The principle of the separation of powers between sharia and the statutory law

Study case: “the constitutional system in Saudi Arabia”

The principle of the separation of powers is one of the basic principles that underly the democratic systems, the Article 44 of the Basic law of Governance in Saudi Arabia that: "Authorities in the state shall consist of: Judiciary authority, executive authority, regulatory authority. These authorities shall cooperate in the discharge of their functions in accordance with this law and other laws. The King shall be their final authority”. Through the study of the Saudi constitutional system shows it did not take the principle of separation of powers, but only just pointing to the three state authorities, in terms of overlapping work of the executive and legislative authorities, and by reference to the Saudi cabinet system, we find it states that the jurisdiction of enactment and propose laws (systems) is one of the executive authority functions as holder of inherent jurisdiction, And also the Shura Council has this jurisdiction, according to the Saudi Shura Council system.

From here arise the problematic matter of the separation of authorities in the Saudi legal system, But by reference to the Saudi legal system in general and what stipulated in Article I of Basic System of Government that: "Saudi Arabia, an Islamic state, a fully sovereign, its religion is Islam, its Constitution are the Book of Allah and the Sunnah of His Prophet peace be upon him. And its language is Arabic, and its capital is Riyadh. We find through this text the question of contradiction as there is a fundamental system of government is considering the Constitution of the State, as well as stipulated by the Basic System of Government that the Constitution of the State is the Qur'an and Sunnah. When you talk about democracy, The first matter we should focus on, is the extent to which state is taken the principle of separation of authorities, And the rights and freedoms which set for individuals and citizens, We cannot say that the Saudi legal system is a democratic system as not taking this principle because the Saudi legal system, as I said, is considered a system based on Islamic Sharia. Therefore, we should study the extent of the principle of separation of authorities in the statutory law with Islamic Shari'a. And especially in light of developments in the international community and claims rights, freedoms and democracy. the Islamic societies and states that take Islamic law as the basis for its standing cannot withstand in front of these claims, and justify it that democracy is a Western concept does not comply with the provisions of Islamic Sharia. Therefore, we should get consensual concept does not conflict with the provisions of Islamic Sharia at the same time takes into account the social, economic and political developments and the demands of individuals.

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