



RESEARCH ARTICLE

# The Right of the Accused to Defense in the Saudi System (A Comparative Study)

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ARTICLE INFO	ABSTRACT
Received: Oct 14, 2024	Almost all criminal justice systems worldwide, including international and regional conventions, agree on the accused's right to defense, whether directly or through a lawyer. Some systems even allow the defendant to seek assistance from anyone deemed suitable to help in their defense. Based on this concept, this paper explores the right of the defendant to defense in the Saudi Law of Criminal Procedure through a comparative study with Islamic Sharia as a fundamental pillar of the Saudi system, as well as with international and regional conventions as a constitutional framework. The study is structured into three sections: the first discusses the defendant's right to defense in Islamic Sharia, the second examines this right in international conventions, and the third compares this right in the Saudi system. The conclusion provides a summary of the comparison and evaluates the extent to which the Saudi system aligns with the universally agreed-upon right to defense, followed by the findings and recommendations.
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## INTRODUCTION

Jurisprudence defines the right to defense as a set of procedural activities undertaken by the accused themselves or through their representatives to ensure their interests and rights and to repel the accusation against them. The right to defense is of particular importance in achieving justice. In addition to helping the accused refute and dispel the charges against them, it also helps the judge to reach the truth in the criminal case. This is because the defenses presented by the accused or their lawyers, as well as the discussions during the proceedings, facilitate the judge in issuing a judgment that aligns with justice. Moreover, the right to defense achieves a balance between the authority of the state in the prosecution, with all its power, and the accused, who is the weaker party in the face of this authority. Given the importance and legitimacy of the right to defense, there are essential elements and requirements that help the accused effectively exercise this right. Therefore, legal jurisprudence, including Saudi jurisprudence and its system, has emphasized the right to defense and linked it to a fair trial, without extensively defining it, except for some scattered views. Some have defined it as a right that arises from the moment a person faces an accusation, intended to enable them to repel the accusation, either by proving the invalidity of the evidence against them or by

providing evidence to the contrary that shows their innocence (Aziz, 2014). Others have defined it as empowering the accused to defend themselves by presenting their viewpoint freely regarding the accusation (Bakar, 1997), or as a set of procedural activities undertaken by the accused themselves or through their representatives to ensure their rights and interests and repel the accusation against them (Othman, 1975). Still others consider it to mean granting the accused of committing a crime all guarantees and legal means to enable them to repel the accusation, either by themselves or through others, from the time they are informed of the accusation until a final judgment is issued (Al-Barrak, 2007).

**Problem Statement:** The problem of the research can be summarized by raising and answering the following question:

- To what extent are the guarantees for the accused to defense available in the Saudi Criminal Procedure Law of 1435 AH, and are these guarantees sufficient to achieve justice?

**Significance of the Research:** The significance of this research lies in the fact that the first thing a person facing a criminal accusation thinks about is how to refute the accusation and, consequently, to search for all available legal means to benefit from their right to defense as one of their basic rights.

**Objectives of the Research:** This paper aims to investigate the extent to which sufficient guarantees are available to allow the accused to refute criminal charges against them in the Saudi Criminal Procedure Law and whether they are sufficient to achieve justice.

**Research Methodology:** According to the nature of the topic and the research objectives, the comparative approach is the most appropriate methodology to follow in researching the topic and achieving the research objectives.

**Scope of the Research:** The scope of the research is limited to studying and analyzing the texts related to the subject of the study in the Saudi Criminal Procedure Law of 1435 AH, compared to the principles established by Islamic Sharia and international and regional conventions.

**Research Plan:** The research consists of three sections as follows:

**Section One:** The Right of the Accused to Defense in Islamic Sharia First Subsection: The Right of the Accused to Be Heard.

Second Subsection: The Right of the Accused to Seek Assistance from a Defender

**Section Two:** The Right of the Accused to Defense in International Conventions

First Subsection: The Right of the Accused to Be Heard

Second Subsection: The Right of the Accused to Seek Assistance from a Lawyer

**Section Three:** The Right of the Accused to Defense in the Saudi System

First Subsection: The Right of the Accused to Be Heard

Second Subsection: The Right of the Accused to Seek Assistance from a Lawyer

**Section One: The Right of the Accused to Defense in Islamic Sharia**

The right of the accused to defense in Islamic Sharia is one of the most important elements of establishing justice, which is considered one of the greatest human rights derived directly from God Almighty. God has confined judgment to Himself, saying, "Indeed, the judgment is only for Allah. He relates the truth, and He is the best of deciders" (Quran 6:57), meaning He is the best to decide matters and the best of those who open and judge between His servants (Ibn Kathir, 1997). Undoubtedly, God's judgment is absolute justice, as God knows no favoritism, courtesy, or prejudice. God states in His Holy Book, "We have already sent Our messengers with clear proofs and sent down with them the Scripture and the balance that the people may maintain [their affairs] with justice..." (Quran 57:25), meaning with fairness in their dealings. The term "with justice" indicates that He intended the known balance, and some have said: He intended justice. Al-Qushayri said: If we

interpret it as the known balance, then the meaning is, 'We sent down the Scripture and established the balance' (Al-Qurtubi, 2006). Another meaning is that people should act with justice and truth among themselves (Ibn Kathir, 1997). The link between truth and divine justice adds a theological depth to rights, which drives a person to demand their rights with insistence and steadfastness, because it is a commandment from God, and therefore it falls within the scope of duties, not just rights.

One of the most important factors of security, reassurance, and a sense of tranquility and psychological comfort is that a person feels that they are fully protected from any judicial injustice, and that any accusations against them are not accepted at first glance but rather undergo a clear path of investigation and trial in an atmosphere of justice where opportunities for defense are available, and cases are examined with integrity and accuracy, so that no innocent person is punished and no criminal escapes. Therefore, Islam recognized the right of the accused to defend themselves and to seek help from those who assist them. This will be addressed in two subsections as follows:

First Subsection: The Right of the Accused to Be Heard

Second Subsection: The Right of the Accused to Seek Assistance from a Defender

### **First Subsection: The Right of the Accused to Be Heard**

One of the most important principles established in Islamic Sharia to achieve justice between litigants is the principle of the right of the accused to defend themselves and be heard before the judiciary. This is a fundamental right that should not be confiscated under any pretext, as every right holder has a say. The basis for enabling the accused to have their say before a judgment is issued is found in the hadith of the Messenger of God (peace and blessings be upon him) to Ali ibn Abi Talib when he sent him to Yemen as a judge: "If two litigants sit before you, do not judge until you hear from the other as you heard from the first, for if you do so, the ruling will become clear to you" (Ahmad, 1988 & Abu Dawood, 2011).

From this hadith, it becomes clear that the judge must not issue a verdict against the accused until they have heard their statement. If the judge rules without hearing the accused's statement, their ruling is invalid, because the Messenger of God (peace and blessings be upon him) forbade judging before hearing the argument of the accused. This prohibition indicates the invalidity of what is forbidden; therefore, the presence of the accused to present their defense is a condition for the validity of the judgment.

In the case where the two litigants climbed over the wall into Prophet David's (peace be upon him) chamber to have him judge justly between them, and the claimant had a strong argument, the Prophet David ruled in favor of the claimant without hearing the accused. Because this ruling was issued without hearing the argument of both parties to the dispute, David felt that there was a flaw in his judgment and hastened to seek forgiveness and repentance. This was a directive from God to His prophet David, and a warning to those who administer justice among the people of the Islamic nation, until God inherits the earth and all who are on it, that judging based on the apparent argument of one litigant without hearing the argument of the other is a deviation from the truth and a following of desires that will result in severe punishment on the Day of Resurrection. As God Almighty said: "O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your] desire, as it will mislead you from the way of Allah. Indeed, those who go astray from the way of Allah will have a severe punishment for having forgotten the Day of Account" (Quran 38:21-26).

This entails the right of the accused to be present; it is obligatory for the judge not to rule against the absent accused. No matter what evidence is presented against the accused, the accused may come forward with evidence that refutes this. It was narrated that a man came to Omar ibn al-Khattab (may God be pleased with him) with his eye gouged out. Omar told him to bring his opponent. The man said, "O Prince of the Believers, are you not angry at me except for what I see?" Omar said, "Perhaps you gouged out the eye of your opponent as well?" His opponent appeared with both his eyes gouged

out. Omar said, "When I hear the argument of the other, the judgment will become clear." Similarly, it was narrated that Omar ibn Abd al-Aziz said, "Luqman said, if a man comes to you with his eyes in his hand, do not judge in his favor until his opponent comes."

It also entails the right to equality, meaning that the litigants are equal in the right of defense. Neither one should be given the right to defend their claim while the other is deprived of this right. Equality between litigants, regardless of their status, is an important principle of Islamic Sharia. God said, "O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves..." (Quran 4:135). It was narrated by Umm Salama that the Prophet (peace and blessings be upon him) said, "Whoever is put to the test of judging between Muslims should be fair to them in their words, gestures, and seating. He should not raise his voice to one of the litigants more than to the other" (Al-Bayhaqi, 2003). In a letter from Omar (may God be pleased with him) to Abu Musa (may God be pleased with him), he said, "Be fair to people in your face, in your session, and in your justice, so that the weak may not despair of your justice, and the honorable may not covet your unfairness" (Al-Bayhaqi, 2003).

Likewise, it entails the right of the accused to choose their means of defense and their freedom to choose a means of defending themselves. It is absolutely impermissible to influence them during their interrogation with any factor that impairs their will. God said, "Whoever disbelieves in Allah after his belief...except for one who is forced [to renounce his religion] while his heart is secure in faith..." (Quran 16:106). And the Messenger of God (peace and blessings be upon him) said, "Allah has overlooked for my Ummah their mistakes, their forgetfulness, and what they are forced to do" (Ibn Majah, 2009).

### **Second Subsection: The Right of the Accused to Seek Assistance from a Defender:**

Islamic Sharia was a pioneer in establishing the right of the accused to seek assistance from a lawyer, even if it was not called by this name due to the lack of the profession of advocacy at that time. Most jurists of Islamic Sharia permitted the right of the accused to seek assistance from a lawyer based on the permissibility of representation in litigation, and they did not limit their ruling to representation in civil litigation but extended it to criminal litigation as well (Ibn Hazm, 2003). Some see it as an agency for a fee, therefore it is legitimate according to the majority of jurists, since representation at the doors of judges has been practiced since the time of the Messenger of God (peace and blessings be upon him) until today without any objection (Al-Sarkhasi, 1986). It is narrated that Hassan ibn Thabit appointed Abdullah ibn Abbas (may God be pleased with them both) as his representative. When ibn Abbas won the case after Hassan had lost it due to an error in his argument, he recited:

"When Ibn Abbas appears before you, you will see his excellence in every gathering. If he speaks, he will leave nothing unsaid, with organized words with no separation. He has sufficed and healed what was in the souls, leaving nothing for anyone with a need for a serious or joking statement." (Al-Qasimi, 1987).

Undoubtedly, the permission of representation in proving an accusation necessitates its permission in repelling it, indeed, it is more appropriate. This is because a person who is accused is in great need of someone to defend them due to the confusion that may prevent them from defending themselves. God said, "... But if the one who owes the right is incompetent or weak or cannot dictate himself, then let his guardian dictate with justice..." (Quran 2:282). However, they stipulated that this should not be in support of the wrongdoer. God said, "And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in punishment" (Quran 5:2), meaning, do not help each other in sin or transgression of what God has ordained for you in your religion and obligated you in yourselves and in others (Al-Tabari, 2001). The guidance of the Holy Quran seems sufficient to provide clear evidence for the profession of law. God said, "...And do not be for the deceitful an advocate" (Quran 4:105), meaning do not be an advocate or defendant for someone who has betrayed a Muslim or someone under covenant in themselves or their property by defending them against those who demand their due that they have betrayed (Al-Tabari, 2001). The scholars have said that if the hypocrisy of a group becomes apparent to the Muslims, it is

inappropriate for a group to argue on their behalf to protect and defend them (Al-Qurtubi, 2006). God said, "...And do not argue on behalf of those who deceive themselves..." (Quran 4:107), meaning do not argue for those who betray themselves (Al-Qurtubi, 2006) or defend them against those who demand their rights for what they have betrayed them of their money (Al-Tabari, 2001). God said, "Here you are—those who argue for them in worldly life—but who will argue with Allah for them on the Day of Resurrection, or who will be their representative?" (Quran 4:109). God also said, "...and my brother Aaron is more eloquent than I in tongue, so send him with me as a helper to confirm me. Indeed, I fear that they will deny me" (Quran 28:34), meaning he will explain to them what I speak to them because he understands me (Ibn Kathir, 1997). These are verses that prohibit defending falsehood, and by implication, permit defending the truth. In the hadith, the Prophet (peace and blessings be upon him) said, "Whoever assists a wrongdoer to invalidate a right with his falsehood, then he is acquitted of the guarantee of Allah and His Messenger" (Al-Albani, 1988). Perhaps the hadith of the Messenger of God (peace and blessings be upon him), "I am only a human being, and you bring your disputes to me, and perhaps some of you are more eloquent in their argument than others, so I judge according to what I hear. So whoever I judge to have the right to something that belongs to his brother, let him not take it, for I am only cutting for him a piece of fire" (Al-Bukhari, 2005 & Muslim, 2006), allows the litigant to appoint someone with command of language to present their case.

## **Section Two: The Right of the Accused to Defense in International Conventions:**

Based on the principle of the presumption of innocence, international conventions have been keen to provide several rights to the accused in order to ensure a fair trial. In this section, we will address the two most important of these rights through two subsections:

**First Subsection:** The Right of the Accused to Be Heard.

**Second Subsection:** The Right of the Accused to Seek Assistance from a Lawyer

### **First Subsection: The Right of the Accused to Be Heard:**

International conventions have emphasized the right of the accused to defend themselves and have their argument heard directly or through a lawyer. In order to ensure that this right is not just a mere slogan without practical effect, conventions have established several rights that must be available to the accused, the most important of which are:

#### **The Right to Attend the Trial:**

International conventions have established an important principle regarding the presence of the accused, stipulating that everyone has the right to attend their trial in person, and that no one should be tried in absentia (Article 14(3)(d), ICCPR), unless that person refuses or evades attendance (General Comment No. 32, 2007). This requires the provision of all means to ensure that such attendance is real and not formal, by verifying that the accused has been properly notified and is aware of the place and date of the trial, that there are no obstacles preventing them from attending, and by managing trial sessions and proceedings in a simple manner and in a language that is understandable and accessible to the accused. The purpose of an adversarial trial cannot be achieved if the presence of the accused is merely symbolic, even though this is not available in many states that have ratified the Covenant, where political considerations allow for trials in absentia.

#### **The Provision of Sufficient Time and Facilities for Defense:**

Everyone accused of committing a crime has the right to be given "adequate time and facilities for the preparation of their defense and to communicate with a lawyer of their own choosing" (Article 14(3)(b), ICCPR). This right is also emphasized in the Basic Principles on the Role of Lawyers (Article 8) and is also adopted by the Standard Minimum Rules for the Treatment of Prisoners (Rule 93). The sufficient time and facilities for preparing a defense vary from trial to trial, depending on the simplicity and complexity of each trial. Therefore, the judge must assess and verify the sufficiency of the time and determine it in a way that ensures the right of the accused and does not harm justice.

**The Right to Examine Witnesses:**

Everyone has the right "to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them" (Article 14(3)(e), ICCPR). This is a right that is closely linked to the right of defense, so that the existence of one cannot be conceived without the other. Therefore, it is preferable that they be merged into one paragraph.

**The Right to the Assistance of an Interpreter:**

Every suspect or accused person must have the right to use an interpreter at all stages of the judicial proceedings, whether before, during, or after the trial in the appeals stage, if they do not understand the language used in the proceedings (Article 14(3)(f), ICCPR). Principle 14 of the Body of Principles confirms the right of every detainee in this regard. Everyone has the right to be provided free of charge with an interpreter if they do not understand or speak the language used in court, which is a natural matter and is consistent with the right of the accused to be present, as we mentioned earlier. It is preferable that the interpreter has legal knowledge so that they do not translate incorrectly, which would harm the accused.

**Second Subsection: The Right of the Accused to Seek Assistance from a Lawyer:**

After establishing the right of a person to defend themselves and enabling them to prepare their defense and be given sufficient time, international conventions have sought to emphasize this through several aspects:

**The Right to Defense:**

A number of international and regional conventions (Article 14(3)(c), ICCPR, Article 7(c), African Charter, Article 16(b), ACHR) include the right of the accused to appoint a lawyer of their choice, or to be informed of their right to appoint a lawyer, or for the court to appoint a lawyer to defend them without charge. Detainees also have the right to seek the assistance of a lawyer immediately, and in any case within a period not exceeding forty-eight hours from the time of their arrest or detention. Furthermore, every detainee has the right to consult with their lawyer without being overheard by anyone. These rights apply from the moment of arrest and during the pre-trial detention period, during the investigation and trial, and during the appeal and cassation proceedings, and are also enshrined in the Basic Principles (Principles 1, 5, 6, 7 & 18). In general, the right of the accused to receive legal aid is a sound and just principle. However, some complications that accompany access to free legal aid complicate this right and may lead to the prolongation of the trial, which is detrimental to the accused.

**The Right to Contact Family and Be Informed of the Trial:**

Everyone has the right to inform their family of the news of their arrest, as well as the right to visit them (Article 16(2), ACHR & Rule 9, Standard Minimum Rules). This should be done in an easy way and through simplified procedures, without complications. Informing them should include the place and time of the trial and allowing them to attend, unless the court decides otherwise. As is the norm for general rules, the texts do not provide controls for how the family is to be notified or the means of their presence. It seems that the meeting of the family and their presence serves them through reassurance more than helping the detainee, as the text does not stipulate mechanisms for the family to help the detainee.

**Section Three: The Right of the Accused to Defense in the Saudi System:**

The Saudi system as a whole is based on the principles of Islamic Sharia. We have already mentioned in the introduction of this research the general principles established by Sharia regarding the right of the accused to defense. These principles were in the mind of the Saudi legislator when drafting the

legal provisions that frame this principle in the Criminal Procedure Law of 1435 AH. We will refer to these provisions in general through two subsections:

**First Subsection:** The Right of the Accused to Be Heard .

**Second Subsection:** The Right of the Accused to Seek Assistance from a Lawyer.

**First Subsection: The Right of the Accused to Be Heard:**

The hearing of the suspect in the Criminal Procedure Law of 1435 AH begins from the start of the preliminary investigation stage (Article 34). However, since the stage of gathering information is considered a preliminary stage to the criminal case, it is a preparatory stage for the criminal proceedings. "A criminal case does not move forward except by investigation." Therefore, hearing the statements of the suspect at this stage aims to collect information and data related to the crime by investigating it and searching for its perpetrators using various legal methods and means. Consequently, the necessary elements for starting the criminal investigation are prepared. This process may end either with the opening of a criminal case or the filing of the papers. Therefore, hearing the accused (some scholars do not consider a suspect as an "accused" until the criminal case has been initiated, see: Sorour, 2016) at this stage takes place in the absence of some of the controls established in the investigation or trial stage, such as the right to the presence of an agent or lawyer. However, the law requires that the accused be informed upon their arrest of their right to know the reasons for their arrest or detention, their right to seek assistance from an agent or lawyer in both the investigation and trial stages, and their right to contact whoever they wish to be informed of their arrest or detention. The accused's signature is taken to confirm that they are aware of their rights. If they refuse to sign, a record is made of that (Article 22, Executive Regulations).

As for the hearing that takes place after the start of the investigation and during the trial, it must meet the controls guaranteed by the law for the accused. The most prominent of these controls are:

**The Accused's Attendance at the Investigation Procedures:**

The Saudi Criminal Procedure Law of 1435 AH allows the accused, the victim, the civil claimant, and the agent or lawyer of each of them the right to attend the investigation procedures (Article 69). The presence of the aforementioned parties in the investigation procedures takes place after they have been notified of the investigation in accordance with the established procedures. The investigator may prevent them or some of them from attending one or more procedures if they deem it necessary to reveal the truth, and they must record the reasons for this in the minutes. Once the necessity ends, they must be allowed to review what took place in their absence. This presence allows the accused to familiarize themselves with the facts of the accusation and the evidence available against them and thus prepare to refute them.

**The Accused's Right to Know the Charges Against Them:**

The right to defense during the investigation and trial cannot be effective unless the accused is aware of what is attributed to them and everything related to their accusation. Without this information, the right to defense remains ambiguous and loses its essence, so that it is impossible to imagine any defense without the accused being informed of what is attributed to them. Consequently, their lack of knowledge constitutes a violation of the principle of adversarial proceedings, and the presence of the accused during the investigation and trial becomes merely formal. The purpose of informing the accused of the charges against them is originally to secure the right of defense by knowing all the evidence and suspicions against them (Sorour, 2002), so that they can present a serious and effective defense to refute the charge. Therefore, the Criminal Procedure Law and its Executive Regulations have mandated this right for the accused since the beginning of criminal proceedings (Article 22, Executive Regulations).

**The Accused's Right to Equality and Confrontation:**

Although this right is not available at the preliminary investigation stage, which is considered a stage of development and formation of the criminal case until it becomes strong through the availability of

its conditions and evidence, when the content of that stage is presented to the investigator, the scales of justice must be equal between the litigants through rights and obligations. The secret stage ends, and the confrontation stage with evidence begins, as it is not permissible to establish responsibility on the accused based on evidence that was not presented to the investigator or the court. This stage includes the presentation, discussion, and refutation of evidence by both parties to the dispute and then the formation of the court's conviction. Care must be taken to achieve a balance between the rights of defense and the rights of prosecution, so that the procedures do not turn into a continuous indictment document in front of which the accused stands in a position of submission, which contradicts the principle of the presumption of innocence. However, it must be taken into account that equality is reasonable and not mathematical equality that does not achieve the public interest (Sorour, 1993; Mehdi, 2013), as freedom in itself is relative and not absolute, otherwise it would become chaos.

### **The Accused's Right to Hear and Question Witnesses:**

This right is considered a natural outcome of the right of confrontation. It allows the accused, either personally or through their lawyer, to question any witness who appears or is summoned to testify before the court, whether the summons is from the prosecution or the defense (Article 162).

### **The Accused's Freedom to Present Their Statements:**

Reaching the truth in a criminal case cannot be achieved by the court unless the accused is given the opportunity to give their statements freely. The accused is not primarily obliged to prove their innocence. In principle, the accused can present any defense they wish, whether oral or written, as long as there is no impediment. This is related to leaving the accused free to say whatever they see fit to prove their innocence freely. Therefore, the accused is free, and it is not permissible to prevent them from giving any statements related to the case, nor are they compelled to give any statements, no matter how important, nor are they allowed to be pursued with questions that may push them to answer other than what they wish, as that is considered a form of coercion that violates the law. Since the law has not specified how to force the accused to provide evidence against themselves, it appears that swearing the accused under oath may sometimes be more coercive to some than torture, as the accused may endure torture and remain silent, but they may be forced to speak under the influence of their religious conscience after taking the oath (Mehdi, 2013).

### **The Accused's Right to the Assistance of an Interpreter:**

The trial should primarily be conducted in Arabic, as it is the official language of the Kingdom of Saudi Arabia (Article 1, Basic Law of Governance). However, sometimes the accused may be a foreigner who does not understand or speak Arabic well. Since the main purpose is to give the litigants the opportunity to present their arguments, especially the accused, and in the case where the language in which the procedures are conducted is not understood, the investigator or the court must appoint an interpreter to assist them in understanding what is going on or address them in the language or manner they understand (Articles 171, Criminal Procedure Law & 112, Executive Regulations).

### **Second Subsection: The Right of the Accused to Seek Assistance from a Lawyer:**

The right of the accused to seek assistance from a lawyer does not begin when the trial procedures start, but rather should begin with the first measure taken against them for the purpose of investigation (Sorour, 2000). The presence of a lawyer beside the accused brings calm and reassurance to them, which improves their response and discussion. The presence of a lawyer also protects them from the risks of surprise, allows them to deliberate and reflect on their answers, and ensures that they take caution and know their rights under the law. Therefore, the Criminal Procedure Law of 1435 AH explicitly stated this right in its introduction (Articles 4 & 65), as well as in the Executive Regulations of the Criminal Procedure Law of 1436 AH (Article 69). The right of the accused to seek assistance from a lawyer is exercised during both the investigation and trial phases.

### **Assistance of a Lawyer during the Investigation:**



The Criminal Procedure Law of 1435 AH and its Executive Regulations require the investigator to inform the lawyer of the accused or their agent of their presence according to the established notification procedures (Article 47, Executive Regulations). Although the law does not allow the investigator to prevent the parties to the case from attending one or more of the investigation procedures, except in cases of necessity related to revealing the truth without exception, in the researcher's opinion, this should not include lawyers. This is despite the fact that the text obliges the investigator, once the necessity ends, to allow the parties to review what took place in their absence. This is because a lawyer, according to their legal duties, is considered one of the pillars of justice in the search for the truth (Articles 11 & 19, Saudi Law of Advocacy). Especially since the law prohibits the parties from disclosing the secrets of the investigation. In general, preventing attendance does not in any way include isolating the accused from their lawyer during the investigation. Although it is not permissible for the lawyer to interfere in the investigation except with the permission of the investigator, they are permitted to submit a written memorandum with their comments, which the investigator adds to the investigation record (Article 70).

Since the lawyer is legally and ethically prohibited from disclosing the secrets of their client (Article 23, Saudi Law of Advocacy), the investigator is not allowed to seize any papers or documents that the accused handed to their lawyer to carry out the task entrusted to them, nor the correspondence between them, provided that it is related to the task of defending the accused in the case (Articles 59 & 84, Executive Regulations). Furthermore, the state of preventing visits or communication with the accused during the investigation does not include their lawyer, and this is done with the knowledge of the investigator (Article 119 & Article 82(2), Executive Regulations).

#### **Assistance of a Lawyer during the Trial:**

The Criminal Procedure Law of 1435 AH requires the accused to attend in person in major crimes (Article 73, Executive Regulations) while allowing them to be assisted by a lawyer, whereas, in other cases, it allows the lawyer to attend alone (Article 139 & Article 98, Executive Regulations). The condition of the accused's presence at the judgment reading session in cases other than major crimes is met by the presence of their agent or lawyer, unless the court orders the accused to appear in person. Often the court orders the accused to attend the judgment session in person if it decides to convict the accused and impose a custodial or physical punishment, while if the punishment is financial or a suspended sentence, the lawyer or agent may be informed of it and a later time set for its implementation. If the accused does not have the financial means to seek the assistance of a lawyer in major crimes, the law allows them to ask the court to appoint a lawyer at the expense of the state to defend them, as detailed in the Executive Regulations.

In principle, the right to defense is one of the rights that the suspect or accused exercises themselves. However, this exercise may clash with a lack of knowledge or experience in how to do so. Therefore, the justice authorities, in the event of the accused's inability to provide that, have resorted to legal aid. The word "aid" in Arabic means assistance, and it is sometimes referred to as legal or judicial aid. Most constitutions, international conventions, and laws, including the Saudi system, include this aid, which is assistance provided by any qualified person in the legal field. The Executive Regulations have clarified how to request the appointment of a lawyer at the state's expense, which is what is known in jurisprudence as legal aid. This is done through a written request submitted to the administration of the court hearing the case, stating the full name of the accused, their ID number, the case number for which a lawyer is required, its date, and the accusation against them. The request must also disclose their sources and amount of income, stating that they are financially unable to seek the assistance of a lawyer. They also acknowledge that if their financial ability is proven, the state may claim back from them what it paid for the lawyer's fees. The request is registered and immediately referred to the judicial circuit responsible for hearing the case. The circuit studies the request of the accused and verifies through necessary investigations in cooperation with the relevant authorities that they are unable to bear the expenses of the lawyer. It then issues a reasoned and final decision either accepting or rejecting the request and it is included in the case file. If the circuit rejects the request, the accused is informed of that orally and the case

proceeds while still maintaining the accused's right to seek the assistance of someone to defend them at their own expense.

In the researcher's opinion, given the necessity that prompted the legislator to accept the request to appoint a lawyer at the state's expense through a judicial circuit, it is more appropriate to make an exception for crimes with severe penalties such as life-threatening or physical harm, or long-term imprisonment. In those cases, the appointment of a lawyer should be mandatory by law regardless of the financial ability, in order to affirm the state's responsibility to protect the lives and freedoms of its citizens.

If the request is accepted, the appointment decision is issued without naming the lawyer, and the circuit sends a letter to the ministry specifying the date of the session for naming a lawyer. If the lawyer apologizes after being named, the ministry assigns another lawyer. If the lawyer attends the session with the accused, their appointment is recorded in the case file. If the accused refuses the appointment without a reason accepted by the circuit, their right to request the appointment of a lawyer is forfeited.

The judicial circuit prepares a certificate for the appointed lawyer to submit to the ministry for every session they attend to defend the accused in order to pay their fees according to the estimate determined by the circuit. Payments are made through a mechanism set by the ministry. The lawyer is not allowed to receive any other payment from the accused for their defense (Articles 76 & 77, Executive Regulations).

It appears that there is no mechanism to ensure the required performance of the lawyer in their role of defending the accused. It is sufficient for them to attend the sessions and make their plea to be entitled to their fees. All systems, laws, and conventions agree on guaranteeing the right of the accused to have their lawyer present during all proceedings (Article 14(3)(c), ICCPR; Article 7(c), African Charter; Article 16(b), ACHR) and have detailed this clearly in the Basic Principles on the Role of Lawyers (Article 8).

However, it is necessary to establish a mechanism to ensure that the lawyer exerts the required effort in performing their duty. Otherwise, the purpose of the state appointing a lawyer for the accused may be detrimental to the accused, especially since it occurs in major and serious crimes that require outstanding performance.

## **CONCLUSION**

From all that has been presented, it appears that any text in any system that prevents or restricts the right of the accused to obtain their rights in defense and meet with their lawyer at any stage of the proceedings, including the pre-trial stage, must be in accordance with the Basic Law of Governance. Although justice is still looking forward to a text that obliges pre-trial authorities to inform the suspect of the details of the charge and their right to seek legal aid through the adoption of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).

Therefore, although the Saudi Criminal Procedure Law of 1435 AH has provided guarantees for the right of the accused to defense, the researcher believes that simple amendments should be made to provide more transparency in providing criminal procedures that achieve more justice. The researcher has reached the following conclusions and recommendations:

## **RESULTS:**

The Saudi Criminal Procedure Law of 1435 AH has followed Islamic Sharia and international conventions in enacting the right of the accused to defense, although it needs adjustment and the addition of some texts to provide more guarantees for this right.

Leaving the assessment of the accused's eligibility for a court-appointed lawyer at state expense in major crimes affecting life, physical safety, and crimes punishable by life imprisonment to the judicial

circuits and the weak compensation determined by the Ministry of Interior for such crimes may lead to depriving some accused persons of the right to have a lawyer appointed at state expense.

The lack of setting controls to obligate the lawyer to make the appropriate effort in performing their duty, and leaving the determination to the number of sessions they attend, may lead to the lawyer's failure to carry out their assigned and expected role.

The insolvency of some defendants and their lack of awareness of their right to request the appointment of a lawyer to assist them at state expense may lead to their loss of the right to seek assistance from a lawyer to defend them, and thus thwart their right to a fair trial.

### **Recommendations:**

Make more effort in enacting legal texts that contribute to developing the principle of the accused's right to defense and encourage research and study in this area.

Add a text to the Criminal Procedure Law of 1435 AH granting the accused in crimes affecting life and physical safety, and crimes punishable by life imprisonment, the right to have a lawyer appointed at the state's expense without requiring proof of financial inability.

Add a legal text to the Executive Regulations of the Criminal Procedure Law of 1436 AH specifying the conditions and appropriate experience for selecting lawyers who are retained at the state's expense to defend accused persons in major crimes.

Add a text in the Executive Regulations of the Criminal Procedure Law of 1436 AH obligating the investigator and the court to inform the accused of their right to seek assistance from someone to defend them at their own expense, or at the state's expense if they are insolvent, and to record that in the minutes of the investigation.

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