

Triangle of change: the situation of women in Saudi Arabia

By Eman Alhusein

■ Executive summary

The current situation of Saudi women is influenced by three dominant and interlocking factors – the legal, the social and the economic. Because Saudi law is uncodified, powerful clergy are opposed to codification and make important legal judgments shaped and moulded by social norms, customs and conventions, with often-detrimental effects on women’s legal and economic status. The “exclusiveness” pretext – the perception of the “unique” and “exclusive” nature of Saudi culture – has been used to integrate and maintain socially conservative norms and traditions in Saudi society that cannot be easily refuted or altered. Royal decrees have been a primary vehicle for changing and challenging conservative norms and customs – allowing women greater access to job opportunities and public office and increased visibility in the public sphere. Economic pressures and factors have also contributed. The current analysis will explain the complex and dynamic interactions between the social, legal and economic factors influencing Saudi women’s situation today in light of recent developments in the country.

The legal complexity of Saudi law pertaining to women

The legal system in Saudi Arabia is based on sharia or Islamic law, which has two primary sources, i.e. the Quran and the Sunnah (which are the practices and way of life advocated by the Prophet Muhammad). Sharia provides the principles in terms of which all legal matters are judged and resolved by clerics in the country’s courts. The legal system in Saudi Arabia has not, however, been codified, because the powerful clerical class opposes any attempts at codification. These opponents argue against the development of law (*qanun*) because, firstly, law represents human-made regulations. Secondly, the clerical class argues that such laws and regulations are contrary to an approach where legislation is interpreted (*ijtihad*) from the divine text. Because there are no written laws, judges and legal scholars tend to perform *ijtihad* by interpreting the texts in the way they find suitable. Those who oppose codification insist on maintaining the *ijtihad* tradition. Furthermore, it is feared that codification will put an end to interpretation, which is seen as vital for the continuity of the Islamic heritage. Therefore, when referring to legislation, the term “regulation” (*nizam*) is used rather than

“law” (*qanun*) to avoid creating lexical tensions. Those who call for the codification of the sharia (*taqin al-Sharia*) typically use the word *tadwin* (to record) rather than *taqin* (to codify).

What is more, judges rule differently on similar cases because their rulings rely on personal judgement and interpretation. This results in different readings and verdicts, demonstrating the need for codification in order to maintain a level of consistency. This need is especially relevant to cases that address women and their rights, because the current situation perpetuates laws that create constraints on women in both the private and public spheres. Not clarifying and standardising the terminologies used by judges and legal scholars sometimes leads to violations of women’s rights. This argument is especially relevant to the issue of *ahliyyat al mar’ah* (the competence of women), which has restricted women’s role in the public sphere and bound them to a guardianship system that contradicts the principles of Islamic sharia. Because the laws are not codified, women must rely on their guardians’ consent to manage their daily lives, including financial matters, education and work.

The social constraints

During the 1980s and 1990s Saudi society was influenced by an unofficial religious discourse that evolved from being purely religious to becoming religiopolitical, especially following the Gulf War in 1991. This trend, especially in the absence of counter-discourses, contributed to shaping the current social and cultural structure of Saudi society with its underlying complexities and inconsistencies. Social factors are perhaps the most challenging for women because they maintain prevailing norms and perceptions, including the pretext of “exclusiveness” (*khususiyah*), which is the perception many Saudis have of their society and culture. It is argued that since the country is the birthplace of Islam and the land of the religion’s two most holy cities, Saudi Arabia must preserve a unique Islamic identity and the distinct social characteristics of Saudi society.

One of the issues that is not fully addressed and analysed in scholarly work on Saudi Arabia is the country’s social structure itself. There seems to be a tendency to categorise Saudis into two social groups, conservatives and liberals. However, some Saudi observers claim that only one group is capable of generating widespread support, i.e. the politically active Islamist movement (*al-tayyar al-Islami al-harakii*), which consists of people with an Islamist inclination. This movement shapes the legal system through organised social opposition to the introduction of any changes in the country, such as accession to the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

Furthermore, the issue of women and their situation is a highly politicised one among the various factions in Saudi society. For example, the politically active Islamist movement argues that norms and customs in Saudi Arabia protect women and, therefore, should be maintained. Conversely, the modernising movement (*al-tayyar al-tahdithi*) aims to highlight the distinction between norms and traditions, on the one hand, and religion, on the other, because it has become challenging for individuals and society as a whole to separate norms and customs from religion after decades of maintaining this religious discourse.

A 2004 study presented as part of the National Dialogue (*al-hiwar al-watani*), an annual event organised by the King ‘Abd al-‘Aziz Centre for Dialogue, established in 2003 to foster tolerance and understanding, examines Saudi women’s increasing awareness of the differences between norms, customs and religion. The study confirmed that customs and norms are mixed in with and inform religious provisions, influencing how Saudi women perceive their rights and situation. Many judges and legal scholars tend to maintain social norms through their legal actions, decisions and judgments, demonstrating that the intermingling of these two constructs affects women. For example, women’s freedom of mobility and the restrictions imposed by the guardianship system are both heavily rooted in cultural customs and backed by the legal system.

This situation is further complicated by the fact that until recently women were not allowed to study law – an issue discussed in more detail in a later section.

There seems to be a general consensus in Saudi Arabia among both women and men that the problematic nature of granting women’s rights stems not from sharia itself, but from customary laws and practices, which are responsible for restricting women’s freedom to control their own lives. For example, they cannot apply for their own passports because the governing regulations for the issuing and renewal of Saudi passports require women to be accompanied by a male guardian. Furthermore, women need a *mu’arif* (a male relative who identifies the woman) and sometimes are required to provide *sak ithbat alhayat* (proof of life identification), regardless of their physical presence before the concerned authorities.

The economic challenges

After King ‘Abd al-‘Aziz unified Saudi Arabia in 1932, Saudi society maintained a conservative tribal structure. With the oil boom in the 1960s and 1970s some changes began and more openness was witnessed in the country. Saudi girls and women were allowed into schools and colleges, and Saudi men were employed in government offices and other sectors of the country’s thriving economy.

During the siege of Mecca in 1979 armed religious extremists took over the Grand Mosque to contest what they viewed as excessive Westernisation. There were immediate negative consequences for Saudi society and particularly for women (whose rights were seen as linked to Westernisation). The openness that was previously witnessed was reduced. At the same time, enabled by the country’s wealth and in an attempt to appease the religious fundamentalists, the government opted to implement segregation between the sexes in workplaces and the public sphere. This is one of the historical reasons why women in Saudi Arabia make up a small proportion of the workforce, because gender segregation is partly responsible for the low number of women in various sectors of the economy.

Breaking this norm by allowing women to work in unsegregated areas was one of the main issues that infuriated the active Islamist movement, and opposition remains prevalent today. The opposition perspective on the issue of feminising shops is related to a number of royal decrees and orders that stress the importance of segregation between men and women. For example, the Council of Ministers issued Order 759/8 in 2001 to stress the importance of segregation between men and women in the workplace. This order followed on the previous Royal Order 11651, issued in March 1983, forbidding women from being employed in jobs that allow mixing with men. According to the opposition, it is vital to follow these basic tenets that require segregation, and failure to do so risks harming the country’s social fabric.

This discussion of norms and practices related to gender segregation has historically hindered Saudi women's access and entry to the labour market, as has extensive reliance on foreign workers. However, recent developments, including the economic need of some Saudi families for additional sources of income, resulted in a royal decree in 2011 that allowed women to work in domains that were previously restricted to men. This, crucially, helped legalise women's entry into the retail sector. The widespread opposition to this decree did not stop its enforcement and the creation of 500,000 jobs for women in less than three years. As a result, women have become more visible in the work force and public sphere.

The situation today

When discussing women's rights, a number of issues are usually raised by various groups of Saudi women. To some, the guardianship system is one of the main issues that need to be dealt with to allow women more freedom and rights. Other issues that are also discussed include underemployment, education reform and the codification of sharia. However, both domestically and especially internationally, the issue of allowing women to drive often takes precedence.

The driving revolt in 1990, which was an attempt to break away from the pretext of "exclusiveness", was highly resented by the active Islamist movement. It was also widely opposed by other factions in Saudi society. This resentment re-emerged when a number of Saudi activists attempted to revive the driving debate in 2011. Both attempts in 1990 and 2011 were seen by many as contrary to a collective social and cultural identity.

The driving campaign of October 26th 2013 and those that followed are examples of how change in Saudi is determined by the three factors outlined above. Activity on social media websites during the run-up to the 2013 driving campaign confirmed the continuous opposition from a large portion of the population, regardless of how vocal some Saudi women were in trying to defeat the ban. Also, a large number of Saudi women remained silent regarding the driving issue, not because they are against it, but because they know the social fabric of the country and that change can only be introduced gradually. This is especially so since many women can see that their situation has improved significantly since King 'Abd Allah's accession to the throne in 2005.

One of the most important changes that affected Saudi women in the past decade has been the increased visibility of women especially in the retail sector, as discussed above. In a highly patriarchal society women have rarely been considered as individuals: they are typically viewed as a part of the family unit in both private and public. This viewpoint has gradually changed as women have become more visible and, most importantly, have been increasingly considered as individuals. Therefore, when

King 'Abd Allah issued a royal decree to include women in the advisory Shura Council in January 2013, women became both formal members of and visible in the highest political body in the country. In 2015 Saudi women will for the first time take part in the upcoming municipal elections as both voters and candidates.

The driving ban has not been lifted partly due to the interplay among social, economic and legal factors; however, a number of developments are challenging the status quo. For example, economically, following the crackdown on illegal workers in late 2013, drivers' salaries have risen, putting economic pressure on women and families – which might lead to the eventual acceptance of attempts to lift the driving ban. Socially, the issue of women driving has been widely discussed on social media and is no longer highly controversial. A book by two women who took part in the 1990 driving campaign was published in 2013 and details their struggle. This book is widely available in Saudi Arabia, along with other publications on women's rights. Legally, the inclusion of women in the court system as lawyers, and their overall growing presence in the workplace, may in turn help bring about further reform, possibly also affecting the driving ban.

The increased visibility of and greater public roles for women as individuals will likely lead to further normalisation in society. This transformation will help women realise their individuality and prompt additional changes to their situation. Furthermore, greater visibility in the Shura Council will help women voice their opinions in formal positions. In an unprecedented move, three female members of the council submitted a recommendation in October 2013 to lift the driving ban.

The "feminisation" of Saudi employment in shops was also enforced by royal decree, despite widespread opposition, as discussed above. In 2011 the first phase of the feminisation process started, but only targeted certain women's stores, resulting in the hiring of 43,383 Saudi women. In 2012 the second phase was launched, which allowed women to work in a wider variety of shops, increasing the number of female employees to 201,411 initially, and then to 454,274 in 2013. The last phase was launched in March 2014 and includes allowing women to work in smaller shops that do not have to be part of a complex or a shopping centre.

Lastly, one of the main obstacles women face in Saudi Arabia is the reform of the judicial system and the codification of personal status laws. Until recently Saudi women were not allowed to study law. Now, women law graduates are absorbed in various sectors of the country. Women law graduates are also present in various organisations that promote women's awareness of their rights, such as the Mawaddah Foundation, which helps women obtain their rights after divorce, and the Tarahum Foundation, which supports female prisoners. All of these efforts by various organisations working to promote women's rights aided in the passing of the first domestic violence law in the history

of the Kingdom in August 2013. Also, in October 2013 women were allowed to obtain licences to practise law. In January 2014 the first female law firm was opened in Jeddah by a Saudi woman. All these changes in just two years appear to many to be promising indicators of wider possible reforms to the country's judicial system in the future.

Conclusion

The reform agenda has taken some important steps, even though it has not fulfilled all of the aspirations of women in Saudi Arabia. Saudi women, especially those who advocate for more reforms, acknowledge the progress in recent

years. This has included more women in the job market, the opening of some spaces of study (i.e. law), the acknowledgement of female political participation and the opening up of new opportunities for women. While some argue that the changes introduced are insufficient, the social, economic, legal and even historical factors that create this marginalisation have been accumulating over the last few decades and cannot be changed overnight or simply by rapidly introducing a series of royal decrees.

Recent developments related to all three factors discussed above signal the prospects for more changes to be made to the situation of women in Saudi Arabia. ■

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