet, this decree, regrettably, is insufficient, since it is too old and related to only a few investigational procedures.<sup>23</sup>

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<sup>21</sup> - "The Islamic religious police (Arabic: مطوع *mutawwi'*, plural مطوعون *mutawwi'ūn* – derived from classical Arabic: *mutawwi'a*/*mutṭawwi'a*") refers to an official person in some Islamic countries, who on behalf of the authorities, enforces *Sharia* law in relation to religious values or behaviours (Bosworth, Van Donzel, Heinrichs, and Lecomte 1997, 779).

<sup>22</sup> - To elaborate on that ministerial decree, the Ministry of Justice in the Kingdom of Saudi Arabia released a decree in 1969 for all of its judges, stating some principles for judging the crimes of minors (juveniles). Subsequently, these principles should be followed when investigating and judging juveniles' crimes. This scheme is as follows:

No one can attend the hearing unless there is permission from the judge as it should be held in a private place.

The hearing process of judgment must be completed as quickly as possible.

The court should take into account the minors' psychological stability and avoid exposing them to any kind of fear or threat, and they should realise that the court's objectives are to guide them to become better citizens.

The judge should study and review each case before the judgement session is held, and take into account the report of the social worker as a guide to the juvenile's social, psychological and physical condition.

If the judge decides that the juvenile should stay in a reform institution, then this institution must be suitable for his/her age (e.g., they should not be kept with adults or with juveniles who have committed other crimes).

The judgement against a juvenile should be reviewed by the Supreme Court if the juvenile or their parents are not satisfied with it.

Crimes committed by juveniles should not be officially recorded. This means that when they apply for jobs, their previous record should not appear (Al-Mutlag 2003).

<sup>23</sup> - i.e. it did not address the age of criminal liability; it neither classified juveniles' crimes and their penalties nor specified certain rules for juveniles' prosecution.

On the other hand, a few other judges and researchers have misleadingly<sup>24</sup> and repeatedly enforced what is already contained in the *Hanbali* doctrine regarding the age of criminal liability.<sup>25</sup> For instance, Alharthi (2012, 87, 90) argues that Saudi Arabia is superior to the international conventions because it applies Islamic law to the issue of puberty, which is considered to be 15 years old, unless the natural physical evidence appears earlier. He continues to assert that we should apply *Hudud* punishments, if proven, on juveniles, and make some exemptions according to the United Nations Convention on the Rights of the Child, 1989. Therefore, the problem here, I argue, is that juveniles in Saudi are in need of specific legislation which rules and specifies the appropriate age of criminal liability in a clear manner, and classifies crimes and punishments in accordance with *Sharia* policy and objectives.

### 1.3 Aims and objectives

The purpose of this research is<sup>26</sup> to identify and prove to what extent the Saudi juvenile criminal system recognises minors. In other words, it seeks to identify four substantial problems: the codification of the Saudi juveniles' system; determining the age of criminal liability; the categorisation of juveniles' crimes; and inconsistency in their punishment. Badenhorst (2015) reports that research is vitally made up of arguments conceptualized around a problem that meets the needs of the discourse community. As a

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<sup>24</sup> - Because they established only one opinion, which is *Hanbali* juristic doctrine and forgot that there are different and strongly evident opinions within Islamic juristic books with regard to the age of criminal responsibility, crimes' classification and so forth.

<sup>25</sup> - e.g., at 15 years old, or even earlier if the natural evidence supports this.

<sup>26</sup> - There is also a number of supplementary targets and enquiries involved in this research. For example, this study aims to evaluate the Saudi juvenile system in order to identify core problems and suggest some potential solutions. Additionally, it discusses some important points in this matter, for example, the codification of Islamic law with specific reference to juvenile rules, differences in the determination of minors' ages, and the classification of minors' crimes in Saudi Islamic law. Furthermore, it seeks to extrapolate what Islamic criminal law states and argues in terms of renewable issues in minors' crimes, such as codification and juvenile sentences. This will help to combat the inconsistency in juveniles' punishments in Saudi Arabia. To achieve this, the book examines classifications of crimes and their penalties upon juveniles in Islamic *Sharia* law. Finally, supplying Saudi judges, scholars and stakeholders with an empirical study will hopefully contribute to the betterment of the Saudi legal-judicial system, as well as the knowledge of Islamic studies generally.

result, the core problems related to the juvenile system are essentially the four thematic issues mentioned above.<sup>27</sup>

### 1.4 Additional contextual background

In Saudi Arabia before 1969, as shown above in the justice ministerial decree, the crimes of minors were dealt with, legislatively and judicially, in the same court as those of adults, known as the General Court (Al-Mutlag 2003, 30). However, judges at that time were aware, in some way, of juveniles' ages and their lower awareness of life, as well as their diminished ability to choose and differentiate between right and wrong, in some ways. Consequently, there was a strong demand from some scholars, judges and communities to run a specific and separate court for minors. In 1969, the Ministry of Justice in Saudi Arabia announced a decree which included very few instructions in terms of juveniles' judgement and procedures.<sup>28</sup>

Recently, in Saudi Arabia, new laws, especially some regarding criminal procedures (2013) and the judicial law (2007), have been enacted, although these laws were not fully applied in some of their articles. In other words, there was a real gap in their application. For instance, Act 12 of the new Criminal Procedures Law (2013) stated that, "juveniles, either

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<sup>27</sup> - To elaborate, as a paralegal for some time in Saudi, I realised that the matter of *Tadwin* and/or codification remains in the Saudi juvenile system, despite the fact that a law of social observation houses for boys and the law of the care institution for girls was passed in 1975 supposedly to set up some regulations. In addition, Saudi Arabia joined the Convention on the Rights of the Child (United Nations General Assembly, 1989). Saudi Arabia was a bit late to join this convention; Alshaqhaa (2007) and Alsigh (2010) argue that this was due to their cautiousness regarding some jurisprudential issues related to *Sharia*, such as issues related to *Hudud*, retribution punishments and determining the age of puberty in Islam. However, two reactions arguably emerged and, therefore, were followed by Saudi Arabia in order to clarify an Islamic and regional identity (i.e. regional characteristics that represent Gulf Arabian countries e.g. Saudi Arabia, the United Arab Emirates and Oman. In other words, it sought to make something unique to them and their cultural and religious traditions.) The Islamic reaction can be presented in the form of the Children's Charter in Islam passed by the International Islamic Committee for Children and Women, 2003. Yet, the regional reaction can be found in the Abu Dhabi document for unified juveniles' law for GCC countries ( Gulf Cooperation Council, 2002.). However, none of those laws has addressed the problem of codification for the Saudi juvenile system, as can be seen in a more elaborated manner in Chapter Two.

<sup>28</sup> - See p.22.

boys or girls, will be investigated and judged in accordance with the laws and instructions which order that." Yet, Alzughabi (2014) wrote that the time has come for activating special courts for juveniles, because their sizes and types have become larger and more wide-ranging, as well as the fact that the juvenile court now is held at either the SOH or the CIG, which follows the guidance of the Ministry of Social Affairs.<sup>29</sup> Alzughabi (2014) continues to argue that juvenile judges need to spend at least one year participating in juvenile judgment, rather than only four months,<sup>30</sup> because juvenile judges have an obvious need to calculate experiences and unify them, in accordance with similar cases and related laws. Unfortunately, those related laws seem somehow problematic, as there are still some critical issues with them. For instance, there have been some contradictions in determining the age of criminal liability for minors. These contradictions can arguably be seen between theory<sup>31</sup> and judicial practices.<sup>32</sup> However, before the courthouses, there are two points of controversy. First, according to Almani'ee (2011, 526) the *Hanbali* juristic doctrine specifies the age of maturity at 15 years old for both genders equally, unless maturity is attained before 15 years according to natural physical signs (e.g. the appearance of semen, periods for girls, etc.). Secondly, juvenile judges can determine the age of puberty according to their own discretion (i.e. without depending on the juveniles' official IDs). This can be supported by some cases I found before the Saudi courts. For example, during my time in Riyadh, I found 26 cases in which juveniles' ages hadn't been mentioned. Some of these verdicts include<sup>33</sup> cases numbered: 31/11/144 (2014); 28/20/254 (2014); 31/50/123 (2014); 36470395/254 (2015); and 28/139/239 (2013).

Another example is that complex terminologies are used interchangeably with codification in the local newspapers, such as *Taqnin*, *Tadwin*, *Fiqh* and *Sharia*. Hence, I examine these terminologies in Chapter Two.<sup>34</sup> The third example is related to the problem of classifying juvenile crimes in

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<sup>29</sup> - It can be said that these courts do not belong to the supreme judicial council as they are affiliated to the Ministry of Social Affairs.

<sup>30</sup> - Unfortunately, Alsuygh (2010, 22) wrote that juvenile judges would only spend four months to oversee juvenile cases at either the SOH or the CIG. He additionally asserted that this is in fact according to the decision of the High Judicial Council number 95/239 (2007).

<sup>31</sup> - i.e. what is written as law, e.g., 18 years old for boys and 30 years old for girls.

<sup>32</sup> - i.e. 15 years old for both genders, or even earlier, if the natural physical signs appear earlier.

<sup>33</sup> - For more critical evaluations, see Chapter Three.

<sup>34</sup> - See p. 65.

Saudi. To elaborate, the core issue with categorizing their crimes straddles, again, the huge variations between theory and judicial practice. While many researchers (e.g. Alshammary 2012, Ala'jam 2013, Alna'iem 2011, Alhariqy 2001, Alharthi 2012, Almadhi 1994) argue that juveniles in Islam are not capable of being punished, they report that juveniles should have corrective sentences (e.g. prison, lashes, etc.). Moreover, they claim that penalties should be discretionary based on age, starting at seven years old. This, in fact, is supported by some interpretations of the *Hadith*; when the prophet said to his people, "start to ask your children to pray at the age of seven years old, yet correct them, if they missed the prayer, at the age of ten years old..." However, the Islamic law distinction for the idea of discretion is somewhat problematic. The Stanford marshmallow experiment (Da Silva, Moreira and Da Costa 2014, 1) determined that children aged four can make distinctions between objects based on cause and effect (e.g. related to self-interest – what is good/bad for the child). This shows us the reason why Ma'bdah (2011, 207) differentiated between religion and life in terms of age, based on the same *Hadith*, above.<sup>35</sup>

On the other hand, in front of the courts, juvenile crimes do not have different classifications from those of adults (i.e. adults' crimes are mainly classified into *Hudud*, *Qisas* and *Ta'zir*). If we dig deeper into the basis of this classification, we arguably find that some Muslim *qadis*/scholars, such as Abu Zahra (1998, 42) and Abdulqadir Audah (2009, 614–620) use the punishment's heaviness or lightness as a scale for classification. Therefore, we see *Hudud*, *Qisas* and *Ta'zir* respectively. However, I argue that this standard is not effective since it is inconsistent (i.e. the punishment of *Qisas* is stronger/heavier than many *Hududs*, e.g., fixed lashes, so while *Qisas* is stronger than *Hudud*, it is classified as second in order). This is the reason which pushes some researchers such as Awadh (2008) to think of an appropriate scale upon which we can understand the whole Islamic division of crimes, that is, *Sharia's* interests and legislative power in criminalizing and penalizing.

Consequently, this study investigates those substantial problems related to the Saudi juvenile system. Further, these considerations are looked at and criticized according to the main Islamic resources - the *Qur'an*, the traditions of the prophet Muhammad (*Sunna*) as well as some interpretations

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<sup>35</sup> - i.e. while the age of seven could be a starting point for performing prayers, criminal responsibility, however, requires more than recognition, such as full awareness.

of the four Islamic law schools<sup>36</sup> when required. This study, again, aims to provide a good understanding of its applications; therefore, it supplies some judicial cases. The researcher has conducted empirical data at the General, Criminal, and the Juvenile Circle Courts, located at the Social Observation House (SOH) and also the Care Institution for Girls (CIG).

In summary, as a paralegal in Saudi Arabia for some years, I observed a number of thematic problems related to the Saudi juvenile system. These problems can be presented in the lack of codification/consolidation or *Tadwin*, unclear determination of the age of puberty, misclassification of juvenile crimes, and gross inconsistency in the penalties. These substantial thematic issues have motivated me to investigate the causes of these problems. For instance, juvenile justice in Saudi Arabia operates under ambiguous rules. Rather, the rules claimed for juveniles are obviously related to regulations which govern either the Social Observation House (SOH) or the Care Institution for Girls (CIG). Hence, there is an obvious need for either codification or *Tadwin*. However, the GPSRI in Saudi Arabia wrote an old research paper in 1972 and concluded neither to legislate nor codify *Sharia* in general, including juveniles' rules. Another point is that the Saudi juvenile system has misconceptions about the age of criminal liability, in that the age of puberty is not clear – sometimes it is 15, 18, 19, or 30 years old. Further, juveniles' crimes are classified as the same as those of adults. Therefore, my research examines these contradictory opinions and supplies some solutions. This introduction has described the problem of this study, as well as its research basis.

In a nutshell, this academic research will, to the best of my knowledge, be an advanced example of its kind in Saudi Arabia, after very recent criminal laws and procedures (2013), judicial laws (2007) and other international treaties which have been joined by Saudi Arabia, have been passed. Therefore, this book provides some applied cases from three courts in Riyadh, KSA. This study closely discusses three types of juvenile crimes (i.e. *Hudud*, *Qisas* and *Ta'zir*) and their punishments, quantitatively via SPSS, and qualitatively via an analytical approach (as shown in Chapters Two, Three, Four, and Five). Additionally, those crimes are carefully chosen to make sure that they represent the problem practically (i.e. in reality and in theory), so the crimes were not chosen randomly or arbitrarily. However, in *Hudud* crimes, I have focused on the following crimes; *Zina* (adultery), *Khamr* and drugs, *Hirabah* (armed robbery) and *Sariqah* (theft). A few studies were found in this field, but they confined

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<sup>36</sup> - e.g. Hanafi, Maliki, Shafie and Hanbali.

themselves to studying the reasons, social factors, and impact of the crimes upon the community. This research covers a wide remit, offering in-depth coverage and greater analysis, as will be seen in the literature review.

## 1.5 Literature review

While some researchers such as Ala'jam (2013) and Alhariqy (2001) examine juvenile crimes in terms of investigational procedures only (e.g. capture, arrest, etc.), a few others have appeared, without real academic approaches, to examine the Saudi juvenile system in a thematic manner. For example, these few studies can generally be classified into three clusters; newspaper articles, a few dissertations, and general juristic books that are only used for referencing.<sup>37</sup> Unfortunately, these three typologies were insufficient to discover and address important thematic issues faced by Saudi juveniles critically, such as codifying their juristic rules, determining their ages of criminal liability, classifying their crimes in a distinct manner, and ensuring their punishments are consistent.<sup>38</sup>

One reason for this is that those few dissertations I have mentioned were written by religious police,<sup>39</sup> who, basically, were not academics, and whose jobs are mainly to deal with pre-trial matters such as arrest, interrogation, and so on. Another reason is that those articles lack a scientific methodology that is far more important for accepting the outcome of any research, let alone the fact that all of those studies and articles came from bodies that are unrecognized according to the international and regional rankings.<sup>40</sup> This part of my research reviews the previous literature and methodologies that have helped to shape this book through an analytical thematic methodology. In other words, applying an analytical, thematic, approach means concentrating on how certain topics present themselves during the story/study. According to Meirow (2014, 1), this sort of writing requires us to look at specific parts of a work to cast light upon the big picture.<sup>41</sup> Consequently, the main arguments are

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<sup>37</sup> - i.e. it lacks academic methodologies and, hence, was just written for either memorizing or for documenting the knowledge, such as can be seen in Almughni (1999).

<sup>38</sup> - This is one assumption that the previous literature was insufficient.

<sup>39</sup> - For more details see footnote 22.

<sup>40</sup> - For example, QS University Rankings: Arab Region (2016), Shanghai Academic Ranking of World Universities (2016).

<sup>41</sup> - i.e. to relate these specific themes to the main point.

identified so as to compare and contrast some ideas in order to offer more critiques for the literature. Another important result of applying this type of methodology is that it enables us to see the theoretical and conceptual frameworks of this research.

For instance, I assume that the ambiguity that has existed in some essential concepts related to this book<sup>42</sup> has already resulted in considerable reaction towards juveniles' legal-judicial issues, which has meant ignoring the reformative calls for renewing the juvenile justice system in a more professional style, and with more appropriate content.<sup>43</sup> This professional way means that we should look at both the theoretical and practical sides in parallel, to achieve what we are now planning. Unfortunately, during my critical reading through the literature, I could not find any researcher who followed this method.<sup>44</sup> Thus, this literature review starts by discussing and analyzing some important terms/concepts. Those conceptual words (e.g. *Jarimah*/crime, *Jinayah*, juvenile, minor, *Tifl*/child, *Taqnin*, *Tadwin*) are important, because they construct the title of this book, so the reader may inquire about them. After that, we move on to analyze the main debates and ideas in a thematic way. Therefore, this discussion of the main ideas and arguments is divided according to the chapters of this book.<sup>45</sup> Taylor (2010) reports that a literature review is actually not to prove the main points, as this function (i.e. the proof) will be in the book body, but instead the literature is for developing, building our understanding of a theme, concentrating our knowledge, and updating the readers as to what has been done already. Finally, the researcher evaluates the literature, its methods and typologies, in order to identify gaps and justifications for this study. In short, this literature review is divided into two parts, the topic itself, and the methodology, as follows.

### 1.5.1 Part One: Definition of terms

This research has some essential terms that need to be examined through the literature. For example, *Jarimah* (crime) and *Jinayah*, *Tifl* (child), *Sabi*, *Ghulam*, *Hadath* (juvenile), *Fata* and *Qasir* (minor). Below is the analytical discussion of these terms.

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<sup>42</sup> - e.g., terminologies like *Jarimah* (crime), *Jinayah* (juvenile), minor, *Tifl* (child), *Taqnin*, *Tadwin*.

<sup>43</sup> - This is another assumption.

<sup>44</sup> - i.e. combining or supporting theory with reality and this is my third assumption.

<sup>45</sup> - i.e. each argument will represent a core chapter.

### 1.5.1.1 *Hadath*, *Qasir* and their synonyms

Almadhi (1994, 22) did not come up with something new in defining the term *Hadath* (juvenile) but, depending upon what the Saudi guide to criminal proceedings state, he defined *Hadath* as a human being whose age is neither below seven years old, nor above 18 years old. Similarly, Alshammari (2012, 7, 8) did the same in defining *Hadath* (juvenile). However, neither specified the place which conceptualizes this understanding of the term, i.e., is it Saudi Arabia, Islamic law, international conventions? Additionally, they did not discuss the synonyms of *Hadath* (juvenile).<sup>46</sup> Yet, they didn't rationalize why they chose this certain definition. Furthermore, another member of the religious police, Alhariqi (2001), whose dissertation's pages are neither numbered nor indexed,<sup>47</sup> did not mention a clear definition for what is meant by *Hadath* (juvenile) in Saudi Arabia. Rather, he argued under a subsection titled "definition of *Hadath*" that Muslim jurists, generally speaking, agree that any *Sabi* (child) has no ability to receive *Taklif*<sup>48</sup> if he/she is under seven years old, due to the *Hadith*: "the pen is lifted from three people; one of whom is the child till he/she attains the age of adulthood" (Abu Daoud 2013). However, jurists are not unanimous on determining the end of childhood. Alhariqi continued to confirm that the word *Hadath* is not mentioned in the *Qur'an*, but it is mentioned in the *Hadith*, when the prophet described the *Khawarig*<sup>49</sup> as young people (i.e. *Ahdathul Asnaan*), and suggests they are mindless (Altirmizy 2012, 425). Additionally, Alhariqi descriptively listed some words synonymous with *Hadath*, but without clear criteria to depend on.<sup>50</sup> Alhariqi finally concluded that the term *Hadath* (juvenile) is the most popular and common in legal usage around the globe, but there is no problem in using whatever we like (e.g. *Tifl*, *Hadath*, minor, *Fata*, etc.). Unfortunately, Alhariqi failed to provide justifications for choosing these words.

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<sup>46</sup> - Such as *Tifl* (child), *Sabi*, *Ghulam*, juvenile, *Fata* and *Qasir* (minor).

<sup>47</sup> - This is just one example of those studies to show you that their works, regrettably, lack a methodological and scientific basis.

<sup>48</sup> - i.e. commands to do or let.

<sup>49</sup> - i.e. radical people.

<sup>50</sup> - i.e. he does not rationalize why he chose these certain synonyms or that he clarified the bases upon which these words are similar to *Hadath*. For instance, *Sabi*, according to him, means a young person. *Tifl*, *Ghulam* and *Saghir* all refer to a human being before attaining puberty. Moreover, the word *Murahig* means a person who is about to reach adulthood, as does the word *Fata*, which means *Shabab* (youth).

Subsequently, about nine years after Alhariqy's research,<sup>51</sup> Alsyigh (2010), a judge in the General Court, misleadingly provided unprecedented definitions and differentiations between the terms *Tifl* (child) and *Hadath* (juvenile). To break his argument down, Alsyigh (2010, 7-10) claimed that *Tifl* means a person from birth until puberty, which is 15 years old, whereas *Hadath* only means a person whose age is between 15 and 18 years old. He continued to affirm that his definition for *Hadath* was taken from his own experience in the Saudi judicial system (i.e. from his work in the General Court for several years). Moreover, Alsyigh listed three terms similar to *Tifl*, namely, *Sabi*, *Saghir* and *Ghulam*. Although he argued that *Tifl* and *Hadath* have similar meanings, he limited his reference regarding *Tifl* (child) to children who, from his perception, have more judicial rights. To challenge him, all the cases I gathered from the General, Criminal and the Juvenile Circle Courts in Riyadh strongly reject this allegation, as I found *Ahdath* (juveniles) whose ages ranged between 11 and 30 years old, as can be seen throughout Chapters Three, Four, and Five of this book.

In 2011, three works appeared from Ma'bdah (2011), Almani'ee (2011), and Alna'iem (2011) respectively. Ma'bdah, an Assistant Professor at a Jordanian university,<sup>52</sup> argued that the term *Hadath* has not been used throughout Islamic *Fiqh* because the *Qur'an* does not name children (young people) as *Hadath*. Instead, the *Qur'an* calls them by other names, or nicknames, such as *Saghir*, *Ghulam*, *Fata* and *Tifl* (Ma'bdah 2011, 206). On the other hand, Almani'ee, a Doctor at Umm Alqura University, claimed that Islamic jurisprudence used *Bulough*, as opposed to *Hadath* (2011, 520). He went on to claim that *Hadath* in Islamic jurisprudence means a description that exists in a human body which prevents him/her from praying unless he/she makes ablution, whereas *Bulough* means the end of childhood. While Almani'ee took his definition of *Hadath* from old jurists, such as Alhattab (2003, 44, 439) and Alramli (2011, 108), he also took his definition of *Bulough* from Albaberti (no date, 228). Finally, Alna'iem (2011, 9) claimed that *Tifl* (child) is a person from birth until adulthood, and also listed a few synonymous words, such as *Sabi*, *Saghir* and *Ghulam*. However, Alna'iem did not define or differentiate between them, other than arguing that all of them arrive at the same meaning, which is a person who has not reached puberty yet. Therefore, he does not mind anyone using any word from those listed above, since the juristic

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<sup>51</sup> - We can clearly see that Alhariqy's research was conducted in 2001, while Alsyigh's was conducted in 2010.

<sup>52</sup> - Despite the fact that his work only compared *Sharia* and Jordanian juvenile law, I looked at his work on juvenile juristic rules in *Sharia* only.

maxim articulates that consideration is only given to the meaning, not to the shape/style of a word.

To critique this, while Ma'bdah and Almani'ee claimed that *Hadath* is a term that has not been used throughout Islamic *Fiqh*, Aljundi<sup>53</sup> (1986, 7-9) argued that the term *Hadath* has already been used in Islamic jurisprudence to mean young people (i.e. *Sigharul Sinn*) who have not reached puberty yet.<sup>54</sup> Contemporary Muslim researchers<sup>55</sup> altered the term *Saghir* to *Hadath*, not because *Hadath* has a more accurate meaning, but for two reasons. First, *Hadath* is a common term around the world. Secondly, it indicates criminal responsibility for these youngsters. Nevertheless, a few members of the religious police in Saudi have continued repeating or establishing the wrong meaning of *Hadath* and *Tifl*. For example, in 2012, two dissertations appeared to repeat the misunderstanding of the meaning of *Tifl* and *Hadath*.<sup>56</sup> To explain, Alharthi (2012, 6-10) defined *Tifl* as a person from birth until either recognition or puberty. He asserted that he took this definition from Alsyigh, the judge at the General Court, citing and discussing the argument above.<sup>57</sup> Unfortunately, Alsyigh did not mention this, but argued that *Tifl* is someone from birth until the age of adulthood, which is 15 years old. Alharthi went on to contradict himself again in another part of his research (2012, 108), as he said that *Tifl* is someone between 15 and 18 years old. Additionally, Alharthi asserted that he took this definition from Saudi labour law Article 1, yet he debated that there is no reason to determine the age of puberty at 18 years old, since this specification opposes simple psychological principles for age grouping. In other words, *Tifl* (the child) at 18 years old can only be described as a teenager, not a child. Regrettably, I could not find any reference for this allegation; nor did Alharthi supply any reference for this. Instead, he continued to list some words synonymous with *Tifl*, such as *Sabi*, *Fata*, *Ghulam*, *Hadath*, and *Bulough*. Consequently, he defined all of these, except *Sabi*, as a person who has not reached the puberty, which is

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<sup>53</sup> - An assistant teacher at Tanta University in Egypt.

<sup>54</sup> - One example of this is mentioned by Alshatibi in his book *Alitisaam* (1995, 95) and also Ibn Alqayim in his book *Alturuq Alhukmiah* (2014, 128). Yet, Islamic jurisprudence used such a term according to their appropriate manner and style of writing. For instance, we can find *Hadath*'s rules, in Islamic *Fiqh*, under the titles *Saghirul Sin*, or *Awaridh Alahliyah*.

<sup>55</sup> - Some of those listed above.

<sup>56</sup> - We have previously examined that of Alshammary (2012) and others, so refer here to p. 29 please.

<sup>57</sup> - Please see p.29

15 years old. However, *Sabi* is a child who has not reached the stage of recognition, which is at seven years of age.

To sum up, with regard to the term *Hadath* (juvenile) and its synonyms, it is noted that Almadhi (1994) and Alshammary (2012) depended on the Saudi guide to criminal proceedings to define *Hadath* as a human being whose age is not below seven years old, nor above 18 years old. However, neither discussed their definition in order to clarify its meaning, since their definition did not cover girls' ages in Saudi (i.e. in which puberty is 30 years old) nor did they examine other related terms. Additionally, Almadhi and Alshammary did not rationalize their preference in choosing this specific meaning of *Hadath* in the Saudi juvenile system. Consequently, while some researchers such as Alhariqy (2001) listed words synonymous with *Tifl*, other judges and members of the religious police (e.g. Alsyigh and Alharthi) misleadingly mixed *Tifl* and *Hadath*. Further, Alharthi skewed Alsyigh's context.<sup>58</sup> Therefore, this shows how important it is to set out this theoretical framework, as well as how crucial this book is, as there are still many contradictions that do not apply logic. In other words, I strongly question that if those articles, which were done by a few members of the religious police, and, more rarely, judges in Saudi, really helped to identify and resolve problems faced by juveniles, then why are these problems still remaining now?

Despite Almani'ee (2011) and Ma'bdah (2011) arguing that *Hadath* is not used in Islamic *Fiqh*,<sup>59</sup> Aljundi (1985) believed that the term *Hadath* is already used in Islamic jurisprudence to mean young people (*Sigharul Sinn*) who have not reached adulthood. However, Islamic jurisprudence used such terms according to their styles of writing. Contemporary Muslim researchers (e.g. some of those mentioned above) altered the term *Saghir* by *Hadath* not because *Hadath* has an accurate meaning, but for two reasons. Firstly, *Hadath* is a common term around the world.

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<sup>58</sup> - To elaborate, Alsyigh argued that *Tifl* (child) is a person from birth until puberty which is, according to him, 15 years old. In contrast, Alharthi stated that *Tifl* is from birth to either recognition or adulthood. Additionally, Alharthi claimed that there is no need to determine the age of maturity as being 18 years old since this opposes the simple psychological principles for age groupings. This means that *Tifl* (the child) at 18 years old can only be described as a teenager not a child.

<sup>59</sup> - I believe that *Bulough* is something not opposite to *Hadath* but involved in determining the age of adulthood, which is the end of being *Hadath* (juvenile). As a result, we can see that the same misunderstanding in defining *Hadath* and its related synonyms is repeated many times, because almost all the above researchers dismissed the great work of Aljundi (1986).