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A Legal Comparative Critique of the Saudi Arabian Board of Grievances System in its Current Context with Insights from the Experience in England and Wales

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List of Court Cases in both countries:

List of the Saudi BoG Cases:

The BoG decision No 190/T in 1988.

The BoG decision No 164/T/2 in 1993

The BoG decision No 67/T/1 in 1991.

The BoG decision No 617/14/K in 2013.

The BoG decision No. 68/12/I in 2014.

The BoG decision No. 2257/1/I in 2002.

The BoG decision No. I/5 in 2008.

The BoG decision No. 147ff/3 in 2014.

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The BoG decision No 318/T/3 in 2007.

The BoG decision No 16S/T/3 in 2013.

The BoG decision No 61/2 in 2014.

The BoG decision No. 7Srr/3 in 2002.

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The BoG decision No. 31rr/l in 1984.

The BoG decision No. 31/6 in 1986.

The BoG decision No. I/5 in 2008.

The BoG decision No. 6/1 in 2016.

The BoG decision No. 5/l in 2014.

The BoG decision No. 147ff/3 in 2014.

The BoG decision No. 6/11 in 2013.

The BoG decision No. A/2/Q in 2005.

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R FinnKelcey v Milton Keynes Council [2008] EWCA Civ 1067 [2009] Env LR 17R. (para. 47, per Keene LJ).

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R. v. Somerset C.C and ARC Southern Ltd, ex p. Dixon, [1998] 75 P & CR. 175.

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R v Parliamentary Commissioner for Administration ex p Dyer [1994] 1 WLR 621.

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Thesis summary in less than 300 words (University requirement)

This thesis concerns analysing and critically assessing the role of Saudi Arabian administrative justice system from a comparative perspective by focusing on the Board of Grievances, the Saudi Arabian independent Administrative judicial body.

The study will attempt to shed light and reveal some of the uncertainty surrounding the current status of the BoG and its decisions, in four specific areas that the thesis believes from the preliminary results it has some flaws and weaknesses and may need minor improvements, namely: the ground of Challenges, the issue of Time limits, The Issue of Standing, and the Issue of Alternative Remedies; by present the most important insights, observations, and reflections resulting from its comparison with the English and Welsh system.

The first central argument of the thesis is that codifying the grounds of challenge in the Saudi system has restricted the administrative courts' authority to review administrative actions, as they are only able to intervene if there is a provision in the applicable laws or regulations that explicitly indicates the executive decision is unlawful.

The second central argument is that the time limits constraints in Saudi Arabian law are complex as a result of the ten-year legal time limits periods; as the study claims that these periods are excessively lengthy, hindering the development of future plans that can be put into action.

The third central argument is that barring individuals from accessing BoG courts due to insufficient standing raises significant concerns that are pertinent to both the individual and society.

The fourth central argument is that the mandatory grievance procedure, which requires individuals to approach the administrative authority that made the decision before initiating a JR proceeding, has several criticisms. The study claims that this requirement is problematic, as it lacks a basis in Islamic law.

Abstract

This thesis concerns analysing and critically assessing the role of Saudi Arabian administrative justice system from a comparative perspective by focusing on the Board of Grievances, the Saudi Arabian independent Administrative judicial body. The Board was established in 1982 initially to hear individual Judicial Review claims against the Government and certain commercial dispute cases. In an attempt of the Saudi legislature to improve the Board of Grievances system, the Board was reformed in 2007, The Board Act 2007 gave the administrative judiciary broader powers and better possibilities to operate independently from the Government's authorities.[1]

The study will attempt to shed light and reveal some of the uncertainty surrounding the current status of the BoG and its decisions, in four specific areas that the thesis believes from the preliminary results it has some flaws and weaknesses and may need minor improvements, namely: the ground of Challenges, the issue of Time limits, The Issue of Standing, and the Issue of Alternative Remedies; by present the most important insights, observations, and reflections resulting from its comparison with the English and Welsh system, with a general consideration for the social, historical, political, legal, and religious differences between the two countries. Such comparative studies in the Saudi system are scarce; as most were written before the BoG legislation was enacted in 2007. This comparison is important in understanding the context in which the Saudi legislator can benefit from the English experience as there are fundamental differences that go beyond the structure of their respective administrative justice systems. Hence some caution is needed when comparing the two systems. It is acknowledged, however, that while the context is different, the nature of some of the problems faced by the BoG are similar to those faced in the past by the Administrative Courts in England and Wales. The way these problems were faced and often resolved in England and Wales can be provide inspiration for developing useful and innovative solutions in Saudi Arabia.

A recent area of concern discussed in the thesis pertains to the massive surge in cases brought before the BoG Courts. Precisely, during the past few years, due to the

[1] Since the thesis will extensively use the terms "Board of Grievances" and "Judicial Review," the writer will use the abbreviations "BoG" and "JR" to refer to them; The author considers it unnecessary to include a table solely dedicated to abbreviations, as the thesis encompasses a broad spectrum of judicial legal terminology, and using multiple abbreviations may confuse readers and hinder their understanding of the content.

increasing confidence among individuals in the Administrative Justice System in Saudi Arabia and its independence led to hugely increased in the number of JR applications.[2] Which considered the most significant obstacle that impedes the development of the BoG.[3] The Board is becoming overburdened with a significant number of JR applications; as most of which are weak or ill-founded, and they tend to consume a lot of court time, burden the Administrative Court system financially, and can be highly frustrating to the government agencies concerned. The recent surge in unmeritorious claims has often resulted in individuals with meritorious claims avoiding JR as a form of redress due to the lengthy litigation period.

The first central argument of the thesis is that codifying the grounds of challenge in the Saudi system has restricted the administrative courts' authority to review administrative actions, as they are only able to intervene if there is a provision in the applicable laws or regulations that explicitly indicates the executive decision is unlawful. The thesis contends that this has constrained the administrative courts due to the stringent regulations governing them.

The second central argument is that the time limits constraints in Saudi Arabian law are complex as a result of the ten-year legal time limits periods; as the study claims that these periods are excessively lengthy, hindering the development of future plans that can be put into action, and leading to an overwhelming number of JR cases for the courts, many of which are weak or unfounded, owing to the extended time limits that allow them to be filed.

The third central argument is that barring individuals from accessing BoG courts due to insufficient standing (lack of direct or personal interest) raises significant concerns that are pertinent to both the individual and society. From the author's point of view, the essential issue here is whether it is justifiable for a BoG court to deny someone with a meritorious objection, simply because their rights or interests were not considered to be directly or personally affected; so, what about individuals whose rights have been sufficiently affected but not on a personal level? Is it fair to deny them the right to JR?

[2] According to official statistics published by the BoG which will be discussed in more detail later.
[3] The Board of Grievances in Saudi Arabia acknowledges this issue and indicated it on its official website" https://www.bog.gov.sa/ScientificContent/JudicialBlogs/Pages/default.aspx ".

The fourth central argument is that the mandatory grievance procedure, which requires individuals to approach the administrative authority that made the decision before initiating a JR proceeding, has several criticisms. The study claims that this requirement is problematic, as it lacks a basis in Islamic law and is primarily designed to benefit government agencies rather than protect individuals' rights.

The thesis will begin with a general introduction, containing the research objectives and methods, the study's importance, previous literature, and thesis methodology (Chapter 1). Then it will present a historical and constitutional overview of JR and analyse the principle of sovereignty and separation of powers in both systems, this chapter is essential for understanding the constitutional foundations and justifications between the two countries regarding the subject of JR; it will analyse the principles of sovereignty and separation of powers that will be the basis on which the thesis builds on it all the solutions and justifications for the four arguments mentioned above (Chapter 2). It will then move on to discuss the opportunities and challenges in relation to the right of access to justice of litigants seeking JR. It will, in particular, examine and conduct a critical analysis of the grounds of challenge (Chapter 3). Then, the thesis will subsequently study and analyse the time limit issues (Chapter 4). Next, it will examine the complexities of standing (Chapter 5). The thesis will then seek to evaluate the effectiveness of current reforms in the BOG and analyse the issue of the obligation to exhaust alternative remedies (Chapter 6). lastly, the conclusion (Chapter 7) will provide some overall reflections and insights. It will also offer specific recommendations regarding the future of BoG, and the writer here will review the four central arguments stated at the beginning of the thesis and outline the key findings, reflections, and solutions the study has uncovered concerning them.

Chapter One: General Introduction

I. Introduction

BoG's primary objective is to resolve disputes between individuals and the executive branch over rights and obligations by reviewing government administrative decisions to ensure that they stay within the boundaries of the law. In many legal systems, including Saudi Arabia, there is an independent judiciary that supervises judicial review. While in other legal systems, the traditional courts are responsible for reviewing administrative decisions; this difference can be attributed here to the diversity of political, constitutional, social, and customary ideas of each country.[1]

The BoG "Dewan Al-Mazalim" upon which this thesis focuses is a Saudi Arabian administrative court that adjudicates claims between individuals and government authorities. This Administrative Court exists in addition to a set of the ordinary court known as "sharia court" that hear private-party disputes.

The 2007 BoG Statute provides in Article (1) that, "The BoG is an independent Administrative judiciary." According to Article (13) of the Statute, the BoG is entitled to "adjudicate the following Administrative disputes: (i) Claims by government employees under the civil and military service Laws, and retirements and pension Laws; (ii) The invalidation or annulment of Administrative decisions for lack of jurisdiction, procedural defect, violation of applicable Laws and by-Laws, misapplication or interpretation thereof, and misuse of power including failure to act where required to do so by Law; (iii) Claims for compensations against the government or a public agency arising out of acts or omissions of officials in the exercise of their duties; (iv) Disputes of a contractual nature in which the government or a public agency is a party; and (v) Disciplinary suits against public employees filed by the Board of Surveillance and Investigation". Despite the express text of Articles (1) and (13), the BoG is empowered to adjudicate issues and disagreements that are non-administrative. At the same time, the BoG is prohibited from adjudicating in some disputes, even if they are of an administrative nature. These include restricted administrative disputes

[1] Ayoub Al-Jarbou, *Judicial Review of Administrative Actions between the Saudi and American system: Comparative Study* (SJD thesis, University of Virginia 2002) 1–3.

adjudicated by Judicial administrative committees, which are known as a part of the executive.[2]

The Saudi judicial system has always been characterized by high privacy, especially in the judicial part. Still, recently, it has begun accepting some criticisms in the judicial field and accepting the transfer of some distinct visions that some developed countries have, especially those with a long history and excellent knowledge, such as England in the judiciary side.

Through presenting the most important insights resulting from the comparison between the Saudi and English systems; the study will provide an overall legal perspective on Administrative Courts and tribunals in Saudi Arabia, which will help resolve certain gaps in future JR disputes. Al-Jarbou,[3] highlight the need for legal reform for the BoG in Saudi Arabia; the Saudi Administrative Law could benefit from the developed western countries experiences, whether in substance or procedure; he indicates that ideas and solutions that are valid in the context of a particular legal system may be applicable in another legal system. He discussed that the American Administrative Law had no influence, unlike French Administrative Law, on the Arab Administrative Laws in general and on Saudi Arabian Administrative Law in particular, because the United States legal system is based on the theory of common Law. In contrast, most Arab countries, including Saudi Arabia, have adopted civil Law approach, an Islamic Law approach, or a mixture of them. He adds, the United States has adopted a united judiciary system, whereas Saudi Arabia has adopted a dual judicial system. He indicates the lack of studies comparing specific legal issues under both the American and Saudi legal systems regarding JR. He believes the focus should be on reforming the BoG's work by comparing it with the American and western experience in this field.

It appears there is a debate that some features of the English system in the JR have already begun to follow civil law systems in a certain respect, at least in terms of purposes; Schwarz indicates to this point in the English administrative law, he states "...The legislators, inspired by proposals tabled by various Reform Committees, and the courts, with leading judicial figures like Lord Denning, Lord Diplock, and Lord

[2] The Board of Grievances Statute, Article (1).
[3] Al-Jarbou (n 1) 16–53.

Reid in the vanguard, have in the meantime developed a body of administrative rules which is entirely comparable with the Continental system of administrative law..."[4]

The importance of the present study comes from the fact that the issue of JR over the executive branch's actions is considered one of the most complex topics that Administrative Law deals with. This significance draws from two facets. First, the BoG' role is the most effective protection for individuals facing the administration authorities. Second, The BoG plays a vital role in the modernization of administrative justice in Saudi Arabia placing at its core the right of individuals to directly challenge the acts of the administration. Binlebdah[5], argued that JR's role over administrative actions is considered one of the most important and complex subjects in Administrative Law. He sees its importance in the Saudi system arises from the fact that the BoG' role is the most effective safeguard for individuals against illegal administrative decisions. He adds that many questions have been raised regarding JR in the Saudi system because it is strictly based upon Islamic Law and does not consider modern western approaches. He also insists the BoG can practice a liberal western approach regarding individuals' right to access JR without opposing or contradicting Islam's basic principles. He notes such an adjustment to the Saudi system would make the BoG more convenient, liberal and flexible, and favourable to the claimants.

Four comparative doctoral studies on BoG are considered relevant to the present thesis; all assisted the author's approach to shaping and structuring the research. However, none of these studies address the significant developments in JR that have emerged since the enactment of the new BoG legislation in 2007, which replaced the 1982 BoG Statute. Furthermore, it is important to indicate there are other studies highlight the value of exploring the parallels between the BoG in Islam and similar Western experiences in future studies.[6]

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[4] J Schwarze, *European Administrative Law* (Office for Official Publications of the European Communities 2006) 152.

[5] Naif Binlebdah*, A Legal Comparative Study of Judicial Review between England and Saudi system*. (PH.D Study, University of Newcastle 2009) 28–41.

[6] Binlebdah (n 5).' Al-Jarbou (n 1).' Mohammad Qtaifan, '*The Requirement for Access to JR and Ground of Challenge'* (PHD thesis, University of Essex 2001).; Mohamed Abdullah Al-Jerba,'The Board of Grievances: *A Study of the Institution of Diwan al-Madhalim of Saudi Arabian with Particular Emphasis on Its Administrative Jurisdiction*.' (PHD Thesis PhD 1992).

II. Objectives and Research Approaches

This thesis will critically assess the role of the BoG in its current context by focusing on JR in Saudi Arabia and the factors that contribute to its use. In this regard, the thesis will provide insight into the ground of challenges, the issue of time limits, The Issue of Standing, and the issue of Alternative Remedies.

The study will concentrate on achieving its **main goal**: It attempts to shed light and reveal some of the uncertainty surrounding the current status of the BoG decisions and comparing them with the English system through four central arguments in order to extract the most important insights, observations and reflections. these four arguments are as follows:

1- It argues that codifying the grounds of challenge in the Saudi system has restricted the administrative courts' authority to review administrative actions, as they are only able to intervene if there is a provision in the applicable laws or regulations that explicitly indicates the executive decision is unlawful. The thesis contends that this has constrained the administrative courts due to the stringent regulations governing them.

2- It also argues that the time limits constraints in Saudi Arabian law are complex as a result of the ten-year legal time limits periods; as the study claims that these periods are excessively lengthy, hindering the development of future plans that can be put into action, and leading to an overwhelming number of JR cases for the courts, many of which are weak or unfounded, owing to the extended time limits that allow them to be filed.

3- It claims that barring individuals from accessing BoG courts due to insufficient standing (lack of direct or personal interest) raises significant concerns that are pertinent to both the individual and society. From the author's point of view, the essential issue here is whether it is justifiable for a BoG court to deny someone with a meritorious objection against a government decision, simply because their rights or interests were not considered to be directly or personally affected; so, what about individuals whose rights have been sufficiently affected but not on a personal level? Is it fair to deny them the right to JR?

4- Lastly, it argues that the mandatory grievance procedure, which requires individuals to approach the administrative authority that made the decision before initiating a JR

proceeding, has several criticisms. The study claims that this requirement is problematic, as it lacks a basis in Islamic law and is primarily designed to benefit government agencies rather than protect individuals' rights.

The author hopes that providing such insights and observations resulting from this comparison will serve as a basis for researchers interested in conducting comparative studies in this regard between the two systems. Collins claims that comparative Law aims to improve and understand one's domestic legal system by analysing how foreign jurisdiction has dealt with the same problem; he adds,"…there may well be different aims in comparing legal systems. Still, one that has come to the fore is acquiring diverse insights and ongoing learning..."[7]

Also, this thesis wants to emphasize that comparing the two systems is important to understand the context in which the Saudi legislator can benefit from the English experience; it is true that there are fundamental differences that go beyond the structure of their respective administrative justice systems, but the nature of some of the problems faced by the BOG are similar to those faced in the past by the Administrative Courts in England and Wales. The way these problems were faced and often resolved in England and Wales system can provide inspiration for developing useful and innovative solutions in Saudi Arabia. The current study acknowledges that proposing any changes and improvements inside any judicial institution within Saudi Arabia is in itself considered a significant challenge and will face many obstacles. Nevertheless, this study will propose some recommendations within narrow limits at the end of each chapter, through which it hopes to contribute even slightly to presenting some improvement in the work of the BoG. Additionally, the study would like to clarify that if it does not succeed in this endeavour, its only consolation is that it at least drew attention to these weaknesses and laid some foundations and insights for ongoing modification and modernization.

[7] Reimann and R Zimmermann, *The Oxford Handbook of Comparative Law* (OUP Oxford 2019) 403.

I. Thesis Limitations and Importance

The author asserts that the Saudi administrative justice system could substantially benefit from insights and ideas derived from the English legal system, for several reasons, including:

First, the English and Welsh legal system possesses a rich history and extensive experience in the judicial framework and judicial review in particularly. Unfortunately, there is a clear lack of modern and comprehensive studies that have addressed the comparative legal analysis between the two countries in the field of administrative law. This gap is particularly noteworthy given that the current BoG system has been in effect since 2007, and since that date, there has been no comprehensive research in the field of administrative law between the two countries.

Second, the primary rationale behind the author's selection of the administrative justice system in England and Wales as the foundation for the legal comparison between the two systems is evident from the four arguments set out at the beginning of this thesis. The author believes that these arguments, which he aims to address, have previously been faced by the English system, leading to the development of logical ideas and successful solutions. The thesis believes that there is an exceptional opportunity to draw insights from the English and Welsh experience in this regard and contribute new perspectives to this area of knowledge in the Saudi system. The writer emphasizes that all the solutions and ideas presented will be compatible with the Islamic Sharia system.

Third, a prevailing sentiment among academics and those interested in the judicial field within the Kingdom of Saudi Arabia suggests that the Saudi system has adopted a tendency towards modernizing its various judicial systems. This inclination draws inspiration from the progress achieved by developed countries in this field. The adoption of many new judicial systems in the past few years exemplifies this sentiment,[8] a development that was not witnessed previously, at least not at such a rapid

[8] This modernization drive is evident in several newly implemented judicial systems. For instance, the Commercial Court system was completely overhauled on August 4, 2020, replacing the 1931 system that had remained unchanged for nearly a century. Similarly, the Personal Status Law, issued on September 3, 2022, the first of its kind, represents a significant departure from the previous framework. These instances, alongside various other reforms, stand in stark contrast to past decades characterized by minimal judicial modernization. From the perspective of this thesis, these developments offer evidence of the Saudi system's commitment to effective modernization. It is through this comparative legal study of the BoG with the English system that this thesis aims to contribute to this ongoing modernization effort.

pace. The author believes that the English system, with its remarkable historical heritage in the field of judicial review, stands out as one of the most prominent developed countries in this regard. The study underscores the significance and imperative of modern comparative research between the Saudi and English systems in the domain of administrative justice, laying the groundwork for future scholarly endeavors in this field. The writer expresses a strong ambition for the thesis to transcend academic circles and exert a practical impact on the ground within the departments of the Saudi Administrative Court.

The thesis would like to draw attention to the fact that there are many limitations that the author faced while writing this thesis, which he tried hard to overcome and make them not affect the level and the quality of the study. Among them: **First**, in terms of access to court decisions and whether they are published to the public or not; almost all decisions of the English Administrative Court are easily accessible online, while in contrast, not all BoG cases are made available to the public; the Board only chooses to publish a select few, which creates significant difficulties for individuals seeking accurate information on specific cases. In such situations, researchers who cannot find the necessary information through published materials must resort to special contacts such as lawyers or judges, or reach out to judicial departments after obtaining official permission.

Second, one of the obstacles the author faced while writing the current thesis was that he wanted to discuss many of the important insights deduced in the current research with some judges of the BoG. Unfortunately, at the end of the first year of writing the present thesis, the Corona pandemic began, which led to the closure of government ministries and administrative courts within the Kingdom of Saudi Arabia, the pleading was digital only online. Then, after the storm subsided nearly two years later, the courts reopened to plead in person; A request was sent to the Office of the Chief of the BoG stating the researcher's desire to present the results reached in this letter to take their views on them. Sadly, the BoG responded by saying that the author may find some of the answers he is looking for in the case law presented on the BoG website through judges' opinions.[9]

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[9] The head of the BoG was addressed by an official letter. When the writer reached the fifth chapter, he received an official call from the Board, telling him that the directive contained regarding the letter

Third. one of the challenges faced by the current thesis is the lack of modern and comprehensive work dealing with the subject of this thesis especially after the enactment of the BoG legislation in 2007. In Saudi Arabia, there are very few comparative legal studies on JR with Western countries in general; much of the work done so far has been on the *Sharia* Law and *Sharia* Courts only. While in England, there is abundant literature concerning the JR of administration actions.

III. Research Methodology

A defined explanation of the methodology used enhances both the quality and accuracy of the research, explaining the different aspects of the topic and justifying the appropriateness of the approach taken to it. Thus, the methodology adopted in this thesis has been designed to reflect the distinct nature of this study and to enable it to reach significant conclusions. Delaney and Dixon, writes "By approaching a comparative perspective, we learn between legal systems and Explore how Administrative Courts interact with their broader environments, which should allow scholars to build more nuanced theories about JR behavior and judicial empowerment".[10]

This thesis undertakes a comparative legal study between the English and Saudi JR which it hopes will serve as a basis for researchers interested in conducting comparative studies in this regard between the two systems, by presenting the most important observations and insights resulting from this comparison and proposing some recommendations within narrow limits at the end of each chapter. As mentioned earlier, Collins believes that comparative Law aims to understand and improve one's domestic legal system by analysing how foreign jurisdiction has dealt with the same problem, he adds, there may well be different aims in comparing legal systems, but one that has come to the fore is acquiring diverse insights and ongoing learning.[11] Zweigert and Kötz support this by demonstrating that comparative Law's primary aim, as of all sciences, is knowledge; understanding foreign countries' national Law is an apparent

addressed to the Chairman of the Board is that the researcher may find some of the answers he is looking for in the case law presented on the BoG website through judges' opinions. Accordingly, the writer explained to them, via the same phone call, that many of the questions he would like to ask are very accurate, and there is no comment about them through the case law published on the BoG website; unfortunately, they apologized politely.

[10] Delaney and Dixon, *Comparative Judicial Review* (Edward Elgar Publishing 2018) 22.

[11] Reimann and Zimmermann (n 5) 403.

nearby goal of most Law comparisons, they add "..if a comparative study aims to learn from a foreign experience which is said to be superior, it should be taken into account that it is proved satisfactory in its country of origin and will work well in the country where adoption is proposed ..".[12]

Salter and Mason point out that "comparative analysis can be a particularly useful methodology for considering the desirability of introducing forms of legal regulation that have been successfully introduced in other jurisdictions as a response to analogous issues".[13]

This study aims to shed light and lift some of the uncertainty surrounding the current status of the BoG and its decisions, in four specific areas that the thesis believes from the preliminary results have some flaws and may need some minor improvements, namely: the ground of challenges, the issue of time limits, The Issue of Standing, and the issue of Alternative Remedies; by presenting the most important insights and observations resulting from the comparison with the English and Welsh system. The method deemed to be most suitable for achieving this study's objective is the comparative functional methodology. The thesis will precisely use this approach for several reasons. The most important of which is that it focuses on the effects of the rules, court decisions, and some arguments rather than focusing on the rules and decisions in themselves. In order to be more specific, this study will often focus on the impact of administrative judiciary decisions in both countries, which in turn will give the study the ability to identify gaps and weaknesses related to the BoG in Saudi Arabia in the light of English Law as a learning model.

Functionalist comparatists agree upon some essential features of the functional methodology. First, functionalist comparative law is factual and practical; it focuses on decisions effects as responses to real-life situations and compares legal systems by examining their different judicial reactions to similar situations. Second element, not shared by all functional method variants, is that functionality can serve as an evaluative criterion; Functional comparative law can be described as a "better law comparison" in which the effectiveness of different laws is evaluated based on how better they fulfil

[12] K Zweigert and H Kötz, *An Introduction to Comparative Law* (CLARENDON PRESS ; OXFORD University Press 1998) 15.
[13] M Salter and J Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson/Longman 2007) 108.

their intended function. Third, the functional method focuses on common legal problems and legal solutions in the compared legal systems, rather than on the "diverging" rules and doctrinal frameworks. Lastly, the functional method's strength lies in its emphasis on differences between systems' similarities and aspirations to reform and develop Laws. [14]

This thesis will collect data from primary and secondary sources. Primary data include legislation, Court reports, judicial commentaries, Administrative Court decisions, and law commissions reports. Secondary data include books, journals, conference proceedings, and academic articles. Moreover, the author's own opinions, reflections, and analysis are employed throughout the thesis. Given that thesis will use the functional approach, it will compare the elements related to its goals from these primary and secondary sources within the two legal systems to assess the differences between the two systems' similarities, present the most important insights and trace the gaps and weaknesses in the BoG. All material will be organized and analysed in a logical and coherent approach. Bryce describes that: "…collects, examines, collates the notions, doctrines, rules and institutions, which are found in every developed legal system, or at least in most systems, notes the point in which they agree or differ and seeks thereby to construct a system, which shall be natural…because it shows what particular means the ends, which all or most systems pursue have been best attained".[15] Dannemann, who cited Reimann and Zimmer Zimmermann's work, states that analysing data in comparative legal work consists of three major stages, "..first to select what will be compared, second to describe the Law and its text in the legal system under consideration, third to analyse."[16]

Most legal systems strive to achieve particular effects by modernizing their judicial systems. This comparative study will add a new dimension to view the Saudi legal system and seek to develop the BoG and address specific essential issues. But, as mentioned before, the current research acknowledges that proposing any changes or improvements in any judicial institution inside Saudi Arabia is in itself considered a

[14] Ralf Michaels, *The Functional Method of Comparative Law, Edited by Mathias Reimann and Reinhard Zimmermann* (OUP Oxford 2012) 364–368.
[15] HC James Bryce on the book of: Gutteridge, *Comparative Law: An Introduction to the Comparative Method of Legal Study and Research* (The University Press 1949) 165.
[16] Gerhard Dannemann in: Adams and J Bomhoff, *Practice and Theory in Comparative Law* (Cambridge University Press 2012) 209.

significant challenge and will face many obstacles. Therefore, this study wants to clarify that if it does not succeed in this endeavour, its only consolation is that it at least drew attention to these weaknesses and laid some foundations and insights for modification and modernization.

- **Research Methodology Limitations:**

The author of the current study acknowledges that there are some limitations to the functional methodology. For instance, the functional methodology does not provide clear evaluation criteria and does not adequately take into account historical and customary differences nor does it help evaluate the purposes and causes of laws. Additionally, the functional method always assumes that the societies whose laws and regulations will be studied from a comparative view are separate legal systems, but on the ground, most of the legal systems are usually connected to each other; therefore, the functional method does not effectively explain tensions within legal systems. However, despite these limitations, the author still defends this methodology, primarily because it has several significant advantages. The most crucial advantage is that it allows for a better understanding, formulation, and comparison of local laws by focusing on their impact on the ground and whether they benefit individuals. As a result, the author believes that the functional methodology is the most suitable approach for analysing the four arguments of the thesis.

Thesis Structure

The Introduction will cover the thesis objectives and approaches that will provide relevant perspectives by presenting the study goals: The thesis will attempt to reveal some of the uncertainty surrounding the current status of the BoG and its decisions, in four specific areas that the thesis believes from the preliminary results it has some flaws and may need minor improvements, namely: the ground of challenges, the issue of time limits, The Issue of Standing, and the issue of Alternative Remedies. Moreover, it presents the thesis methodology: it will use a functional research approach which involves reviewing the relevant available literature, including statutes, Islamic jurisprudence, contemporary jurisprudence, and analysing cases decided by Administrative Courts and tribunals in both countries and tracing the gaps, weaknesses in the BoG, making observations and gaining insights.

Chapter One will provide a general introduction which includes the study's objectives and research approaches, the significance of the research and previous literature, study methodology, and the structure of the thesis.

Chapter Two will present a historical and constitutional overview of JR and analyse the principle of sovereignty and separation of powers in both systems, this chapter is essential for understanding the constitutional foundations and justifications between the two countries regarding the subject of JR; it will analyses the principles of sovereignty and separation of powers that will be the basis on which the thesis builds on it all the solutions and justifications for the four issues mentioned before.

In Chapter Three, the thesis will explore the opportunities and challenges related to litigants' right to access justice in seeking JR. The chapter will particularly scrutinise and critically evaluate the main grounds for JR. The thesis contends that the codification of these grounds in the Saudi Arabian legal system has restricted the administrative courts' authority to review administrative actions, as they are only able to intervene if there is a provision in the applicable laws or regulations that explicitly indicates the executive decision is unlawful. The thesis contends that this has constrained the administrative courts due to the stringent regulations governing them. which led claimants and lawyers to stop submitting any request before the BoG unless they were absolutely sure a legal text expressly indicated the decision was illegal. This study would like to clarify an important point, the Islamic Sharia system, " which is supposed to be higher than all the laws and regulations in Saudi Arabia as stipulated in the Basic Law," provides greater freedom for the Courts to review administration decisions even if there is no error stipulated in the laws.

Chapter Four will study and analyse the time limit issues in JR proceedings. According to the chapter, the time limits constraints in Saudi Arabian law are complex as a result of the ten-year legal time limits periods stipulated in most cases. The study argues that these periods are excessively lengthy, hindering the development of future plans that can be put into action, and leading to an overwhelming number of JR cases for the courts, many of which are weak or unfounded, owing to the extended time limits that allow them to be filed. This chapter will address some of the weaknesses related to this important issue, one of which is that litigants are not obligated to file promptly before BoG, as litigants can file his claim on the last day of the ten-year period stipulated in

most cases, and judges have no legal authority to question this delay. By contrast, in the English system, applications for JR must be brought promptly; as the limitation period of three months usual in English law is not an entitlement.

Chapter Five will delve into the complexities of standing in JR proceedings. This chapter argues that barring individuals from accessing BoG courts due to insufficient standing (lack of direct or personal interest) raises significant concerns that are pertinent to both the individual and society. From the author's point of view, the essential issue here is whether it is justifiable for a BoG court to deny someone with a meritorious objection, simply because their rights or interests were not considered to be directly or personally affected; so, what about individuals whose rights have been sufficiently affected but not on a personal level? Is it fair to deny them the right to JR? The study believes these strict rules of standing in the BoG have negative repercussions, affect some of the fundamental rights of individuals required to maintain their essential freedoms; also, it creates a state of uncertainty in the eyes of the public about BoG authorities.

Chapter Six will evaluate and analyse the issue of the obligation to exhaust alternative remedies in the Saudi system. In this chapter, the thesis critiques the mandatory grievance procedure, which requires individuals to approach the administrative authority that made the decision before initiating a JR proceeding; the study argues that this requirement is problematic, as it lacks a basis in Islamic law and is primarily designed to benefit government agencies rather than protect individuals' rights. The system here argues that its intention is to provide the administrative leader with an opportunity to review and potentially modify their previous decisions. The study believes that individuals' rights should be secured through established legal mechanisms rather than resorting to begging for their rights from the administrative official.

In **Chapter Seven**, the conclusion presents comprehensive insights and specific recommendations for the future of BoG in Saudi Arabia; the writer here will review the

four central arguments stated at the beginning of the thesis and outline the key findings, reflections, and solutions the study has uncovered concerning them

Chapter Two: The Constitutional Background of JR and the principle of sovereignty in English and Saudi Law

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Chapter Two: The Constitutional Background of JR and The Principle of Sovereignty in English and Saudi Law

I. Introduction:

As De Smith's stated "many of the peculiarities of JR in English Administrative Law are unintelligible unless viewed in the light of their historical origins."[1] In this thesis, the comparative study of the JR requires initial descriptions of the legal systems in both countries. This chapter gives an overview of the historical and constitutional backgrounds of JR in each system providing the canvas for the comparison of the two JR systems in relation to the thesis question. This chapter is essential for understanding the constitutional foundations and justifications of the two countries regarding the subject of JR; it will analyse the principles of sovereignty and separation of powers that will be the basis on which the thesis builds on it all the solutions and justifications for the four arguments mentioned previously. The first section gives an overview of the Saudi legal system theoretically. It includes some comparisons to relevant aspects of the English legal system. The second section focuses on the details of the development of JR in each country.

II. A historical introduction to the Saudi legal system:

The Kingdom of Saudi Arabia was officially recognized under this name when King Abdulaziz united all regions of the kingdom in 1931[2], its history goes back two hundred years before a pledge by Muhammad ibn Saud, the Founder of the first Saudi state, and Shaykh Muhammad ibn Abd al-Wahhab, the founder of the Wahabi Movement, to

[1] De Smith's and others, *Judicial Review* (8th edn, Sweet & Maxwell 2018).
[2] King Abdulaziz bin Abdulrahman is the founder of the current Saudi State.

apply the Islamic *Sharia*.[3] The rule upon which the First Saudi State was established has been deeply reaffirmed by different statutes enacted since the current Saudi State appeared.

Not long ago, in 1992, the Basic Law was established, proclaiming that the Constitution of Saudi Arabia is rooted in the Holy *Quran* and the *Sunnah* of Prophet Mohammed (peace be upon him). It emphasizes that the government's authority in Saudi Arabia emanates from these sacred sources, holding sway over all regulations, including the Basic Law. The Basic Law asserts the state's commitment to protecting Islam, implementing Sharia, promoting righteous deeds, discouraging evil, and fulfilling all obligations in response to God's call. Furthermore, it explicitly states that human rights are safeguarded in alignment with Islamic Sharia. Notably, it underscores the autonomy of judges in delivering their judgments. The courts, as per the Basic Law, are bound to apply Islamic Sharia in their rulings, guided by the *Quran*, the *Sunnah* of Prophet Mohammed, and regulations issued by authorities that do not contradict with the fundamental principles of the *Quran* and *Sunnah*. The Basic Law affirms that the King shall govern the nation in adherence to the principles of Islamic Sharia.[4]

III. The Sources of the Islamic Sharia enforced by the BoG decisions

Islam is not merely a spiritual belief system, nor merely a set of legal rules governing an individual's interactions with others, including the state. Islam is a way of life that encompasses all aspects of one's life. There are instructions for every element of life in it. Islamic Sharia law governs one's interactions with others, including Muslims, Christians, and private persons, as well as God and one's own conscience. This means

[3] Shaykh Muhammad ibn Abd al-Wahhab was founder of the Wahhabi Movement in 1745.
[4] Saud Al-Doriab, *Al-Tanzim Al-Qdai/i Almamlakah Alarabia Alsaudiah* (1st edn, Dar Al-Hilal Press 1984) 18.

that the Islamic Sharia encompasses everything that is considered law in the United Kingdom, as well as spiritual, ethical, political, humanitarian, and religious matters. In western countries, notably the United Kingdom, the famous adage "To God God's, to Caesar Caesar's" may reflect the genuine connection between state and faith. Islam, on the other hand, is commonly described as "Deen Wa Dawlah" and "Aqidah Wa 'amai," which means Islam is "religion, state, faith, and behavior."[5]

IV. The primary sources of the Islamic Sharia enforced by the BoG decisions:

The Islamic *Sharia* contains of both primary and secondary sources. The primary sources recognized by the most Muslims "Sunni Madahib" schools of thought or schools of jurisprudence are the *Quran*, the *Sunnah*, and the qiyas. The first two sources, the *Quran* and the *Sunnah*, are the only divine revelations of God. The *Quran* is the word of God as revealed to the Prophet Muhammad "peace be upon him" in years by the Archangel Gabriel, depending on the circumstances and situations. There are 114 Surahs (chapters) in the *Quran*. There are "ayat" in each of them. In defining the *Quran*, Almighty God says, "Truly this is a Revelation from the Lord of the Worlds: With it came down The Truthful spirit to thy heart that thou mayest admonish: In the perspicuous Arabic tongue. "Prophet Muhammad described the *Quran*; he says, "In it (the *Quran*), there are stories of the past, portents of the future, and the orders reigning in the period between."[6]

As a result, the supremacy of God's faith is the foundation of the Islamic state. This contrasts with the philosophical underpinning in the United Kingdom, which is based on the people's sovereignty. One of the critical results of the Islamic concept of

[5] Al-Jarbou (n 1) 15–18.

[6] FE Vogel, *Islamic Law and the Legal System of Saudí: Studies of Saudi Arabia* (2nd edn, Brill 2000) 56–62.

sovereignty is that no one can issue new regulations that contradict God's Laws, nor even consider whether the majority of people want it or not.

The *Sunnah* indicates to the statements and actions of the Prophet Muhammad, as well as statements and actions of his companions done in his presence or with his knowledge that met his approval. The Sunnah is considered to be a sacred source and the second primary source of the Islamic *Sharia*. The main difference between the two is that the words and meanings within the *Quran* are from God. God says in the *Quran*, speaking of the Prophet, "He does not speak from his desire, verily it is inspiration which has been revealed." Also, God states, "Whatever the Messenger gives you, take it; and whatever he forbids you, leave it." Moreover, God says, "Oye who believe: obey Allah, and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer to Allah and His Messenger. He who obeys the Messenger, obeys Allah".[7]

The Sunnah was gathered and written after the death of the Prophet by different Muslim writers over a quite long of time. It can be found in seven collections known as the books of Hadith. They are Sahih al-Bukhari, Sahih Muslim, Sunan abu-Dawud, Sunan ibn-Majah, Sunan al-Nasai, Sunan al- Tirmidhi, and Musnad Imam Ahmad. Muslims consider the first two books, which are Sahih al-Bukhari and Sahih Muslim, the most authentic books after the Holy *Quran*. This is because of the strict inspection, high standards, and conditions employed by the two authors to ascertain the genuineness of a particular Hadith. Regardless of the high requirements and strict inspection that were followed when compiling and writing the Sunnah, the accuracy of the *Sunnah* is unlike that of the Quran because not all of the Sunnah is transmitted and reported in the same

[7] Nooer Aldeen After, *Manhag Al-Naqicl Fi 'Alowm al-Hadith* (3rd edn, Dar al-Fiker 1981) 252–256.

way as the *Quran*. Some of the *Sunnah* was transferred and reported in the same way as the *Quran* and other parts of the *Sunnah* were transmitted in a less precise way. As a result, some people "claim that the *Quran* is the only source of Islamic Law." This opinion is unrealistic because it ignores the authenticity of the entire Sunnah. In either case, how can it be ignored? More importantly, the Islamic schools of thought vary in relying on the weak Sunnah. However, the *Sunnah* is the second primary source of Islamic *Sharia* after the *Quran*. The Sunnah sections gives further clarification on the *Quran's* general obligations. For example, the *Quran* orders people to pray. Yet, conducting and performance of this obligation is detailed and explained through the *Sunnah*.

Finally, both the *Quran* and the *Sunnah* include rules dealing with faith, belief, morality, and rules of conduct, spirituality, worship, social life and legal matters. Sometimes, they do not provide an explicit solution for issues and problems. Even though the *Quran* and the *Sunnah* are written, they do not appear in legal codes. Although the *Quran* and the *Sunnah* are sovereign over all other Laws and cannot be amended, the Islamic *Sharia* is not out of date and can deal with novel issues and meet evolving needs that have not been explicitly addressed in the *Quran* and the *Sunnah*. The flexibility of the Islamic *Sharia* comes from two main elements: the *Quranic* and Prophetic legislative methods, and the varieties of the sources of the Islamic *Sharia*.[8]

The last main source of the Islamic *Sharia* is the *qiyas*, which means analogy or analogical deduction or reasoning by analogy from the Holy *Quran* and the *Sunnah*. Where the *Quran* and the *Sunnah* do not address a particular problem or issue, Islamic jurists employ qiyas to achieve logical determination. The current study believes that

[8] Ali Mutwali, *Al-Islam Wa- Mabadi Nizam Al-Hukumfi Al-Islam Wa Aldemoqrateat AlGarbiah* (Munsshat Al-Marif 1990) 138–144.

qiyas is one of the important concepts that the study will highlight as one of the potential solutions for conveying English visions and experiences into the Saudi system when analyzing the four arguments of the thesis between the English and Saudi systems; The author of the thesis believes that from the initial study results, many of the solutions that found in the English system have some roots in Islamic jurisprudence. To apply *qiyas* the jurist, when providing a fatwa (legal opinion based on Islamic *Sharia*, or the judge, when deciding cases, must find a verse in the *Quran* or a rule in the *Sunnah* as the starting point. Then he must determine the direct cause or purpose behind the *Quranic* and the prophetic ruling, and the relationship between the two issues: the issue in which there is an existing rule and the issue to which one is trying to extend the rule. If the direct purpose is similar in both issues, then the rule can be expanded. For example, *qiyas* was used to outlaw the use of different types of drugs such as marijuana. Neither the *Quran* nor the *Sunnah* explicitly bans marijuana. Though, because the *Quran* and the *Sunnah* forbid drinking alcohol, and because marijuana has the same intoxicating effect as alcohol, the jurists concluded that all intoxicating substances must be prohibited.[9]

V. The secondary sources of the Islamic Sharia enforced by the BoG decisions

As previously stated, Islamic jurists have constructed secondary sources in addition to the basic sources of the Islamic Sharia to deal with difficulties when none of the primary sources provide answers. These sources are classified as secondary because they are only used if the primary sources fail to give a legal solution to the problem. Furthermore, they are classified as secondary sources since jurists disagree on their significance. The different secondary Laws are as follows: the *Masaleh morsalah*,

[9] Kalifah Babaker, *Al-Adelah al-Muktalaf Fiha 'And al-Awsolyeen* (1st edn, Maktabat Wahbah 1987) 6–7.

known as unrestricted public interest, *'urf* or custom, the opinion of the *Sahaabah* or the opinion of the companions of the Prophet, the legal norms and rules of old nations, and *isthsaan* or preference. In the following section the only two secondary sources that will be addressed are the *Masalih morsalah* and the *'urf*. The reason for this approach is that the *'urf* is relied on in Saudi Arabia by the BoG. The import of *Masalih morsalah* stems from the fact that it is one of the main foundations for the Islamic governments, including Saudi Arabia, to deal with the comprehensive development of the country in all aspects including modernization of its legal system through the enactment of Laws and regulations that do not contradict the primary sources of the Islamic *Sharia*. The Saudi Basic Law obviously relies on the *Masalih morsalah* as a basis for rule making. It declares, "The regulatory authority (the legislative authority, Saudi Arabia government doesn't like the word legislative) sets down Laws and regulations that benefit, or avoid harm, in accordance with *Sharia*".[10]

VI. The role of the BoG in promoting the public interest (Masalih Mursalah):

The phrase "*Masalih mursalah*" contains two Arabic words. The word *Masalih* is plural. The singular is "*maslaha*," which literally means interest, whether obtaining benefit or avoiding harm. The word "*mursalah*" means unrestricted. So, when the two words are combined, they mean unrestricted-public interest. As a source of the Law "*Masalih mursalah*" means the public interest that is not prohibited by either the *Quran* and or the *Sunnah*. Though, to establish new rules that are based on "*Masalih mursalah*," some requirements must be met. First, the statute that is based on the "Masalih mursalah" must not conflict with superior sources of the Islamic *Sharia*. Second, the rule must be linked to the public good and not directed toward specific

[10] The Basic Law, supra note 6, Art 67.

private interests or groups. Third, the interest must be realistic and fall within the general laws of Islam. Fourth, the public interest must not contradict higher public interest". Lastly, some researchers argue that only experts in the Islamic *Sharia* can examine whether these requirements are satisfied. Since employment of the "*Masalib mursalah*" as a source of the Islamic *Sharia* to extend the Law to novel situations is part of *ijtihad*, this needs someone who has the requirements of being a *mujtahid*, a person who should be aware in the Islamic *Sharia* and its sources.[11]

The BoG has often used the public interest principle to accept the modern legislative attitude of the government. For example, the Board dismissed a case due to the claimant failed to file his case during the prescribed limitations period pursuant to the Rules of Pleadings enacted by the Council of Ministers. The Board in this case rejected the plaintiff's argument that the time limit required by the Rules was against the Islamic *Sharia* which does not stipulate a limitations period.[12] The Board announced that:" The time limits that are required by the Rules of Pleadings before the BoG to be followed before filing the Law suits do not conflict with the Islamic *Sharia* because it will provides stability to the function of the governmental agencies".[13]

On this principle also, the BoG also accepted the act of state or political question doctrine, even though it has recognized the fact that this doctrine is a contemporary idea that has not been recognized through the jurisprudence of the Islamic *Sharia*.

VII. The role of the BoG in considering the validity of custom (urf):

The regional practices are considered secondary and supplementary sources of the Islamic *Sharia*. Two requirements must be met to accept regional practices as a source

[11] Saad Naser, *Al-Maslahah 'And al-Hanabilah* (1st edn, Dar al-Muslim lii Nashir wa al-tawzee) 47.
[12] The BoG decision number 190/T 1988.
[13] The BoG decision number 164/T/2 in 1993.

of Law: if these local traditions do not conflict with main sources, and they must not be incidental practices. The BoG rely on *'urf* when no legal solution can be attained within the higher sources of Islamic *Sharia*. The Board considers the validity of administrative traditions as a source of the Law if there are no higher legal solutions offered by the other sources of the Islamic *Sharia* and the statutory Laws.

This brief describes the sources of the Islamic *Sharia* which differs from other legal systems in terms of the number of sources from which the Law can be obtained. Most legal systems obviously depend on human experience and secular sources to establish their laws, While the sources in non-divine Islamic law are related to divine sources, the *Quran* and *Sunnah*, and must not contradict them. [14]

This study would clarify that Islamic countries now have legislative authorities responsible for the formation of the law and work similarly to any other legislative authority in the West. In Saudi Arabia, for example, there is a vast array of statute Laws in the criminal, administrative, and commercial spheres, in addition to the laws of the Islamic Sharia, which are continually evolved through jurisprudence." It is vital to note that, due to the sensitivity of having statutory Laws, the name Nizam (which means regulations) has been used to refer to legislated Laws in order to alleviate traditionalists' concerns. This is done because the term *Qanuwn* (Law) is extremely sensitive to the religious establishment and is used in other legal systems to refer to positive Laws (man-made Laws). Also, the phrase *Sulta Tanrsemeya* or regulatory authority is used to refer to the legislative authority.[15] As explained previously, the terms legislative according to traditionalists should be used to refer to the Almighty God only.

[14] Al-Jarbou (n 1) 23–29.

[15] The Basic Law, supra note 6, Arts. 44 and 67. The Council of Ministers Law, supra note 6. Art l.

VIII. The Saudi Basic Law:

The Basic Law is a crucial piece of legislation in the country's constitution. Its significance stems from the fact that it contains provisions that are comparable to those found in other countries' constitutions. It is not a particularly long document; it has eighty-three articles. The Islamic foundation of the state, the form of government and the rule of secession, social and economic principles, individual rights and state duties, and state authorities and inter-branches relationships are all highlighted in the Basic Law. It does not go into great detail about individual rights; instead, it states that the state would preserve those rights in accordance with Islamic Sharia. However, because it incorporates some positive rights, the Basic Law demonstrates modern constitutionalist characteristics. It covers some affirmative rights that the government must offer in addition to fundamental human rights such as the protection of one's home and property. The right to a healthy environment and the right to free education, health care, and retirement benefits. It is important to note that Administrative Courts would have difficulty enforcing such positive rights because they are still subject to the state's discretionary jurisdiction.

IX. The forms of Judicial Review laws in the Saudi and English legal systems:

As this study primarily concerns the BoG, the author believes it is important for readers to gain a brief understanding of the Judicial Review regulations between the two countries in order to develop a clear understanding of the nature and its drafting; This knowledge will provide a foundation for delving into the four arguments presented in this thesis. Furthermore, as the writer may propose some changes to these laws at the end of each chapter, it is crucial that readers grasp its key concepts to facilitate a smoother and more effective integration of such suggestions. The thesis will present

some of the essential articles in their original form, hoping this will elucidate the significant contrast between the law forms, as follows:

The Judicial Review laws in the Saudi system can be found in the BoG law[16]; it is stated in certain articles that "…The BoG shall have jurisdiction to decide the following: 1- Cases related to the rights provided for in the Civil Service and Pension Laws for government employees and hired hands, and independent public entities and their heirs and claimants. 2- Cases of objection filed by parties concerned against administrative decisions where the reason of such objection is lack of jurisdiction, a deficiency in the form, a violation or erroneous application or interpretation of laws and regulations, or abuse of authority. It is considered as an administrative decision the rejection or refusal of an administrative authority to take a decision that it should have taken pursuant to laws and regulations. 3- Cases of compensation filed by parties concerned against the government and independent public corporate entities resulting from their actions. 4- Cases filed by parties concerned regarding contract-related disputes where the government or an independent public corporate entity is a party thereto. 5- Disciplinary cases filed by the Bureau of Control and Investigation.

While in the English and Welsh legal system, the JR regulations can be found of it in the Civil Procedure Rules (CPR) under PART 54 - JUDICIAL REVIEW AND STATUTORY REVIEW[17]. Noting that the thesis will try to review here only the articles that will be discussed in the coming chapters, as part of its four main arguments. These articles are as follows: **"…Who may exercise the powers of the High Court/ 54.1A** (1) A court officer assigned to the Administrative Court office who is : (a) a barrister, (b) a solicitor; or (c)a Fellow of the Chartered Institute of Legal Executives

[16] The BoG law.
[17] Civil Procedure Rules PART 54.

or a CILEX lawyer, may exercise the jurisdiction of the High Court with regard to the matters set out in paragraph (2) with the consent of the President of the King's Bench Division. (2) The matters referred to in paragraph (1) are – (a) any matter incidental to any proceedings in the High Court; (b) any other matter where there is no substantial dispute between the parties; and (c) the dismissal of an appeal or application where a party has failed to comply with any order, rule or practice direction. (3) A court officer may not decide an application for – (a) permission to bring judicial review proceedings; (b) an injunction; (c) a stay of any proceedings, other than a temporary stay of any order or decision of the lower court over a period when the High Court is not sitting or cannot conveniently be convened, unless the parties seek a stay by consent. (4) Decisions of a court officer may be made without a hearing. (5) A party may request any decision of a court officer to be reviewed by a judge of the High Court.

X. The principle of sovereignty and separation of powers in the Saudi system:

Like any other state, an Islamic state can enact regulations, execute them, and adjudicate disputes that might arise from them, Separating or allocating these functions or powers into distinct departments or authorities. The political theory of Islam is based on centralized authority in the hands of the head of the state. Accordingly, the head of the state is responsible for all state functions, including the judiciary. One must bear in mind that even though the enactment of administrative regulations was under the control of the head of the Islamic State, Islamic law throughout the history of Islam has been developing outside the control of the state, due to the opinions of many independent jurists who have the qualifications and requirements of Ijtihad. Consequently, when scholars or historians say that, throughout the history of Islam, the head of the Islamic State has controlled all state's authorities, including the legislative or rule-making authority, they refer to the enactment of administrative regulations in

circumstances when the divine sources of the Islamic Sharia are silent or only provide for general principles.[18]

As a consequence of this allocation of authority based on a doctrine of nonseparation of powers, the head of the Islamic state, in addition to being the chief executive, can undertake the judicial authority himself or through judges whom he appoints and whose jurisdiction he defines by subject matter, region, or both. In fact, even when he appoints judges, he has the right to act as judge simultaneously. But can judicial independence be attained through such an allocation and arrangement of authorities. To deal with such inquiry fairly and thoroughly, one should define the term "judicial independence," and present the desirable constituents by which one can declare that the judicial system in a particular legal system is independent.[19]

The Saudi Basic Law, as well the other Fundamental Laws include provisions declaring the supremacy of the divine sovereignty. However, they include more than one term when speaking about this sovereignty. ln some provisions, writers use the "Holy *Quran* and the *Sunnah*," to refer to this supremacy, while in other provisions the term "Islamic Sharia," the "Prophet's tradition", or the term "sources of Islamic jurisprudence" is used. the divine sovereignty or God's laws are the supreme law of Saudi Arabia. The close analysis of the divine sources of the Islamic Sharia in force in the Saudi system leads one to argue that neither a particular form nor government structure has been suggested. Since the divine sources are the supreme authority, any human cannot amend it even if the majority decides to make such changes.[20]

[18] Al-Jarbou (n 1) 124–128.
[19] Naser (n 11) 274–276.
[20] Mutwali (n 8) 279–281.

Since the founding of the Saudi State the Islamic Sharia is the supreme law and all laws, regulations, and acts of the state must defer to the Sharia. However, the observer of the Saudi legal system may have the impression that there is a duality in the legal system. Alongside the body of the traditional Sharia, including its legal education and judicial institution, there is a body of modernized statutory laws with its institutions. This duality has resulted from the need to modernize the country's legal system, while still adhering to the traditional Islamic Sharia.[21]

During the Gulf War crisis, two petitions were submitted to the King demanding constitutional changes. What was unique about these petitions was that even though they were introduced by two opposing groups, "conservatives and liberals," they included some similar constitutional demands, such as establishing a consultative council. A fair reading of the Basic Law indicates that it was enacted to reaffirm the legitimacy of the Monarchy and its authority to rule Saudi Arabia. The Basic law bases the legitimacy of the rule of the Monarchy on three different ideas: legitimacy by achievement, legitimacy by the implementation of Islamic Sharia, and finally legitimacy by gaining the acceptance of the people. The Basic Law of Saudi Arabia declares that the state's authorities are the judicial, executive, and legislative authorities.[22] This may lead to the misperception that a separation of powers is acknowledged and recognized. On the contrary, there is no separation between authorities, especially between the legislative and the executive. The Council of Ministers undertakes both functions at the same time. It shares the legislative function with the King and the Shura Council, which renders only advisory opinions. More importantly, the King is granted numerous and extensive powers. According to the

[21] Al-Jarbou (n 1) 256.
[22] The Basic Law. Art. 70

Basic Law," the King is the head of state, the head of the Council of Ministers, and the commander-in-chief of the armed forces... he has the power to appoint and dismiss the heir Apparent, Ministers, Deputies of the Prime Minister, governors of local regions, judges...and He carries out the policy of the nation in accordance with the provisions of Islamic Sharia, and oversees the implementation of Islamic Sharia and the protection of the country." Also, "He is the only authority empowered to amend the Fundamental laws: the Basic Law, the Shura Council Law, the Council of Ministers Law and the Regional Law. He also has the power to approve ordinary laws, international treaties, and the state budget before they come into force. He can impose a state of emergency, general mobilization, and war. Furthermore, the King has the right to convene the Shura Council and the Council of Ministers for a joint meeting and invite whomever he wishes to attend that meeting to discuss whatever matters he wishes. In addition, he has the power to decide what he deems fit in cases when the Council of Ministers and the Shura Council disagree on specific issues.[23]"

Therefore, if the King or the legislative authority in Saudi Arabia assigns a judicial function to non-courts or delegates legislative authority to an executive entity, the BoG will uphold such re-allocations and consider them as amendments to the existing laws. However, suppose the administration enacts decisions that conflict jurisdictions of either the legislative authority or courts, or the re-allocation is undertaken by administrative decisions without legislative authorization, then in such case. In that case, the BoG will invalidate the executive decision, but not on the grounds of the separation of powers. Its judgment will be reached on the basis that the administrative decisions conflict with the jurisdictional rules of that are prescribed by statutory laws.[24]

[23] The Basic Law. Art. 56/61/62 and the Council of Ministers Law. Art. 1.
[24] Al-Jarbou (n 1) 170.

In fact, the BoG, has invalidated many administrative decisions on such grounds; Seemingly, the Basic Law does not provide explicit limitations over the authority of the King except that he should follow the Islamic Sharia. Therefore, one can conclude that the Basic Law reaffirms the classic Islamic theory presented earlier, which emphasizes the extensive authority of the head of the Islamic state.[25]

The Saudi and the English systems acknowledge the idea of having a supreme law; however, the supremacy in each legal system is very distinct from the other. Whereas the Saudi legal system recognizes the divine sovereignty or the sovereignty of God's law, as well as "within certain limits" the supremacy of the fundamental laws which are based on the King's high authority and do not contradict the provisions of Islamic law, The English system is founded on the principle of parliamentary sovereignty; which reflects the will of the people. This is certainly true in the 21st century, but doesn’t quite work for the 19th century, which is when we see the rise of modern administrative law. The expansion of the franchise had occurred, but wasn’t anything like its modern form until the Representation of the People Act 1918 (with full female suffrage a decade later).[26]

The objective of pointing out the difference between the supremacy in the Saudi legal system and that of England, which bases its laws and government on the idea that supremacy lies with the people, not with a divine source. This will show how the two different approaches affect the concept of JR. Also, understanding the basis and the doctrine upon which the state authorities are allocated is one of the main factors to knowing how much freedom the court should allow to the government administrations

[25] Al-Qahtani (n 9) 28.
[26] A Alqassimi, *As-Sari’a Fi Bab al-Yaman* (alqanoun riyadh 2000) 264; Abdel Mahdi Massadeh, ‘The Legality of Central Government Administrative Delegation: A Comparative Study of Jordan and the United Kingdom’ (PhD, Cardiff University 1982) 257.

when making its decisions. Administrative Courts sometimes employ a certain structural and functional analysis of the distribution of state authority in order to examine the Illegality of some administrative actions and possible abuses of power.

The doctrine of the separation of powers seems to be a fundamental ground for allowing courts to be part of the policy decision-making system, at least regarding the allocation of the state's authorities. Since the system of the Saudi government is not based on a separation of powers doctrine, one can argue that the BoG did not participate "unlike the English system" in making policy with regard to the allocation of the state's legislative, executive and judicial. In this type of issue, the BoG has functioned as a traditional court, which is just to solve disputes, but not to make policy. In the eyes of the current study, the English courts had an important participation in decision-making regarding the assignment of certain powers. While the only role that the BoG has been very active in is the invalidation of administrative acts and decisions if they take over the function of a particular body. The Board, in these cases, however, has not employed a separation-of-powers argument. Basically, it has applied jurisdictional rules defined by statutes.[27]

As will be explained later, The English system is based on the separation of powers doctrine. Although there is an overlap between the legislative and executive authorities, it is not explicit like the situation in the Saudi system. Alder emphasizes that " .... the ideas of the separation of powers have influenced the UK constitution but that this has been in an unsystematic, incomplete and pragmatic way in which the balance of forces is unstable. Most obviously there are indeed three branches of government, with

[27] Binlebdah (n 5) 141.

broadly separate functions: the Legislative (Parliament), the Executive (the Crown) and the Judiciary."[28]

XI. BoG and Judicial Committees in Saudi Arabia:

Even though the JR authority is vested in the BoG by the Basic Law, huge administrative committees have been constituted from time to time since Saudi Arabia's unification in 1931 to handle critical issues. They were established to resolve disputes in various areas, including civil, economic, administrative, and criminal matters. Its unique establishing decision always determines each committee's judicial jurisdiction. Since the primary objective is not to investigate the structure, composition, or competence of each committee, a brief description of a few committees will be provided here to afford a better idea of their nature and existence, especially since the preliminary results of the thesis indicate there is common ground and some similarity, at least in terms of purpose, between them and some of the Tribunals in England and Wales, especially those of an administrative nature.

Some legal scholars and critics claim that England has been late in developing an appropriate administrative justice system.. For instance, Drewry stated, "...in the 1940s and 1950s, academics like William Robson and Ivor Jennings were struggling to exorcise the unquiet ghost of Professor Dicey; when judges generally seemed nervous about entertaining challenges to the Executive, administrative justice did have one area of sturdy, and relatively longstanding existence, in the shape of administrative Tribunals." He added, "…many of these Tribunals have offered a specialized adjudication facility, alongside the ordinary courts, operating for the most part without the daunting procedural formality, for the citizens aggrieved about their treatment by

[28] J Alder, *General Principles of Constitutional and Administrative Law* (Palgrave 2002) 150.

the State regarding their administrative rights and legal entitlements". These tribunals, which are essential in the machinery of the England and Wales administrative justice system, have recently experienced some significant amendments. [29]

Below are two examples of judicial committees in Saudi Arabia:

a) **Committee for Settlement of Violations and Financing Disputes:** Royal Decree No. (M/51), that issued on 8/13/1433 AH, corresponding to 7/3/2012 AD, outlined the establishment of the "Committee for Settlement of Violations and Financing Disputes." As per its third clause, the committee makes decisions by majority vote. Any objections to the committee's decisions must be raised within thirty days of notification; otherwise, the decision becomes final and non-appealable. The committee is tasked with adjudicating violations, disputes, and lawsuits involving public and private rights arising from the Finance Companies Control System, Financial Leasing System, and related regulations, rules, and instructions. Additionally, it is responsible for resolving grievances of stakeholders concerning decisions of the Saudi Arabian Monetary Agency, provided the grievance is submitted within sixty days from the date of decision notification. The committee possesses comprehensive powers to investigate and decide cases within its jurisdiction. This includes summoning witnesses, issuing decisions, imposing penalties, and mandating the submission of evidence and documents.[30]

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[29] Gavin Drewry, 'THE JUDICIALISATION OF ADMINISTRATIVE TRIBUNALS IN THE UK' [2009] Transylvanian Review of Administrative Sciences, 46.

[30] The royal decree also delineated cases falling outside the committee's jurisdiction, which include the settlement of disputes arising from real estate financing contracts and financial lease contracts, particularly when the dispute concerns a real right over a property, and the resolution of securities disputes originating from financing activities.

b) **Banking Disputes Committee:** Royal Order No. (729/8) was issued on 7/10/1407 AH, corresponding to 3/10/1987 AD. In its second article, it outlined the establishment of a committee within the Saudi Arabian Monetary Agency consisting of three specialized individuals. The committee's purpose is to examine issues between banks and their customers, aiming to resolve disputes and find suitable solutions based on the agreements signed between the parties. Subsequently, Royal Order No. (37441) was issued on 8/11/1433 AH, corresponding to 7/1/2012 AD. The first clause of this order amended the name of the committee from "Banking Disputes Settlement Committee" to "Banking Disputes Committee." This committee is empowered to adjudicate original banking and commercial disputes. According to the second clause, the committee is composed of one or more circles, each consisting of three members and a reserve member. The head and members of each circle are appointed by royal decree for a four-year term, subject to renewal. The third clause specifies that committee decisions are made by a majority vote and can be appealed before the Appeals Committee within thirty days. Failure to appeal within the specified period renders the decision non-appealable. The committee was granted the authority to compel debtors to adhere to final decisions within its jurisdiction. This includes the ability to issue rulings to seize their bank accounts, investments, and outstanding dues to government agencies.[31]

The most common aspect of the Saudi judicial committees is that they are part of the executive branch and execute judicial functions: they are established under the

[31] Furthermore, the committee can restrict debtors from engaging with government agencies and banks, as well as imposing travel restrictions. In specific cases, the committee may expedite the implementation of its decisions, as stipulated by Royal Order No (37441). (https://www.bfc.gov.sa/ar-sa/Aboutus/BankingDisputesCommittees/Pages/default.aspx).

supervision of a specific ministry, and decrees define their jurisdictions. That is to say, those administrative committees provide substantial support for the notion that Saudi Arabia's system of allocating state authority is not based on the theory of separation of powers, which is the most critical aspect in ensuring the judiciary's institutional independence. Another element that all these committees have in common is their members' standing. Their position is distinct from that of the judges. Members of administrative committees may fulfill judicial tasks, but they do so at the discretion of the concerned minister: their membership is not permanent. They are subject to the discretionary authority of the individual minister. He has the power to disband the Committee and rename its members. And also he has the authority to dismiss any member for any cause. As a result of these qualities, the outcomes of these committees are influenced by the interests of the ministers involved.[32]

In addition, members of administrative committees are considered civil servants. As a result, in the event of claims of wrongdoing, the Civil Servant Disciplinary Law will apply against them. The executive typically carries out this action, and this Law, more importantly, includes pecuniary penalties.[33]

Some legal scholars and critics implicitly indicate that creating these committees was a response to the need for comprehensive development of Saudi Arabia's social and economic life, which Sharia courts could not handle due to a lack of experience.[34] This argument, on the other hand, lacks any practical foundation. The issues that these committees adjudicate do not necessitate a great deal of knowledge, and if they do, Sharia Court judges can be trained to handle them. Others believe that they were

[32] Al-Jarbou (n 1) 89.
[33] ibid 91–92.
[34] Omar Alkholy, *Qadaa Al-Thell*, (Shadow Judiciary) (2012). This entire book is regarded as a scholarly reference on the subject of the proliferation of judicial committees in Saudi Arabia.

designed to reduce the number of cases that Sharia Courts have to deal with. Sharia Courts appear to have dealt with an excessive number of cases. Naming more Sharia judges and setting additional Sharia Courts, for example, could have resolved this issue. Others say that these committees were formed to resolve disagreements over the administration of decrees or other regulations. The study believes that this argument fails to address the real motives behind the formation of these committees due to the lack of clear objective legislative laws.[35]

Furthermore, where their respective statutes do not contain provisions dealing with specific circumstances, other committees adopt Islamic Sharia. In such cases, Islamic Sharia is considered to be the default law. Due to the Sharia Courts' passive stance toward legislated laws, several committees were formed. Sharia Courts, as previously stated, have refused to apply adopted laws and rules to issues before them. More crucially, the formation of these committees was in some cases a response to the Sharia Courts' and, more recently, the BoG's unwillingness to hear specific problems due to their illegality, such as non-Islamic bank activities and tobaccos.[36]

XII. The rise of the BOG as an independent administrative court

JR's role in Saudi Arabia has evolved for a variety of causes. The dual Court system was not operating well when the first Saudi state was founded. At all levels, only the Islamic Sharia system had been implemented. Sharia Courts handle all disputes, whether they are between individuals or between authorities. However, the Ulama's failure to recognize Ottoman Law in general and Sharia Courts' refusal to adjudicate

[35] Ahmed Al-Zahran, *Judiciary Authority in the Kingdom of Saudi Arabia* (Muhammad Al-Tawil 1995) 116–118.
[36] A AL Qassimi, *As-Sari'a Fi Bab al-Yamen* (alqanoun Riyadh 2000) 391.

cases according to the new statute Laws has necessitated adopting a new system to solve or at least mitigate some of the problem's consequences.[37]

To resolve cases and disagreements, Sharia Courts relied on principles of Sharia jurisprudence rather than statutory law. The Sharia Courts' passive approach toward statutory regulations has manifested itself in the form of adjudicating matters by applying Islamic Sharia found in Islamic jurisprudence books rather than by applying legislation. However, in order to meet the country's long-term and comprehensive development needs, like in the commercial and administrative fields for example, there was a need for statutory laws to be enacted. In Saudi Arabia, the idea of a dual court system has emerged due to Sharia's passive attitude and the need for statutory laws to address future concerns. Not only had the Sharia Courts been denied the opportunity to decide many significant conflicts due to their unwillingness to follow statutory regulations, but they had also been denied the opportunity to build a compelling constitutional review of legislative acts. [38]

While English courts use both the ultra vires and common law theories to determine the legitimacy of administrative action, the BoG simply guarantees that decision-makers act within their powers as defined by the legislative authority's laws and regulations. This is analogous to the ultra vires doctrine that is used in English courts.[39]

Unless they violate Sharia Law, the BoG decides matters based on enacted laws and regulations such as the Procurement Statute, Employment Statute, and Pension Statute. The BoG has explicitly stated this in several decisions. "The judge is required to adjudicate according to statutory Laws if these Laws do not contradict with the

[37] Tawil (n 44) 162.
[38] Al-Jarbou (n 1) 208.
[39] Delaney and Dixon (n 13) 68.

provisions of the *Quran* and the *Sunnah*," it noted in one of its judgments. The BoG has declined to hear cases that are illegal under Islamic Sharia, which is the supreme authority over all statutory laws, regulations, and other government acts, as well as the activities of individuals.[40]

The new BoG statute was established in 2007 and is the law in effect when writing this present thesis, replacing the 1982 BoG Statute. Since that time, the BoG has not been recognized as part of the executive authority. The board is now regarded as an independent Administrative Court reporting directly to the King. Article 13 of the 2007 Act gave the BoG the jurisdiction to resolve the following administrative disputes:"1: Disputes related to the rights of government employees under the Civil Service and Pension Laws. 2: Objections by interested persons against final administrative actions: such objections should be based on the grounds of (i) lack of jurisdiction, (ii) failing to follow the procedures provided, (iii) violation or misapplication of applicable Laws and (iv) misuse of power. 3: Claims for compensation against the government or public agency for injury occurring from their actions".[41]

XIII. A historical introduction to the English and Welsh JR system:

The roots of JR in English law run deep, stretching back to a time when the monarchy held absolute power over the government. Back then, Justices of the Peace served as crucial figures, straddling both administrative and judicial roles. However, their authority was largely under the King's thumb, exercised through the Privy Council and the Star Chamber. This dynamic shifted dramatically in 1688 with the "Revolution," which saw power transfer from the crown to Parliament. As Parliament secured its

[40] Naser (n 35) 25.
[41] Mohammed Al-Bana, *Muasasat Al-Ummah Fi Al-Mamlakah Al-Arabia al-Saudiah* (1st edn, Alfarazdaq Press, 1988) 43.

position as the supreme legislative body, ministers became answerable to its oversight. In addition, the Act of Settlement of 1701 declared judicial independence, which led to judges independent from the monarch's direct supervision. Following that, through the Courts of Law, the Court of the King's Bench began to exercise authority over the powers of justices of the peace and other public bodies. The Court of the King's Bench, had the power to award damages, issued prohibitions, declarations, injunctions, and certiorari to anyone disputing the legitimacy of administrative acts, which are still JR's effective remedies. The stated Court also formulated ultra vires and natural justice norms during the eighteenth and nineteenth centuries. As a result, as Forsyth and Wade point out, the current English law of JR has a long history dating back to the late seventeenth century.[42]

In the famous book "The Law of the Constitution", Dicey denied that Administrative Law has a presence in the legal system of England and Wales because the existence of this Law represents - in his opinion - a violation of the principle of the Rule of Law, which is one of the fundamental pillars of English Law. The principle of the Rule of Law means, according to Dicey, "that all individuals are equal on the eye of the Law, and that they all subject to the same Courts, which are the regular Courts that hear all legal disputes, regardless of the parties to these disputes and their circumstances."[43]

Dicey believed that the concept of Administrative Law, which emerged in France during that period, included a set of legal principles and rules that considered the confidentiality of the administration and the uniqueness of its disputes, and led to the

[42] C Forsyth and W Wade, *Administrative Law* (eleventh edition, Oxford University Press 2014) 110.
[43] A.V. Dicey, *The Law of the Constitution*: Notes from the Editors (Legal Classics Library 1999). Additionally, another book extensively discusses Dicey's work, "The Law of the Constitution," providing thorough elaboration on its content: Mohammed Alkhalayla, *Alqadaa Aledare* (Administrative Judiciary - a Comparative Analytical Study in Jordan, France, Britain and Egypt), (dar althqafaa for Publishing and Distribution). p 89.

establishment of independent administrative courts, has violated the principle of sovereignty.[44]

This view that denies the idea of Administrative Law independent of ordinary Law and Administrative Courts separate from the ordinary Courts came due to the comparison that Dicey was making in his time with France's situation. During that period, Administrative Law as an independent Law passed its early stages in France after the revolution in 1789. Indeed the new experiment was an experiment rejected by many jurists, philosophers, and even the French among them, because the first concern of the men of the French Revolution was to exclude ordinary Courts and any means from interfering in the work of the Administration so that it would not be an obstacle to the success of their revolution and the achievement of their goals, as they were seeking to create a strong administration capable of controlling the country and achieving the significant reforms for which the revolution was begun.[45]

Justices of the peace's administrative powers were delegated to local governments, boards of works, school boards, and commissioners in the nineteenth century. In addition, movements toward a central government bureaucracy with increasing powers in officials' hands were taken concurrently with the establishment of these public bodies.[46]

JR was in a state of weakness in the early twentieth century due to the courts' inability to formulate competitive rules consistent with new regulatory legislation. Extraordinary powers were shifting in the administration's favor. Following World

[44] ibid 285.
[45] AV Dicey and JWF Allison, *Comparative Constitutionalism* (OUP Oxford 2013) 285-289.
[46] ibid 291.

Wars I and II, the Courts largely rejected that the administration should be given extraordinary powers.[47]

The English stance appears to be based mainly on the Law Commission's recommendations in its 1976 report Remedies in Administrative Law. In 1994, the Law Commission published another report, Administrative Law: JR and Statutory Appeals. The significant proposals were that the present leave phase in JR proceedings is renamed the "preliminary consideration stage," The Court only moves to the second phase if there was a serious issue that needed to be resolved. The Commission recommended that the Court be given the discretion to allow an application if the claimant was not directly affected. It was also suggested that old terminology like certiorari, mandamus, and prohibition be replaced. Furthermore, the Law Commission is not the only entity that has had a crucial part in the development of JR law; the English courts have also played a key role.[48] Before 2000, the cases involving JR were heard by the Crown Office List of the High Court judges, which is now referred to as the Administrative Court.[49]

The Lord Chancellor issued a decision in July 2000 regarding the establishment of a new formation of Administrative Courts, in which the Crown Office List was renamed the Administrative Court List and the Crown Office was renamed the Administrative Court Office, resulting in the Administrative Court being known as the Administrative Court Office.[50] The modern type of JR used in England and Wales is the culmination of a lengthy process that began many years ago. The Administrative Court currently has supervisory authority over lower courts, tribunals, and other public bodies. It is

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[47] De Smith's and others (n 21) 152.

[48] J Alder, *Constitutional and Administrative Law* (Palgrave Macmillan 2007)171-182.

[49] ibid 176–179.

[50] S Halliday, *Judicial Review and Compliance with Administrative Law* (Bloomsbury Publishing 2004) 84.

governed by Section 31 of the Supreme Court Act of 1981 and Part 54 of the Civil Procedure Rules; it is referred to as a public law remedy.[51]

XIV. Parliament sovereignty and the separation of powers in the English system:

There is no formal separation of powers under the constitutional legal system of the UK system. Nor is there a clear-cut demarcation between the three functions of the State. Nor are these functions discharged by three distinct and separate bodies. Nor is it possible, either in practice or in theory, to make a clear-cut demarcation between the three functions of the State. In fact, they overlap and historically there has been no absolute separation of powers within the constitutional system of England and Wales. Even in the eighteenth century when Montesquieu advocated his doctrine of separation of powers, contending that it was based upon the principles of the English constitution, there was, in fact, no rigid separation of powers within this system but there was an elaborate coordination between the three organs of the State.[52]

After the establishment of the administrative courts in 2000, as discussed in the previous section, the administrative courts have developed jurisdiction to adjudicate disputes in which the government is a party. These courts, through their supervisory role over the activities of the government, exercise a function analogous to that of the administration, which controls the activities of its subordinates. In the eighteenth century, the cabinet system was established, and it is under this system that Ministers of the Crown ought to be members of either the House of Commons or the House of

[51] Martina Kiinnecke, 'Towards Similar Standards Ofjudicial Protection against Administrative Action in England and Germany? A Comparison of Judicial Review of Administrative Action and the Liability of Public Authorities under the Influence of European Laws' (University of Hull 2002) 34.

[52] Massadeh, (n 26) 556–559.

Lords. Also, under this system, the government has become accountable for its activities before Parliament.[53]

As a consequence of the party system the Cabinet has an active role to play in the legislative process, since the government normally commands a majority in the House of Commons, and through its majority may influence Parliament and secure the passage of its legislative proposals into Acts of Parliament. This emphatic link between the legislature and the Executive also ran contrary to Montesquieu's doctrine.[54] Accordingly, it cannot be reasonably argued that an Act of the legislature may be condemned as invalid on the ground that it was contrary to the principle of separation of powers since it conferred upon the Executive legislative power. Such an argument may be advanced in countries with written constitutions, such as the Saudi system to some extent, where the powers of the state are divided by the terms of it between three organs of the State.[55]

The principle of separation of powers within the constitutional system in UK, as the other principles of the constitution, has evolved through the legal and political history of the country. The principle of parliamentary sovereignty has been finally established through fundamental constitutional settlements expressed in the enactment of the Bill of Rights in 1688 and in subsequently developed doctrine. Since that date, Parliament has been given the final word in determining the policy of the State. The prerogative power has become subordinate to statute law; and Parliament could, if it so wished, abolish this power, or restrict it at will. It has also become established that the prerogative power of the Crown must be exercised on behalf of the Sovereign by his

[53] M Shapiro, *Courts: A Comparative and Political Analysis* (University of Chicago Press 2013) 231–232.
[54] De Secondat baron de Montesquieu, *The Spirit of Laws*, (Prometheus Books 2002) 329.
[55] ibid 327–328.

ministers who are responsible before Parliament for the exercise of this power, just as they are accountable for the exercise of their statutory powers. Therefore, eminent jurists and judges have concluded that Acts of Parliament are supreme and must not be questioned before courts of justice on any ground. In those days, the subject's common law rights became firmly entrenched in the principles of the England constitution.[56]

The Act of Settlement of 1701 marked a pivotal moment in English legal history, enshrining judicial independence from the Crown. This paved the way for the emergence of a robust judiciary. Here, Massadeh pointed out: "…It has become a fixed principle that the Executive, under its prerogative power, cannot interfere with common law rights of the subject contrary to common law or statute law; nor can the Executive director control the judiciary in making their decisions. And the judiciary, therefore, has become entitled not to enforce any act if it is found contrary to common law or statute law, " he also added that "Resolutions of the House of Commons or the House of Lords do not make a law that binds the judiciary. Any act of either House will be held to be not binding upon the courts unless the three parts of Parliament consent to it. Even in times of grave emergency, there is no absolute prerogative power which cannot be reviewed by the courts although in these circumstances the courts have sometimes seemed to use, the power of review sparingly. And they have subordinated this power to common law and statute."[57]

The sovereignty of Parliament is a matter of abstract law and legal theory. As a matter of practical policy, the legislature will be reluctant to enact laws upon issues that adversely affect the community's vital interests; nor will it readily enact laws that invade the fundamental principles and common law rights, which are deeply

[56] Forsyth and Wade (n 59) 425–429.
[57] Massadeh (n 26) 542.

entrenched in the principles of the UK constitution. Moreover, the legislature, for instance, may abstain from enacting a new law by which it might withdraw the independence which it had conferred upon a dependent territory; Freedom once given may not be withdrawn. And matters of abstract law must give way to matters of practical politics.[58]

Furthermore, the Parliament is an institution, just as other institutions, which is liable to change in the light of fundamental constitutional changes and changing social and political circumstances. Changes in time and circumstances, Professor Calvert says, "may well be bringing about the different viewpoint of Parliamentary supremacy." Therefore, if a constitutional convention to the effect that certain fundamental principles must not be interfered with by an ordinary Act of Parliament prevails, the courts might then hold that the power of Parliament is limited. It cannot act in contravention of the prevailing constitutional convention. In addition, if the courts had been confronted with an Act that offended against those fundamental constitutional principles, the courts might have held the impugned Act unconstitutional and invalid. Moreover, the views of constitutional writers in this subject matter are different; their arguments might be justified as long as there is no decisive authority to the contrary.[59]

Professor Wade sets his view regarding the principle of parliamentary sovereignty as follows; he says that "Parliament in the present state of affairs is supreme in all cases save in one case only in which the courts are superior to it." He says that "there is in, the British constitutional system, a fundamental common law rule which is superior to all other common law rules...This fundamental rule is to the effect that an Act of a legislature is not binding upon. Therefore, its successors and a new legislature may by

[58] ibid 543–544.
[59] Forsyth and Wade (n 59) 327–328.

a subsequent ordinary Act alter or repeal any Act of its predecessors." He also adds that "...is strictly observed by the courts; and the legislature itself cannot oblige them to disregard it. If a legislature provides so and entrenches certain clauses in statutes - as it has provided on several occasions - the legislature by its Acts cannot change this fundamental rule, and the courts will not obey the will of that legislature since it is contrary to this fundamental rule. The courts will readily enforce any subsequent Act of a new legislature even if the latter disregards the procedure provided for by a former legislature and enacts its Acts in the ordinary process of legislation and encroaches accordingly upon certain fundamental, rights which were entrenched by previous enactments...".[60]

Wade completes by saying," the courts in such case are supreme, not the legislature, since they insist on observing this fundamental rule and are not ready to enforce any enactment of the legislature to the contrary… If the attitude of the courts in this respect is changed, then the Courts inclined to modify this rule and to obey; specific provisions which may be entrenched in a constitutional document, then the courts may in future observe the requirements of this document and hold ultra vires any Act of any legislature which does not comply with the provisions of the constitutional document." He also adds, "The first obvious fact is that in every legal system there must be a basic rule or rules for identifying a valid piece of legislation, whatever we call it… The second obvious fact is that this grundnorm,[61] or whatever we call it, lies in the keeping of the judges and it is for them to say what they will recognize as effective legislation,

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[60] Massadeh (n 26) 555. And: W Wade, Constitutional Fundamentals (Stevens 1980).

[61] Grundnorm means fundamental norm, rule or order that forms the underlying principle for a legal system. It is the source of the validity of positive law upon which validity of all laws is dependent. It is on the top of hierarchy of laws and cannot be repealed. Constitution of a country is the basic, fundamental fabric of its governance through its legal system. It is the touchstone for imparting validity to a law. But it is not mandatory for Constitution of country to judge a law and ensure its validity.

for this one purpose, Parliament's powers of giving orders to the judges are ineffective… It is futile for Parliament to command the judges not to recognize the validity of future Acts of Parliament that conflict with a bill of rights, or with European community Law if the judges habitually accept that later Acts prevail over earlier Acts and are determined to go on doing so. In this one fundamental matter, it is the judges who are sovereign. It is the minds of the judges, therefore, which require to be adjusted, and to pass statutes merely telling them to adjust themselves is futile."[62]

Wade provides a method for changing the attitude of the judges in this respect. He states," All that need be done to any sort of fundamental law is to secure its recognition in the judicial oath of office. The only difficulty is that the current commitment form gives no assurance of obedience to statutes binding later Parliaments. But there is every assurance that if the judges undertake their oath to act in some particular way, they will do so. If we wish to adopt a new form of constitution, all that need be done is to put the judges under oath to enforce it. An Act of Parliament could be passed to discharge them from their former oaths, if that were thought necessary, and to require them to be re-sworn in the new terms. All the familiar problems of sovereignty then disappear, a fresh start has been made; the doctrine that no parliament can bind its successors becomes ancient history, and the new fundamental law is secured by a judiciary sworn to uphold it."[63]

The study believes that since the powers of the UK Parliament are not limited to any written constitutional document, and obedience to it can be imposed in the courts. Therefore, Parliament can authorize the executive to act on its behalf for maintaining the public utilities and the vital interests of the state. The executive with unlimited

[62] Massadeh (n 26) 556.
[63] ibid 557.

powers might be abused and cannot be effectively reviewed by the Courts. The legislature, therefore, should invest the executive with defined limited powers so that the administrative Courts and Tribunals can review them. By this means, the role of Parliament in controlling the activities of the government can be more effective as well.

XV. England and Wales Administrative Tribunals:

As earlier mentioned before, there is common ground and some similarities, at least in terms of purpose, between the judicial committees in Saudi Arabia and the Tribunals in England. The preliminary results of this study show that there is great benefit in studying this aspect. Here, the study will provide some historical information about Tribunals in England, bearing in mind that this is important to build what will be examined later in the chapters of this study.

The establishment of special courts known as "Tribunals" operating in tandem with the ordinary Court is not new in England, as it is in Saudi Arabia. Courts of chivalry, ecclesiastical courts, and courts-martial, to name a few, have their origins in feudal times. It all starts in the early half of the nineteenth century with the introduction of railways. The trading activities of the massive, monopolistic, privately held railway firms occasionally resulted in legal problems. Such conflicts were allocated to ordinary courts by an Act of 1854. However, the judges sometimes felt uneasy in this uncharted and technically specialized environment. Those trying to have their problems addressed were frequently dissatisfied with the inexperienced judgment that was available. [64]

In 1873, a special tribunal of Commissioners was established; in 1888, it was renamed the Railways and Canals Commission, with a judicial chairman and lay advisors selected by the Home Secretary, "one of them a specialist in railway affairs." This

[64] Drewry (n 49) 46.

served as a paradigm for the formation of 48 tribunals during the twentieth century. However, the general presumption remained that legal disputes should be a matter for the ordinary courts "Dicey's Legacy," After 1906, when the government took the basic first moves toward a welfare state by introducing old-age pensions and unemployment benefits, the situation began to alter. Those seeking justice in the welfare field are disproportionately drawn from the poorer and more minor well-educated sections of society; thus, apart from their specialist expertise, one of the great virtues of tribunals operating in this field has always been their perceived relative informality, and the fact that applicants could appear without legal representation, and thus at little cost.[65]

Following the First World War, a system of compensation payments for military personnel who sustained injuries was established, along with an exclusively created tribunal to address issues related to eligibility. Moreover, Pensions Appeal Tribunals were managing appeals against decisions of the minister, stemming from claims for pensions by ex-servicemen, widows, or dependents. In November 1919, autonomous tribunals were formed under the War Pensions (Administrative Provisions) Act 1919 to evaluate and decide on appeals from claimants. Through the War Pensions Act 1921, the jurisdiction of these tribunals was broadened to encompass appeals against decisions of the Ministry of Pensions concerning final awards and assessments. On other hand, many additional statutory powers were granted to government ministries in the 1920s, frequently with the possibility of appeal to a special tribunal. The proliferation of tribunals persisted throughout the twentieth century, however, in an unsystematic manner, according to this study, which is comparable to what transpired in Saudi Arabia's judicial committees. In England, there were more than 60 Tribunals in different jurisdictions in 2000, many of which had been constituted at different times

[65] P Cane, *Administrative Tribunals and Adjudication* (Bloomsbury Academic 2010) 167–169.

in response to certain perceived requirements. Social security, employment, asylum, tax, land registration, and mental health were among the topics covered by the active ones. They handled almost half a million cases per year, relying on the expertise of thousands of full-time and part-time tribunal members.[66]

XVI. The constitutional basis of JR in both countries:

In terms of the constitutional basis of JR, the Saudi and English legal systems are distinct in that they are based on different constitutional frameworks. As a starting point for comparison, here are some key points of distinction between the two legal systems in the JR area, which are particularly relevant to the current study's comparison.

While specific constitutional provisions underpin Saudi Arabia's justice system, the BoG only ensures that decision-makers are acting within the scope of their powers as laid out by enacted laws and regulations of the legislative authority, such as the 2007 BoG Statute and its implementing regulations, Procurement Statute, Employment Statute, and Pension Statute, unless such actions violate Shariah. The Board has explicitly stated this in several decisions.[67] The following was stated in one of these verdicts: "The judge is required to adjudicate in accordance with statutory laws if these laws do not conflict with the provisions of the *Quran* or the *Sunnah*." In another decision, the Board stated that "both the rules of Islamic Sharia and the rules of statutory Laws govern the contractual liability of public authorities."[68]

As opposed to that in English law, the constitutional justification for JR is based on the doctrine of Ultra Vires "within limits of authority," which is based on the idea that the

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[66] Drewry (n 49) 48. Also look at: Michael Adler, 'Tribunal Reform: Proportionate Dispute Resolution and the Pursuit of Administrative Justice' [2006] The Modern Law Review. And: War pensions records (https://discovery.nationalarchives.gov.uk/details/r/C982).
[67] Binlebdah (n 5) 54–58.
[68] *The BoG decision number 67/T/1* 1991.

power granted to the administration must be exercised within the limits of the power delegated to it by the legislature. Unless the administration complies with this requirement, it will be deemed to be acting outside of its jurisdiction. Other legal scholars and critics argue that the English courts' inherent power to create and develop the common law justifies the application of JR principles.[69]

So, the key distinction lies in the fact that the judge of the BoG decides based on the predetermined laws and regulations without the authority for discretionary decision-making, diligence, or investigation into whether the administrative body adhered to the authority granted and explained by the legislative authority, as observed in the English system. The government administration in the Saudi system may implement laws and regulations but may do so incorrectly and deviate from the intentions of the legislative authority. In such cases, the administrative judge in the Board of Grievances lacks intervention capabilities, unlike the English system, which grants the administrative judge discretionary authority under the ultra vires principle "within the limits of power" to assess whether the administrative authority has operated within its authorized scope.

Those in favour of the common Law model argue that JR is a "judicial creation applying standards of a higher-order Law that is logically prior to the command of the legislature," and that the Courts, according to this model, have their own source of power to review administrative actions, which is governed by the common Law not by the Parliament. Therefore, parliamentary sovereignty is not challenged. In the eyes of supporters of the common law model, this is justified on the basis of justice and the Rule of Law.[70]

[69] Paul Craig, *EU Administrative Law* (OUP Oxford 2012) 237-239.
[70] De Smith's and others, *Judicial Review* (Sweet & Maxwell 2013) 448.

The ordinary Courts and not special Administrative Courts in the most common law systems have the jurisdiction to examine the validity of administrative action. In contrast, the administrative courts in English law, which is a specialist court within the King's Bench Division of the High Court of Justice, have jurisdiction to review the legality of the executive activities. Citizens can turn to these Courts of great public regard, whose independence is unquestionable. It has very efficient remedies, and it has none of the demarcation problems of division of jurisdictions.[71] Also, there are other advantages of having separate Administrative Courts, the judges would mostly be specialists in Administrative Law; and the Courts will apply special substantive and procedural rules which understand the disparities between Administrative and other types of disputes; which leads ultimately to improve the work of JR.[72]

It's also important to evaluate the several critical elements that have influenced the evolution of JR in both systems' administrative activities. The King's power over the state's authorities, Judicial, legislative, and executive power, and the predominance of public interest rights over private rights and interests are the factors that directed the development of JR in the Saudi legal system. Because of these elements, judicial or legislative authority can be allotted to the administrative branch. It has also made the BoG less powerful when reviewing the administration's actions. This is obvious from examining many BoG decisions where the Board faces political pressures in certain cases.[73]

Two factors have had a significant impact on the evolution of the JR in the English system. The first is the separation of powers doctrine, which governs how much judicial

[71] Wade and Forsyth, *Administrative Law* (9th edn, Oxford University press 2004) 10.
[72] De Smith's and others (n 21) 5.
[73] Binlebdah (n 5) 60–62.

or legislative power the executive branch has. This doctrine gives courts performing JR functions more authority over the administration's operations and legislative actions. The second principle is the "sovereign act," which has influenced JR's development of administrative activities as well as the culpability of states and their employees. All these factors will carefully and deeply be analysed in this thesis.

XVII. Conclusion and reflections:

There was an urgent need to enact new legislative laws in Saudi Arabia to keep pace with the future and comprehensive development in the administrative judicial system, which governs the individual's relationship in the judicial process that the government is a party, which led to the emergence of the idea of the BoG. The BoG works within the boundaries granted to it by the legislative power, and its decisions are based on Islamic Sharia and modern systems that do not contradict the Qur'an and Sunnah.

The legal systems of the two countries have a long traditional and historical foundation. Undoubtedly, each country's legal chain of command has significantly impacted the development of the legal system in general and JR in particular.

In terms of the essential premise of state power separation, it is apparent that the Saudi and English political systems are fundamentally different. Unlike the English system, which is based on the idea of separation of powers, the Saudi system is based on the doctrine of nonseparation of powers. This basic distinction has a significant impact on how the state's branches use their authority, and it also had a considerable effect when the BoG regulations were enacted.

This study believes that separation of powers within the constitutional legal system of England and Wales is not absolute but flexible. Therefore, there is coordination between the various organs of the state. In practice, these organs may influence each

other, and as a consequence, the principles of the England constitution are respected by all these organs. It follows that there is no objection against delegation of its legislative power by the legislature to the Executive to enable the latter to maintain the comprehensive activities of the welfare state. These viewpoints may indicate that the constitution of England is not a rigid one. Therefore, its principles, including the regulation of parliamentary sovereignty, may be liable to change in the light of fundamental constitutional changes and the changing political, social, and social, economic circumstances. Accordingly, it is not tenable to maintain that these principles are unchangeable or that they must not be modified even if the circumstances under which these principles were established have changed and new constitutional conventions prevail to hold otherwise, and to say that the principles of the England system are entirely rigid and not subject to change is contrary to the political facts of life and even to the historical grounds upon which the constitution is based.

Chapter Three: Grounds of Judicial Review in English and Saudi Law

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Chapter Three: Grounds of Challenge in English and Saudi Law

I. Introduction

In this chapter, the thesis will analyse and examine its first central argument, which was introduced at the beginning of this thesis. Unlike the English system, the Saudi BoG codified the grounds of challenge in its statute. But, this codification affected the administrative courts' powers to review administrative action, as they cannot interfere unless there is a provision within the applicable laws or regulations that expressly indicates that the executive decision is illegal. What made administrative Courts shackled by strict regulations governing them, which led claimants and lawyers to stop submitting any request before the BoG unless they were absolutely sure a legal text expressly indicated the decision was illegal. This study would like to clarify an important point, the Islamic Sharia system, " which is supposed to be higher than all the laws and regulations in Saudi Arabia as stipulated in the Basic Law that detailed in the second chapter of this thesis," provides greater freedom for the Courts to review administration decisions even if there is no error stipulated in the laws, In the sense that, unfortunately, this study considers that the more flexible and broader basis that the English administrative Court has regarding grounds of challenge applies the spirit of Islamic law more than Saudi Arabia Courts itself.

The Preliminary observations of the current study indicate there are some weaknesses and mistakes made by the Saudi decision-maker regarding the grounds of challenge in the past in specific areas; therefore, the study wants to examine these weaknesses from a functional perspective, by focusing mainly on the effect of judicial decisions and some specific events. At the same time, it will also keep in mind the impact of JR's

rules, doctrinal structures, and arguments but on a small scale. Then it will present and highlight the most important reflections, insights, and observations resulting from this comparison with the English system.

In the GCHQ case, the House of Lords in the English system held that "...a public body's decision could only be quashed if it abused its power (illegality) or failed to follow basic rules of natural justice by acted with procedural unfairness (procedural impropriety) or was so irrational or perverse that no reasonable body could have made it (unreasonably)". These are the grounds for JR of administrative action under common law; in that case, Lord Diplock gave the leading judgment, noting that additional grounds might emerge in the future in addition to the three he mentioned, he states "…That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality…".[1]

While In the Saudi system, the power of the BoG to revoke an executive decision must always correspond to the grounds stated in Article 13 (B) of the BoG Law.[2] These grounds arise from the concept of the violation of the principle of legality by the administration; it states that the BoG has jurisdiction to decide the following: "Cases of objection filed by parties concerned against administrative decisions where the reason of such objection is lack of jurisdiction, a deficiency in the form, a violation of erroneous application or interpretation of laws and regulations, or abuse of authority. The rejection or refusal of an administrative authority to decide that it should have taken under laws and regulations is considered as an administrative decision".[3]

[1] De Smith's and others (n 21) 126.
[2] *Article 13 (B) of the Board of Grievances Law*.
[3] ibid.

Article 13 (B) of the BoG Law Has featured in many BoG decisions.[4] One decision states that " ..Administrative abuse of power; Such as tampering with regulations, orders, and instructions and the way of implementing them in abstention or delay that results in personal or public harm, and this includes intentional interpretation of systems, orders, and instructions incorrectly or out of place intending to harm a government interest in exchange for personal interest, and the exploitation of influence of whatever kind in the interpretation and implementation of orders for personal benefit, directly or indirectly..". In another case, the court emphasized in its ruling that decisions made by the executive administrative body must consider various factors to prevent their decisions from being overturned before the BoG. These factors include the necessity for executive decisions to have a legitimate factual basis, to be legally correct, and to be taken in accordance with the rules of jurisdiction and procedures.[5]

The JR grounds have not been legally codified in the English system, and there is no consensus in the literature on how to establish the grounds of challenge in English JR. However, it is essential in the eye of this thesis to indicate that there are some voices within the English justice system debating on the extent importance of codifying the grounds of review; the most important and recent of which is a review provided by the Independent Review of Administrative Law 'IRAL,'[6] which established in 2020 to examine JR trends and provide recommendations for reform. This review sought to

[4] ibid.
[5] Binlebdah (n 5).
[6] The Independent Review of Administrative Law (IRAL) was established following the Government's manifesto commitment to guarantee that judicial review is available to protect the rights of the individuals against an overbearing state, while ensuring that it is not abused to conduct politics by another means or to create needless delays, to consider options for reform to the process of Judicial Review. It was launched in July 2020; they submitted their Report to the Lord Chancellor and the Chancellor of the Duchy of Lancaster in January 2021.

direct attention to several key areas, one of which is the issue of the codification of the grounds of review.

The IRAL review identified several advantages of codifying the grounds for JR, including, First, Codification could enhance legal clarity and certainty as well as clarify the purpose of JR. Second, Codification could increase the accessibility for potential litigants "particularly litigants in person" and speed up the process, by limiting the current areas of discretion. Third, the standing of JR could be improved by making it a right, rather than a discretionary remedy. However, the review also acknowledged the main disadvantages of codification, which are relevant to the present thesis, for instance: "… it would undermine public confidence if the perception were that the government was confining the grounds on which it can be held accountable. Also. The existing restrictions on JR are currently adequate to filter weak claims; the cost of such claims is insufficient to warrant greater barriers. If further restrictions were relied on, injustice could occur…". This thesis may be consistent with some of these flaws, particularly considering the Saudi BoG as an example of what can happen when the grounds for review are codified in a potentially strict and unfair manner. Further discussion on these matters will be provided in this chapter.

This study wishes to highlight an important opinion put forth by Konstadinides, Marsons, and Sunkin regarding the IRAL review; as they expressed concerns about the absence of any direct or implied acknowledgment of the potential constitutional effects of codifying the grounds for review, particularly with regard to the accountability of the executive to public law. Additionally, they pointed out that many commentators believe that the codification of the grounds for review in the Australian Administrative

Decisions 'JR' Act 1977 obstructed judicial developments in the foundations of review.[7] There is some agreement to some extent between what the current thesis desires to present and what commentators had indicated regarding the legal codification of the grounds for JR in the Australian system. Here, the study again emphasizes that legal codification is undoubtedly an important and beneficial matter from a general view. But it is crucial to exercise caution and implement it in a moderate manner while also granting judges discretionary power if necessary. Additionally, designated committees within the legislative authority should review the codification periodically to ensure its continuity and effectiveness.

Lastly, this thesis would like to present its most important observations on the IRAL review. In general, the review believes that a slight but significant advantage that would be gained by statutory codification, as the grounds for review are well established and accessibly stated in the leading textbooks. But at the same time, grounds codification might set limits on the judicial interpretative expansion. Moreover, any statutory formulation of grounds of JR will be translated as operating in the common law framework. The review considers that the capability of the Courts to interpret and apply the law cases should not be constricted, which this thesis agrees with to some extent.[8]

The first section of this chapter will examine the nature of **Illegality** in both English and Saudi systems. This detailed section will be further divided into several sub-sections to discuss illegality's different nature: **The excess of law. The abuse of power. The Mistake of fact or Law**. It will conclude by highlighting Saudi law's current situation, assessing how this is viewed, and tackling the BoG courts' flaws, presenting

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[7] T. Konstadinides, L. Marsons and M. Sunkin 'Reviewing Judicial Review: The constitutional importance of the Independent Review of Administrative Law 2020', U.K. Const. L. Blog (24th Sept. 2020).
[8] Faulks (n 100) 31.

the most important insights and observations resulting from this comparison. This thesis began with the issue of Illegality because there is a similarity to some extent between the Saudi system and the English system in this regard; as clarified before, yes, the bases on which administrative courts operate in both countries are different; Yet, there are still some similarities in some topics; This similarity is necessary to this study at the outset before it can examine the differences between the two countries; as it will lead to a better understanding of the observations and insights arising from these differences.

The doctrine of legitimate expectations will not be examined here because there is no comparable Saudi ground available for discussion. Therefore, the section will only examine the Mistake of fact or Law, excess of law, and abuse of power.[9]

The **Second** section will analyse **unreasonableness**; it will focus on **proportionality** and **irrationality**, which are the core components of unreasonableness. Comparison will show that the irrationality grounds are concerned with the quality of the decision in both systems, while proportionality performs in a smaller area. Proportionality grounds are usually held in cases relating to the balance between fines and crimes. This study chose to examine the issues of unreasonableness because, unfortunately, it is largely neglected in the decisions of the BoG, although it is of great importance, most of what this study found of provisions related to unreasonableness primarily pertaining to employees' disciplinary decisions.

The **last** section will analyse **Procedural impropriety**. Unlike the English system, the Saudi system does not contain a uniform set of rules regarding procedural impropriety.

[9] Also, it is tricky in Islamic law to issue a court decision based on expectation or assumption. It may contradict two sources of Islamic law, *Arf*, and *Ijtihad*, detailed in the first chapter of this thesis. This study believes that discussing such a topic may face opposition from Saudi's religious establishment, leading to rejecting many other recommendations.

Still, procedural requirements can be found scattered here and there in legislative regulations and other administrative regulations. The concept of Procedural impropriety is practiced in Saudi law in a form that is perhaps less developed. This section will seek to collect and gather the procedural requirements in the Saudi system, compare it with the English system that is clearer in this aspect, providing insights and observations through which this thesis hopes to help lead to the development of some valuable solutions.

IV. Illegality:

Illegality is a broad ground of review; it contains a wide range of potential abuses of power by public authorities[10]. Lord Diplock states in *Council for the Civil* [11]*Service Unions v Minister for the Civil Service*: that"… illegality as a ground for JR means that the decision-maker must correctly understand the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of a dispute, by those persons, the judges, by whom the judicial power of the state is exercisable." However, there is some difficulty understanding the nature of illegality in general terms. Illegality is more flexible, wider, and less specialized than Ultra Vires. It would show the possibility of challenging official management in three areas: First: if they failed to conform to their legal obligations. Second: if they misused their legal ability. And last: if they exceeded their legal power.[12]

When reviewing a case against the illegality of an administrative decision, the administrative court's responsibility in both countries here is to analyse and interpret

[10] L Webley and H Samuels, *Complete Public Law: Text, Cases, and Materials* (Oxford University Press 2015) 494.
[11] *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 - 410.
[12] Forsyth and Wade (n 59) 267–269.

the contents of the decision and the extent of authority conferred to the decision-maker by the relevant legal text. In English administrative courts, the primary objective when reviewing cases involving illegality is to uphold the doctrine of the rule of law; as many decisions of the English Administrative Court require the government departments to abide by the rule of law's principles and standards. The study's preliminary examination indicates that the English courts act as protectors of Parliament's will and strive to ensure that administrative decisions align with Parliament's legislative objectives.[13] While the BoG Courts, when implementing this power, act as guardians of the application of the BoG law and its compatible regulations and government ministries' regulations, even if it contradicts the Islamic Sharia system; here, it may appear to the readers some of the disadvantages of codifying the grounds of challenging in the Saudi system, as the Board lacks the necessary authority to apply the spirit of Islamic Sharia.

This section will be further divided into several sub-sections to discuss illegality's different nature: First, the excess of law. Second, the abuse of power. Third, Mistake of fact or Law.

A- Exceeding the power of an Act:

Defining the bounds of jurisdiction not only between the three authorities, legislative, judicial, and executive; but also, within authorities itself, specifically, within each administrative body, is unquestionably necessary. It improves not only administrative efficiency, but also improves individual rights protection since duty and accountability are more clearly defined. As a result, the most significant reason for an administrative

[13] De Smith's and others (n 21) 965–966.

decision's invalidation is a lack of competence. The ground arises when the authority operates outside of the bounds placed on it by the legislation.[14]

In general, grounds for lack of jurisdiction arise when an executive authority acts or approves an action that was not authorized to do. Furthermore, the power exerted by one authority within its jurisdiction cannot be exercised by any other authority. The courts have no jurisdiction to intervene if the decision-makers stay within their authority. On the other hand, if the executive abuses their authority, the court will overturn the decision. Bodies are not allowed to operate outside of their legislative authority. For example, suppose legislation grants a local authority the right to buy ready buildings only, but the government utilizes that power to buy what the court considers lands, which would be unlawful.

In *Attorney General v Fulham Corporation case*, Sargent J. declared that: "In every case, it is for a corporation of this kind to show that it has affirmatively an authority to do particular acts, but that in applying that principle, the rule is not to be applied too narrowly, and the corporation is entitled to do not only that which is expressly authorized but that which is reasonably incidental to or consequential upon that which is in terms authorized. And it is, of course, for the defendant corporation to point out the authority under which it has acted in what it has done."[15]

The Ultra Vires principle monitors and screens those who exceed the force of the law. The simple example of a rule is when the government operates outside the scope of the authority that allows it to regulate private activities. for example, *Congreve v Home Office case*. The Home Secretary had here announced that the colour television license fee would be increased from £12 to £18 from the first of April 1975. He made an Order

[14] ibid 72–73.
[15] *Attorney general v Fulham corporation* [1921] CH 440 -.

to that effect under section 2(1) of the Wireless Telegraphy Act 1949. The Home Office, in accordance with its administrative practice, prepared special instructions for its agents, including the post office counter clerks, telling them that anyone applying in advance for the renewal of a license which did not expire until 31 March 1975 or later should be told to reapply on or after 1 April 1975. Nevertheless, when the plaintiff applied for renewal of his license in March 1975, the counter clerk at the post office did not follow the Home Office instruction and issued a £12 license fee, valid until 29 February 1976. The Home Office wrote to the plaintiff that unless the additional £6 was paid, the license he obtained in March 1975 would be revoked. The court held that "this was an improper exercise of the Home Secretary's discretionary powers of revocation... because taxation should not be levied without clear statutory authority and also because the threat of exercising power was used as a means of extracting money... revocation was unlawful, invalid, and had no effect...The Home Office had tried to use their licensing powers to obtain taxing powers that had not been conferred on them."[16]

While in the Saudi system, according to Article 13(B) of the BoG Law, a decision may be invalidated on the ground of lack of jurisdiction. The article lays down that "The BoG shall have jurisdiction to decide the following: ... (B) Cases to revoke final judicial decisions submitted by those concerned, when the ground of challenge is the lack of jurisdiction...".[17]

The BoG, when reviewing the decision of the administration in dispute, will consider it in accordance with the legislation in force when taking the executive action, and if it turns out that the decision was subject to the authority of another authority when it was taken, then the decision may be revoked by the Board. In one case, the Board revoked

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[16] *Congreve v Home Office* [1976] ER 697 -.

[17] Article 13(B) of the Law of the BoG.

a decision issued by the dean of the University college. The plaintiff's request to cancel the defendant's decision to withdraw his graduation document. The defendant relied on the fact that the plaintiff was granted the graduation document by mistake due to the combination of study and field training at the same time in violation of the regulations of studies that required the student to pass the study requirements before training. The Council of Higher Education and Universities system stipulates that only the university council has the competence to grant academic degrees to university graduates. Therefore, only the University Council has the right to amend the decision to grant degrees. The BoG held that "... It is established that the university council issued the claimant's graduation document with jurisdiction in this regard, while the withdrawal decision was issued by the dean of the college who is not competent to do so. the effect of that; revoke the decision issued by the dean of the University College."[18]

In another case, the BoG invalidated a decision issued by the National Centre for Finance and Economics, where the plaintiff was working in the field of designing publications at the National Centre for Financial and Economics at the fifth rank. The plaintiff requested to cancel the administration's decision to terminate his services; the defendant replied that the plaintiff had been absent for a period of 30 days during the year, as the civil service system and its internal regulations stipulated the termination of the service of those who meet with absences for 30 days per year, his service will be terminated. The Director-General of the National Centre for Financial and Economic Information issued the decision of terminating the plaintiff's service. The BoG held that "... it is established that the powers granted to the Director-General of the National Centre for Financial and Economic Information by the competent Minister of Finance do not include the authority to terminate the service, as it included delegating his

[18] The BoG decision No. 68/12/i in 2014.

powers to discipline employees only, meaning that the National Director-General exceeded the power granted to him by the law. The decision on this basis means that the decision was issued by a non-competent. the effect of that; revoke the service termination decision issued by the Director-General of the National Center for Financial and Economic Information."[19]

The same sort of conclusion was reached by an English court in the Congreve v Home Office case already mentioned above. As the court held that the Minister of the Interior exceeded the authority granted to him by law when imposing additional taxes; as well as with regard to the decision issued by the BoG in the case of the Director-General of the National Centre for Financial and Economic Information, where he exceeded the authority granted to him by law by dismissing the employee.

Although the BoG has recognized the authority of judicial committees in setting specific rules, yet it has invalidated some judicial decisions issued by them for conflicting with some higher legislation, especially when it provides for restrictions or limitations not provided by the higher legislative act, where the Basic Law stipulates that only the Council of Ministers has the right to interpret the regulations issued by him or issued by royal order. In one case, the plaintiff has requested to revoke the Military Appeals Council's decision against him before the BoG, where he has been convicted of a forgery crime. The Military Appeals Council issued its decision to dismiss the plaintiff from military service in absentia. The BoG held that "By reviewing the case's procedures, it was established that the plaintiff had not informed about the date of his trial before the Council by the Council themself. The Council contented itself with notifying the plaintiff's employer only, even though the Saudi enlisted

[19] The BoG decision No. 2257/1/I in 2002.

service Law stipulates that the Military Council must personally inform the accused of the date of his trial. It is clear that the Military Council has interpreted some legal text; This led to the Council exceeding the jurisdiction granted to it by the Council of Ministers. The court decided to revoke the Military Appeals Council decision.[20]

This is similar to the situation in the English system, where the English courts intervene to prevent some statutory Tribunals from exceeding the jurisdiction granted to them by Parliament. Lord Denning, in *the R v Northumberland Compensation Appeal Tribunal case* declared that "the Court of King's Bench can intervene to prevent a statutory tribunal from exceeding the jurisdiction which Parliament has conferred on it".[21]

B- Abuse Of Power:

Administrative authorities must always use the powers granted to them to serve the goals and purposes specified in the legislation, whether expressly or implicitly. If they fail in doing that, the courts have the power to intervene and invalidate a decision based on its illegality; this may happen from the executive for many reasons, such as: acting in bad faith, acting for an unlawful purpose, or being swayed by or considering irrelevant facts.[22]

Through its comparative approach, this thesis will show that when the purpose is stated in administrative judicial decisions, it is noted that there are some similarities between English courts and the BoG in this regard; as they both compare the purpose explicitly stated in the decision with the goal pursued by the decision-maker to determine its consistency. If a suitable purpose is not expressly provided, the English court and the

[20] The BoG decision No. I/5 in 2008.
[21] *R v Northumberland Compensation Appeal Tribunal* [1952] KB 338.
[22] G Aldous and J Alder, *Applications for Judicial Review: Law and Practice of the Crown Office* (Butterworths 1993) 18–22.

BoG will not accept the arbitrary exercise of power; Force should only be used in light of the main objectives of the legislation. Where the executive does an act of confusing lawful and unlawful purposes, the general approach in English law is that the action complained of will be lawful so long as the right purpose is the dominant goal.

While the approach of Saudi law in this regard is still unclear as the most cases have not often been heard before the BoG. The current study believes that this may be due to the jurisprudence rule in Islamic law, " What built on falsehood will eventually result in an invalid decision," which is unfortunately a general rule that has left administrative judges uncertain, indicating that any action, contract, or ruling based on an invalid foundation will ultimately lead to an invalid decision. Despite the widespread application of this rule in different legal domains, such as civil, commercial, and administrative law, it lacks a jurisprudential foundation in the *Qur'an* or *Sunnah*. Consequently, the present thesis therefore holds that this rule should not even be considered a permanent rule in BoG courts; This perspective stems from numerous criticisms, as highlighted by Al-Qarafi, the most crucial of which include:: Firstly, it is an absolute rule that doesn't consider the circumstances surrounding the work, contract, or ruling; as there are instances where an action, contract, or ruling might be based on an invalid foundation, yet it could yield positive or beneficial outcomes for society. Secondly, it may disrupt public interests or deprive people of their legitimate rights. For instance, if a hospital or school is constructed on unlawfully seized land, the application of this rule could lead to the demolition of the hospital or school, thus denying people access to medical or educational services. Thirdly, it may result in injustice against individuals or institutions. For example, if a sale contract is executed between two parties, and it later becomes evident that one of them was disposing of property not rightfully theirs, the application of this rule may invalidate the contract,

deprive the other party of his right to the item sold. Therefore, the current thesis believes that there may be a need to reconsider this rule and replace it with a more flexible rule that takes into account the circumstances surrounding the work, contract or governance, and takes into account the public interests and private interests of individuals and institutions.[23]

1- In English system:

The focus of the following section is to distinguish between improper purposes and relevant or irrelevant considerations, which are two different forms of the misuse of power in English law. The analysis below of the situation in English law is followed by an equivalent examination of the prevailing Saudi situation.

- Improper purposes:

Usually, regulations and laws grant powers to the management body according to clear terms and instructions in order to achieve specific purposes, which gives more accessible access to determine whether the decision-maker has acted correctly in light of these regulations to reach the desired goals. However, administrative decisions are not always that easy. There are always loopholes that may be illegally exploited by the executive body, leaving the court to decide what are the appropriate objectives of these statutes.

If the Government authorities use the power granted for them in specified purposes to achieve a different goal, the act will be identified as unlawfully exercised. For example, In Webb v Minister of Housing and Local Government,[24] the coastal protection administration, desiring to carry out necessary works, designed a scheme under section

[23] Ahmad Abdulsalam Al-Qarafi, *The General Theory of Obligations* (Dar al-Fikr al-Arabi 1968) 132–135.

[24] Webb v Minister of Housing and Local Government [1965] 1 WLR 755.

6 of the Coast Protection Act 1949. Later, the scheme was amended to include the acquisition of a further strip of land to construct a paved accessway. A compulsory purchase order was then conducted in accordance with the Act to acquire the necessary land, and the minister approved the scheme and the purchase order. However, on a challenge obtained by the landowners, the scheme and the order were quashed since the authority could not demonstrate that the scheme was necessary to exercise its powers under the Act. The acquisition of the land was for goals not within the powers conferred by the Act, involving as it did mix motives and an abuse of discretion. Therefore, this was a clear case of improper purpose.[25]

It appears complicated to determine how the administration proceeds from an improper motive. Sometimes, the courts' view in declaring which factor is more dominant may be incompatible with the administrative discretion, leading to its substitution by the judicial discretion, which is unacceptable in the English system. To avoid such situations, English courts may embrace a general method to declare any administrative action invalid where one of the motives is proved to be improper.

- **Irrelevant considerations:**

The distinction between irrelevant factors and improper purposes is probably the most difficult grounds to define. It is not seen easily as a distinct and unique concept. There is no straightforward method to it as a mechanism of review. On the other hand, a review considering irrelevant factors seems to present greater certainty. Therefore, there has been a trend to bring both grounds together in one term. But, as a result, the line between improper purposes and irrelevant considerations has become blurred, and often they are seen as similar. Problems in reviewing the irrelevant factors arise from

[25] Peter Leyland and Gordon Anthony, *Textbook on Administrative Law* (Eighth Edition, Oxford University Press 2016) 90–98.

several sources. The problems compound one another in limited legal structures and judicial analysis. Irrelevant factors are too easily regarded as a "grab-bag" from which a ground of review can always be found to suit the conclusion sought to be reached on the merits. The present thesis noted that the form of the empowering provision dictates the judicial method to be utilized in review for abuse of power. as where the reasons are enumerated in the empowering provision the process used in most reported cases under the rubric "irrelevant factors" is suitable.[26]

In practical terms, the matter of relevance often intersects with other justifiable grounds for JR. seeking an improper purpose may lead a decision-maker to take irrelevant considerations into account. Typically, public authorities are obligated to consider pertinent factors in their decision-making process while disregarding irrelevant ones. The failure to adhere to this principle could result in the invalidation of discretionary decisions.[27] Lord Slynn emphasized that: "It has long been established that if the Secretary of State ... Takes into account matters irrelevant to his decision… the Court may set his decision aside".[28]

To determine what factors are relevant or irrelevant in the exercise of power, English Courts start by reviewing the relevant provision to see whether relevant factors are statutorily provided or not. So, just reading the statutes does not usually directly answer the question of the relevant or irrelevant factors that have to be taken or not taken into account. As the law does not generally state what relevant factors are to be exercised; therefore, the Court attempts to establish criteria for determining relevant interests for implied guidance taken from the legislation or other relevant documents. In one case,

[26] GDS Taylor, 'Judicial Review of Improper Purposes and Irrelevant Considerations' (1976) 35 The Cambridge Law Journal 272.
[27] Alconbury Developments Ltd v Secretary of State for the Environment Transport and Regions. [2003] 2 AC 295.
[28] Binlebdah (n 5) 85.

for example, in *R Nawas v Secretary of State for the Home Department*,[29] it was held that the Home Secretary had properly taken into account the best relevant interests of the applicant's children in deciding whether to transfer the family to Sri Lanka. These considerations included the children's ages and educational situation, their interests in living together as a family, and the fact that they would be obliged to learn a different language to conduct their day-to-day life in Sri Lanka. Also, in *R Ivlev v Entry Clearance Officer, New York*,[30] it was held that the UK Border Agency had been permitted to take into account the unique criminal charges made against the claimant in Russia, and to treat those charges as having some factual ground even though there were solid reasons for suspecting them to be politically motivated.[31]

The following is an example of an irrelevant considerations that was taken into account based on a wide implication drawn from the nature of the statutory power. *In R Khan v Secretary of State for the Home Department*,[32] the claimant had an unspent criminal conviction which he had disclosed in his application for British naturalization. The Home Secretary rejected his application on the basis that he lacked good character. The offence was of using a mobile whilst driving, it is one for which a fixed penalty notice can be issued, but in the claimant's case he had been given a fine and points on his license. Holman J rejected counsel's claim that refusing naturalization in the case of an offence which could have been dealt with by a fixed penalty notice 'though in fact it was treated more seriously' was, 'disproportionate to the point of being irrational'. He noted that the decision was adequately and properly reasoned and not one that, 'no Secretary of State acting reasonably could have made'. However, the operative reason

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[29] R Nawas v Secretary of State for the Home Department [2013] 1799.
[30] R Ivlev v Entry Clearance Officer, New York [2013] EWHC 1162.
[31] S Nason, '*Judicial Review in England and Wales: A Constructive Interpretation of the Role of the Administrative Court*' (PhD, 2015) 321.
[32] R Khan v Secretary of State for the Home Department [2013] 1294

for deciding was that the availability of a fixed penalty notice for this kind of offence was obviously an irrelevant consideration in light of this particular plaintiff because it was not the penalty he had been given.[33]

The current thesis wants to shed light on the fact that the authority of the House of Lords in *Tesco v Secretary of State for the Environment* has reinforced the well-established principle that JR will distinguish between relevant and irrelevant considerations pertaining to exercising powers, and it leaves the weighing of the relevant ones to the decision-maker. It has also made a problematized by insisting that relevant factors may adequately be taken into account even where the decision-maker allows them no influence "subject to challenge for irrationality." The thesis believes that it is difficult to accept that a legislative identification of relevant factors does not influence the decision-maker. However, the proper influence of the relevant matters can be accommodated within the decision-making process while upholding the Tesco principle, as the House of Lords has observed that a factor that has been taken into account may be given no weight. If this is correct and it will be assumed that, it is necessary to explain what the 'taking into account' or 'considering' of a factor may entail. The problem is to give some sense to legal registering relevant matters that are apparently compatible with their exercising no actual influence.[34]

The above discussion shows that in the English system, an overlap happens where a question of relevance arises and seeking an improper purpose may lead a decision-maker to consider irrelevant considerations. The following section will discuss the issue from the Saudi perspective.

[33] Nason (n 31) 323.
[34] Tesco Stores Ltd v Secretary of State for the Environment, [1995] 1 WLR 759.

It is proper to notice here the situation in which the decision-makers ignore the intended purpose or relevant considerations and seek to gain personal advantage or harm others through exercising discretion in bad faith. But it is scarce for public authorities to be found guilty of Bad faith: usually, they are found to have erred, maybe by ignorance or misunderstanding. However, courts constantly accuse them of bad faith simply because they acted unreasonably or on improper grounds. But again and again, laws and regulations emphasize that the authorities must exercise those powers reasonably and in good faith; note that the phrase "in good faith" usually means "legitimate reasons." While In the Saudi system, it is impossible to find a single decision in which the BoG judge indicates that the decision of the administration was issued in bad faith, as the BoG does not raise bad faith as a separate ground for appeal and prefers to examine it under the aspect of improper purposes; due to, perhaps, the fact that the Board's always assumes and decides that ministers represent the role of the King in their ministries and always act in good faith; the thesis find this assumption is somewhat unjustified " assuming that this theory is true, and unfortunately this study will assume it because there are no written studies on the subject, also because the author of the thesis always finds this answer indirectly from the BoG judges while he was exercising his legal function." Still, by observing the situation in the English system in this regard, one does not blame the BoG for taking this direction, especially since, as mentioned earlier, it is difficult to prove and easy to overrule from the administration part.[35]

2- **In Saudi system:**

Reliance on the abuse of power to invalidate an administrative action is an established ground of JR in Saudi law. The BoG has entertained applications for JR on this ground.

[35] Binlebdah (n 5) 89. Also look at: Wade and Forsyth (n 59) 416.

The relevant text of Article 13(B) of the Law of the BoG provides that: "The BoG shall have jurisdiction to decide the following: ...Cases of objection filed by parties concerned against administrative decisions where the reason of such complaint is lack of jurisdiction...or abuse of authority." On these grounds, the BoG has the power to examine the content of the administrative decision itself and, particularly, the intentions and the motives that encouraged the government to make its decision. It has to be noted that this article provides only a general principle for reviewing the abuse of power, and there are no details regarding the constitutes of abuse of power. It is the BoG itself that has established the grounds for challenge under this principle through his different decisions.[36]

In Saudi law, the decision is considered abused if the governmental authority has sought to achieve a purpose different from that stipulated or intended by a statutory provision. Also, if the executive authority has sought a purpose not made in the "general public interest." A second type is a well-known form of abuse of power in the Saudi system, which can clearly be seen in most BoG decisions.

The BoG has differentiated between these two types of abusing power. One BoG decision said: "The general principle is that all administrative actions with no exception have to achieve goals of general public interest, yet particular actions ought to achieve certain goals that are defined and specified by law. Therefore, the reliance on the public interest in general terms in order to take a particular action where the law defines its motive and goal is considered to be misuse of power on the part of the acting administration. This shows that the public interest is a preliminary requisite in the Saudi system; yet the decision also should not slip outside the purposes noted in the statute.

[36] BoG Law, article 13(B).

But it appears that BoG often finds some difficulty balancing whether the executive has used its desired power to achieve the objectives set out in the regulations and between the principle of public interest. For example, if the administrative body issues a decision that achieves goals not included in the laws, the BoG occasionally will invalidate the decision even though the administration built it on the ground of public's interest. In one case, the plaintiff requested to revoke the defendant's decision, which included transferring him to the Department of Career Guidance, which is in another city (Al-Jawf), on the ground of (public interest and work need). It was established in the respondent's management procedures manual that the referral to the Career Guidance Department must be due to two reasons: negligence or incompetence on the part of the employee. The defendant did not provide evidence of the plaintiff's incompetence or negligence. Therefore, the BoG considered that transferring the plaintiff to another city was, in fact, a punishment against him, which means that the word "transfer in the public interest" has been misused by the defendant; Consequently, the transfer decision was revoked, as the "public interest," here was not one of the purposes specified in the statute.[37]

Also, on the contrary, in some cases where the management fulfills all the requirements while making the decision, but ignores the objective of the public interest: occasionally the BoG may overrule the authority's decision, even if the management sought to achieve the purpose stipulated or intended by law. In one case, the plaintiff, was an investor from one of the Gulf countries bordering the Kingdom of Saudi Arabia, demanded the annulment of the defendant's decision refusing to grant him more commercial records for the branches of his shops. The plaintiff has presented a letter from the Secretary-General of the Gulf Cooperation Council stating that the rules for

[37] BoG decision No. 147ff/3 in 2014.

the practice of citizens of the Gulf Cooperation Council countries to trade in Saudi Arabia have actually stipulated that the merchant must reside in Saudi Arabia. Still, it did not specify precisely the meaning of residence in Saudi Arabia, and made it open to the discretionary judgment of the authority. Given that the plaintiff has an official record authorizing him to practice trade in the Kingdom and has several branches, and that the merchant's residence in the commercial custom is a relative residence. BoG saw that plaintiff has continually supervised his commercial activities, and the defendant had abused his authority and it did not take into account the principle of public interest. Therefore, the Court decided to reject the defendant's decision.[38]

In both the Saudi and English systems, the purpose of granting executive some discretionary powers is not always specified; this gives the administrative body wide discretionary powers to deal with different situations. This study believes these powers should be codified as much as possible and reviewed on an ongoing basis to ensure effective continuity. Regarding the BoG, they should take an extra step in cases where the appropriate purposes are not expressly provided by interpreting the implicit intent of the Saudi Basic law.

The question that may arise here is, what kind of evidence can an applicant provide in a JR application to prove that the administrative discretion has not been properly exercised? In general, there is no reference to this, and in both systems, the issue is left to the courts to decide. Most of the misused of executive power are usually proven through the reasons given in the executive decision. However, this may not help establish the administrative misuse of power. The administration is not always bound to state the reasons and motives for their decisions, unless the law specifically requires

[38] BoG decision No. 16/3 in 2001.

it. Even in cases where the management is required to state in its decision the basis for the decision, the reasons may not always help in locating whether or not there has been misuse of power.[39]

Overall, the study found that abuse of power in both systems bore some similarities. When the statute explicitly provides the purposes and considerations, both English and BoG courts consider whether the authority's decision is in accordance with the regulation or not. Furthermore, if the rule does not provide any clear guidance, the courts in both systems determine the legality of the decision by interpreting the implied intention of the law. Also, public interest has to be considered one of the dominant factors alongside the other statutory requirements.

However, there is a difference of approaches in the cases where the administrations consider mixed motives, as the dominant test approach is applied in English courts. At the same time, these decisions are often revoked in the Saudi system. The Saudi system does not seem to represent a positive trend as BoG invalidates almost all the decisions with mixed motives, arguing that the Islamic jurisprudence rule "what built on falsehood will eventually lead to a false decision," which is a weak argument in the eyes of the current study. Therefore, there appears to be no reason not to adopt the dominant test, as Saudi law does not draw a strict line between issues of legality and merit as is generally practiced in English law. The discussion leads to the conclusion that when raising the question of mixed motives, the BoG should consider the dominant teste approach as in the English language system.

C- Mistake of fact or Law

[39] Abdulrahman Algoffan, a judge in the BoG in Riyadh, expressed his opinion on this issue in a personal interview in 2007 : Binlebdah (n 5).

This section deals with the notion of error in law or fact in the English and Saudi system. Mistakes of law in both systems can take different forms. For example, the administration may misinterpret a word or phrase other than its intended meaning in the law, or if they abuse the discretionary powers.

It is customary that courts review the mistake of law, as it seeks to discover the correct definition of the legal words in the relevant statute. While the mistake of fact is an error that the courts are usually hesitant to review, because the decision-maker has all the factual information and the necessary power to base the best decision. Also, the courts intervening in this issue would lead courts to take over the administration's role. However, the courts may occasionally step in to determine whether the facts of the case fit the interpretation of the law, especially if these factual errors are fundamental and have caused an unlawful decision.

1- Mistake of fact or Law in the English system:

In English courts, the mistake of law occurs when the administration has acted in violation of the legal requirements or the rules of the law. At the same time, the mistake of fact is more complicated. It occurs when management bases their decision on a misunderstanding of the actual situation of the issue, which leads to a wrong decision most of the time. In general, this thesis finds that English courts are usually very cautious regarding dealing with the mistake of fact. As previously explained, they often do not have the necessary expertise to assess the factual situation, as is the case for the administrative body that makes the decision. The courts may face great difficulty deciding whether a factual error has led to a wrong decision. English courts have traditionally dealt with this matter by dividing mistakes of fact into two types: mistakes

of fact subject to review, which are jurisdictional, and mistakes of fact that are not reviewable, which are non-judicial.[40]

While the situation is different in Saudi law, as it does not recognize the non-jurisdictional fact. Moreover, in contrast to English courts, the BoG is not reluctant to examine the administrative decisions' factual grounds. The current study finds that the English court's caution towards deciding whether a factual error has led to a wrong decision is highly reasonable. It reflects the long experience of the English court, especially when one compares it with BoG jurisprudential rule," what built on falsehood will eventually lead to a false decision," which the thesis has previously made clear it is appropriate to re-examine it from a justice perspective. Yes, there may indeed be a factual error leading to the wrong decision. Still, it is not a condition that every factual error will lead to a wrong decision. The study believes the administration body must have discretion in issuing decisions even with some factual errors.

The most famous case to illustrate the complexity of English system in this regard is probably *Anisminic Ltd v. Foreign Compensation Commission*,[41] It concerns the decisions of the Foreign Compensation Commission "they determined claims for settlement out of payments obtained by the Crown from foreign countries for measures taken by them against the property of British individuals." The regulation stated that the Commission's decisions were not "named in question in any court of law." The causes for excluding JR were that amounts awarded to claimants were discretionary. It would be unpleasant for the calculations made by the Commission for distribution of the limited sums at its disposal to be disturbed by successful applications to the courts. More importantly, instituting judicial proceedings might significantly delay

[40] H Barnett, *Constitutional & Administrative Law* (Taylor & Francis 2017) 728–732.
[41] *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147.

distribution to successful claimants. However, the House of Lords carried that the exclusionary procedure did not apply to a purported "determination" that was a nullity because it was not one that the Commission had jurisdiction to make. The result of the clause was only to protect valid judgments that might otherwise have been impugned for a non-jurisdictional mistake of law. The error appears from the fact that the right to compensation according to the text of the law does not depend on the nationality of the successor in the title deed.[42]

Nason pointed out here that "...Anisminic was later interpreted by some judges to have collapsed the distinction between jurisdictional and non-jurisdictional errors which the majority in that case had purported to uphold... For a period, judges and academics engaged in a debate over whether the seemingly defunct jurisdiction test could be substituted by a broader principle of error of law. This broad principle aligns more closely with idealistic perspectives on law as a manifestation of values that translate into concrete rights...)".[43]

Lord Diplock, referred to *Anisminic* by saying: "A landmark decision …which has liberated English public law from the fetters that the courts had therefore imposed on themselves so far as determinations of inferior courts and statutory tribunals were concerned, by drawing esoteric distinctions between mistakes of law committed by such tribunals that went to their jurisdiction, and mistakes of law committed by them within their jurisdiction. The breakthrough that Anisminic made was the recognition by the majority of this House that if a tribunal … mistook the law applicable to the facts as it had found them, it must have asked itself the wrong question, i.e. one into which it was not empowered to inquire and so had no jurisdiction to determine. Its

[42] De Smith's and others (n 21) 217.
[43] Nason (n 31) 167.

purported "determination", not being a 'determination' within the meaning of the empowering legislation, was accordingly a nullity."[44]

Daly noted that, according to Anisminic, "...there would be no errors of law that would not go to jurisdiction. The reason is simple: any error in the construction of the empowering statute will result in an inferior court or tribunal asking itself the 'wrong question.' The slightest misinterpretation of a 'question of law' will cause an inferior court or tribunal to commit an error of law...".[45]

In *Pearlman v Keepers and Governors of Harrow School*,[46] a county court judge had to determine whether central heating installation in a dwelling house amounted to structural alteration, extension, or addition. Without proffering a definition of the statutory words, the judge held that the work under consideration did not fall within them. The appellant sought an order of certiorari to quash the judge's decision on the ground that it depended on a mistake of law and, accordingly, was beyond jurisdiction. The majority held that the judge's decision on the issue was such that he must be taken to have made a mistake of law in the interpretation of the statutory words. Lord Denning held that "the distinction between an error which entails absence of jurisdiction…is fine. So fine indeed that it is rapidly being eroded…I would suggest that this distinction should now be discarded ... The way to get things right is to hold thus: no court or tribunal has any jurisdiction to make a mistake of law on which the decision of the case depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it".

[44] ibid 220.
[45] PAUL DALY, 'JUDICIAL REVIEW OF ERRORS OF LAW IN IRELAND' (2006) 41 Irish Jurist (1966-) 62.
[46] *Pearlman v Keepers and Governors of Harrow School* [1979] QB - 56.

It appears that after the decision in *Anisminic*, every mistake of law is a jurisdictional error, which is reviewable by the courts as it amounts to an ultra vires action which an ouster clause cannot protect. There is extraordinarily little room for non-jurisdictional errors, which an ouster clause might protect. In *Racal Communications*,[47] Lord Diplock suggested that "...a tribunal could make an error when the matter involves as many inter-related questions of law, fact, and degree". Nevertheless, " It is doubtful whether any test of jurisdictional error will prove satisfactory. The distinction between jurisdictional and non-jurisdictional error is ultimately based upon the foundations of sand. Much of the superstructure has already crumbled. What remains is likely quickly to fall away as the courts rightly insist that all administrative action should be simply, lawful, whether or not jurisdictionally lawful".[48]

This thesis believes that there are still some difficulties distinguishing between law and fact mistakes. But, after lengthy discussions among specialists, it can be said that to some extent, the English courts can review almost all mistakes of law and some mistakes of fact. The current study also emphasizes that the grounds for reviewing administrative decisions here are one of the most effective forms of protection for the rule of law, since courts in England and Saudi Arabia," as will be detailed in the following sub-section," are not limited to clear and direct violations of the law only but extend to legal and factual mistakes that government administration may commit.

2- Mistake of law or fact in the Saudi system:

The term "mistake of law" in the Saudi system as a basis of challenge is tainted by many ambiguities and misunderstandings. This may be because other reasons for withdrawing administrative decisions, such as "lack of competence, procedural and

[47] *Racal Communications* [1981] AC 374 - 390.
[48] Smiths and others (n 93) 228.

formal mistakes, and misuse of an administrative authority," can also be considered legal mistakes. In other words, the regulation defines the authority of government departments and specifies the procedures to be followed when making specific decisions. As a result, procedural and formal mistakes can be considered legal mistakes.

Article 13 (B) of the BoG system states that legal mistake is one of the basis for challenging administrative decisions. This article authorizes the board to revoke government decisions if they include violations of laws and regulations. Also, but within very narrow limits, if it includes a misunderstanding of the law.

A mistake of law is raised in the Saudi legal system when there is a plain violation of the statute or an error in interpreting the regulation. In one decision, the plaintiff demanded to revoke the defendant's decision (the Ministry of Culture) refused to issue a permit to publish his book. The defendant claimed that the refusal to permit publishing the book was based on that the book's main title might stir up sedition and tribalism. Without clarifying specific facts or mentioning particular violations of what was contained within the book. Since the Press and Publication Regulations stipulate that when a permit is refused to publish any book, a detailed report on the contents of the book and objective reasons for the rejection must be published, subsequently, the BoG issued a judgment rejecting the decision of the Ministry of Culture due to the mistake in adapting what was stated in the law and the mistake in its interpretation.[49]

The BoG has determined that some authority acts are illegal if they intend to impose a legal consequence that is inadmissible. In one of the cases, the plaintiff requested to revoke the defendant's decision that included a penalty deduction of fifteen days from his net salary; On the pretext of his accusation in an immoral case with a student based

[49] BoG decision No 318/T/3 in 2007.

on a complaint from the student's parents. The court saw that the plaintiff denied the accusation against him, and the defendant did not provide evidence that the plaintiff committed what he was accused of and issued the decision to impose a penalty against him without referring him to the competent court, which is inappropriate. The Board stated that one of the main rules set by the judiciary is that even if there is some ambiguity in the legal text, it is not religiously appropriate to punish an employee without direct valuation in order to preserve his rights; it is essential to detect a direct violation and indirect of the statute, regardless of whether the authority has done so intentionally or accidentally.[50]

Moreover, a legal mistake may occur when the administrative body issues a decision based on an incorrect and poor reading of the law, leading to the regulation's violation. Therefore, regardless of the administration's intention, whether it violated the law or misinterpreted it, this flawed decision will often be Annulled by the BoG if the plaintiff decides to plead before it. In one case, the plaintiff's representative demanded the revocation of the defendant's decision, which included her refusal to equalize her client (a non-Saudi of a Saudi father) with his Saudi counterparts in the amount of the monthly allowance for students of the College of Medicine, where he demanded the implementation of Cabinet Resolution No. (406 in 2012) regarding the treatment of non-Saudi children as Saudis citizens in terms of study and allowances. The defendant pleaded that she did not violate the decision issued, but she considered that the plaintiff had a governmental job and accordingly stopped the payment of the monthly allowance. The court found that the defendant had misinterpreted the decision, which was explicit, and did not address the issue of stopping the payment in the event that the student was working as a government employee or not. Accordingly, the court

[50] BoG decision No 16S/T/3 in 2013.

considers the plaintiff's entitlement to equalize him with Saudi students in terms of the monthly allowance.[51]

When it comes to factual errors, Article 13 (B) of the BoG Law clarifies that the Board has the authority to overturn administrative decisions on the grounds of misapplication of regulations, as it has the legal authority to review the factual reasons on which the administrative decision is based. These factual reasons are vital because every management decision must be supported by accurate factual reasons, regardless of whether management has discretionary or restricted power. There has to be some proportionality between facts and executive action. In defining the legal and factual justifications for the administrative decision, the BoG stated: "Whether or not the executive decision is required by law to be clearly reasoned as a formal obligation, it must be justified for a specific reason. The administrative decision is made based on either factual or legal grounds that oblige the executive authority to intervene in order to establish legal effects in the public interest ". The essential point one might make here is how carefully the BoG examined the factual reasons that led the governing body to make the decision. The BoG explicitly responded to this question in one of his decisions. It stated that, "An executive action must be based on legitimate factual grounds, according to one of the most important principles before the administrative courts. The administrative judiciary investigates the accuracy of these grounds, evaluates them, and ensures that the administrative action's result was obtained from legitimate sources".[52]

The BoG can analyse whether an authority's decision is based on accurate factual grounds by considering and evaluating the facts. As a result, the Board may investigate

[51] BoG decision No 61/2 in 2014.
[52] Binlebdah (n 5) 109-112.

whether or not the management's actions are based on factual grounds. In one case, the Board cancelled the administrative performance evaluation for two years for an employee working as the financial manager of one of the ministries. This evaluation of the administrative performance led to his being denied promotion. The Board noticed that there were no factual reasons. The Board stated that, "…yes, it is true that government agencies have the discretionary power to determine the appropriate degree to measure job performance, but it is conditional on it being realistic and has factual reasons". In its conclusion, the Board noted that the employee had refused to pass and authorize several financial dues because they contained a number of violations.[53]

Further, the BoG rejects the applicant's claim if there is in factual error. In one case, the plaintiff demanded the defendant be compelled to pay the financial distinction allowance. Eligibility for the payment of the financial excellence allowance requires the employee to obtain an excellent grade for two years and achieve one of the additional elements prescribed for the payment of this allowance. The Board held that the plaintiff actually obtained excellence for two consecutive years, but he did not achieve one of the additional elements referred to for disbursing the allowance. The Board rejected the case because the decision of not paying was based on legitimate and factual grounds; the concerned department has the discretion to determine the extent to which the employee has passed and obtained one of the elements designated for disbursing the allowance.[54]

However, this thesis considers that the jurisdiction of the BoG in its current situation is not limited to only confirming the existence of factual reasons or not. Instead, it further examines whether the truth justifies the administrative decision or not. It appears that

[53] The BoG decision No. 7Srr/3 in 2002.
[54] The BoG decision No. 23/D/5 in 2014.

the administrative judge is examining whether the facts that have already occurred justify the executive decision or not. However, the current study believes that this is not enough. The Saudi Administrative Court must delve deeper to discover the truth of the factual reasons. The study means that Saudi courts should play a more "positive" role, similar to English courts' role under English JR procedures. The BoG may play this role by hearing witnesses, appointing expert panels, visiting sites, and intensifying them. In one case, the Board emphasized this review authority on factual grounds. He declared: "The legality of such disciplinary action requires not only proven factual grounds relating to the employee, but also that its evaluation constitute disciplinary grounds.[55]

I. Unreasonableness and Proportionality:

The unreasonableness and proportionality examination has long been known in English law, and English courts have extensive experience in this field; nevertheless, the *Wednesbury* case has given the courts and judges more detail and clarity. The examination of unreasonableness concerns the quality of the decision. A discretionary decision can be revoked in English law on the grounds of 'unreasonable,' 'outrageous,' 'absurd,' 'perverse,' or 'irrational.' Meanwhile, Saudi law does not have the exact match unreasonableness or proportionality examination. Still, it can be seen somewhat but in different situations. The closest to unreasonableness in Saudi law is the doctrine of reviewing the legal evaluation of the relevant facts. While one can see that the proportionality examination in the Saudi system may apply in a narrow context through the question of balance between penalties and offenses in Saudi law.[56]

[55] The BoG decision No. 15/D/F/35 in 1988.
[56] Associated Provincial Picture House Ltd v Wednesbury Corpn. [1948] 1 KB 223.

The use of unreasonableness and proportionality examination in both systems may highlight the point referred to by many comparative writers, which this thesis mentioned before in its methodology, that "different legal systems may give the same or very similar solutions ... to the same problems ... despite the great differences in their historical development, conceptual structure, and style of operation".[57]

A- In the Saudi system:

As a general principle, the power of the BoG when examining administrative decisions is limited to reviewing their legality. It does not extend to the proportionality of the executive decision, because the BoG claims that proportionality lies within the administration's core discretionary function. Therefore, the Board does not replace the administration in its core function. The BoG lacks the power to examine the significance of the facts and whether they are reasonable or proportional with the decision that is based on them. In many of its decisions, the BoG emphasized this general principle. Where it always indicates that the function of the administrative judiciary when reviewing administrative procedures should not interfere when there is a statutory text that associates the administration with the discretionary power to issue its decision, even if the decision is unreasonable or disproportionate. In the sense that the discretionary authority of the administration in most cases does not have an oversight authority from the BoG. This thesis believes that this matter should be addressed and reviewed as soon as possible. The BoG judges should be given greater authority in this regard; the study thinks that there is plenty of room to learn from the English system here.[58]

[57] Zweigert and Kötz (n 15) 37–39.

Even though the BoG generally does not apply the test of proportionality on the discretionary power exercised by the administrative bodies, yet it imposes a limitation that the body must not misuse its discretionary authority. The present study considers that the Board was inaccurate when he gave the administration the vital right to issue such decisions, claiming that the government had more significant experience and knowledge in this field. This approach of the BoG comes out of specific underlying ideas, which this study wants to illustrate so that researchers and readers of the thesis become familiar with the BoG view in this regard, emphasizing that this thesis contradicts it to a large extent. Then this thesis will try to present specific proposals that contribute to its solution at the end of the chapter. The Board's claims that this approach gives administrative authorities more room to measure and weigh certain administrative issues in order to deal with novel situations. Such a task may not suit the judge because he is distanced in place and time from the circumstances surrounding the administrative decision. Also, the Board claims that this approach considers the relationship between the executive branch and its instrumentalities and the judicial authority. The Board is reluctant to take any action that may lead to the Board performing an administrative action. That is to say, if the BoG intervenes with the proportionality of administrative decisions, this means that it is substituting for that administration in its core function and issuing a new decision, which is a function that the Board itself refuses to take.[59]

However, the BoG may intervene in specific cases to examine the proportionality of administrative decisions if some paragraphs of the Saudi regulations allow him. For example, the Board may intervene in cases related to the balance between penalties and violations in administrative disciplinary decisions. The BoG has the authority to

[59] Binlebdah (n 5)132.

examine the extent of proportionality in this area because the Civil job discipline system has granted it this power, as it was stated in Article 10/3 of it that "when choosing a penalty, it should be taken into account that it is proportional to the degree of violation, taking into account precedents and mitigating circumstances."[60] It was stated in one of the Board decisions that when inflicting a disciplinary punishment, the administrative authority must take into account the size of the error and the size of the penalty without exaggerating the penalty; there must be a clear proportionality between the employee's mistake and the type and size of the penalty imposed on him. If the offense is not proportionate Between the error and the penalty imposed, the BoG has the right to intervene and revoke the decision. For example, the Board revoked a disciplinary decision because it considered the disciplinary punishment too harsh, and that the administration should re-estimate the penalty imposed on the employee in proportion to the size of the violation. they explained that: "The disciplinary penalty that was imposed, which is the deduction of three months' salary, because he made a mistake in issuing airline tickets to one of the employees, which he does not deserve, is not commensurate with the extent of the plaintiff's mistake."[61]

It is clear from the foregoing that the Saudi system does not interfere in the examination of administrative decisions based on unreasonableness or proportionality, unless a statutory text allows it to do so. But the question that the present thesis wants to ask here. When will the Saudi administrative judge be freed from some of the restrictions imposed on him by the BoG system and start given them some powers stipulated in Islamic law and the basic system of governance? The study believes that the administrative judge should be given the power to examine administrative decisions

[60] The BoG decision No. 31/6 in 1986.
[61] Article 10/3 of the Civil job discipline system 2022.

based on the grounds of disproportion or unreasonableness, even if there is no legal text that allows him to do so. It also believes that the system of the BoG in its current form has contradicted some of the texts contained in the basic system of government in the Kingdom. There is a great deal of space for learning for the Saudi system from the English system in this regard. In the following sub-section, the unreasonableness and proportionality in the English system will be examined.

B- Unreasonableness in the English system:

The Unreasonableness is an established ground of review In English system. Many law cases have described and defined it. An administrative decision can be described as unreasonable, if it is capricious or arbitrary, manifestly unjust, made in bad faith, oppressive, etc. in other words, the administrative decision can be held unreasonable if it is so unreasonable that no reasonable authority could ever have reached it. Unreasonableness is different from other grounds for the review of administrative discretion, notably, irrelevant considerations and improper purposes. Irrelevant considerations and improper purposes examine the administrative process and whether the executive authority made a specific mistake by taking into account irrelevant consideration or directing its mind to an improper purpose. At the same time, the Unreasonableness usually does not examine the process in itself, but rather the final decision. The Unreasonableness in the English system seems to be surrounded by some vague. Therefore, the court is usually cautious in using this ground of review, and only rarely will an administrative decision be revoked on the ground that it is unreasonable.[62]

It is essential to note here that irrationality is one aspect of unreasonableness. A decision is considered irrational if it is unreasoned and lacks comprehensible

[62] Itzhak Zamir, *Unreasonableness, Balance of Interests and Proportionality*, (1992) 131.

justification or if it is based on justifiable grounds but lacks logic. The issue under the irrationality ground is whether the discretionary power under which the decision-maker acts has been improperly exercised or insufficiently justified: the court here examines the quality of the decision itself.[63]

Lord Greene stated in the Associated *Provincial Picture Houses Ltd v Wednesbury Corporation* case, "It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is quite right; but to prove a case of that kind would require something overwhelming...It is not what the court considers unreasonable, a different thing altogether. If it is what the court considers unreasonable, the court may very well have different views to that of a local authority on matters of high public policy of this kind..."[64]

Lord Hoffmann in *R (Begum) v Tower Hamlets London Borough Council* case said: "...Although I do not think that the exercise of administrative functions requires a mechanism for independent findings of fact or a full appeal, it does need to be lawful and fair…In any case, the gap between JR and a full right of appeal is seldom in practice very wide. Even with a full right of appeal it is not easy for an appellate tribunal which has not itself seen the witnesses to differ from the decision-maker on questions of primary fact and, more especially relevant to this case, on questions of credibility..."[65]

In one case, the *Richmond upon Thames London Borough Council v Secretary of State for the Environment, Transport and the Regions,* which is regarding a tree preservation order that was located in the grounds of property A. H, the owner of an adjoining

[63] Binlebdah (n 5) 162.

[64] Andrew Le Sueur, '*The Rise and Ruin of Unreasonableness*?' (2005) 10 Judicial Review 32.

[65] House of Lords' case of R (Begum) v Tower Hamlets London Borough Council [2003] UKHL 5 [2003] 2 AC 430.

property, applied for consent for the tree to be pruned to remove the risk of overhanging branches posed to his conservatory. R refused the application, and H appealed to the Secretary of State. An inspector recommended that H's appeal should be dismissed. The inspector's report stated that the tree contributed to the general amenity of the area. This case was concluded to that: the Secretary of State's decision was Irrational, and the consent itself was inadequate because it was impossible to determine precisely which operations could be lawfully carried out. The permitted work had not been identified clearly, and insufficient reasons had been given for disagreeing with the inspector's recommendations.[66]

While Lord Cook had a rather hard-line opinion in this regard; he states: "...And I think that the day will come when it will be more widely recognized that *Wednesbury* case was an unfortunately retrogressive decision in English administrative law, insofar as it suggested that there are degrees of unreasonableness and that only a very extreme degree can bring an administrative decision within the legitimate scope of judicial invalidation. The depth of JR and the deference due to administrative discretion vary with the subject matter. However, it may well be that the law can never be satisfied in any administrative field merely by a finding that the decision under review is not capricious or absurd."[67]

Lord Scarman had implied in *Nottinghamshire County Council v Secretary of State for the Environment* case that there is a high threshold of irrationality here, as he defined unreasonableness "a pattern of perversity or absurdity of such proportions that the

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[66] *Richmond upon Thames London Borough Council v Secretary of State for the Environment, Transport and the Regions* (Tree Preservation Order) [2001] EWHC Admin 205 [2002] JPL 33.
[67] Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223.

guidance could not have been framed by a bona fide exercise of political judgment on the part of the Secretary of State."[68]

This thesis believes that unreasonableness as a ground of review in the English system is a straightforward concept, based on sound constitutional principles for dealing with a residual class of clearly bad decisions. It clarifies that the courts have to make a secondary decision, leaving the preliminary decision on the merits of the matter to the public authorities. But the problem here from the point of view of this study is that it seems in last years, the English court has stretched too much on the test of irrationality and made it more complicated; They used it to carry out tasks that were never meant to be dealt with. While the current study finds it almost impossible for the administrative court in Saudi Arabia to overturn any decision based on unreasonableness. As long as the decision is within the limits of its authority entrusted to it by law. Unfortunately, the Saudi judicial temperament is unwilling to examine administrative decisions on the ground of unreasonableness. The study considers that this issue should be paid attention to and benefit from the experience of the English judiciary in this regard. The thesis hopes that a window will be open here in the subsequent modernization of the BoG system, even if it is small, by allowing the BoG judge to examine administrative decisions on the ground of unreasonableness but in narrow limits. The study would like to mention that the basic system of government in the Kingdom, which was previously detailed in the second chapter, expressly stated that judicial justice is the basis that the state wants to reach and implement according to Islamic legal texts provisions. So, the study believes that there is an opportunity to adopt this test in light of the provisions of Islamic Sharia and line with the customs and traditions in the Kingdom.

[68] Nottinghamshire County Council v Secretary of State for the Environment [1986] AC 240 (HL).

C- Proportionality in the English system:

Since 1973, UK courts have applied the proportionality concept in EU matters, and since that time, it has been suggested that the test deserves to be included as one of the leading reviews in UK administrative law. Lord Diplock, the head of GCHQ,[69] supported this reform; he believes that it was both constitutionally imaginable. The additional constitutional discussion may have confused the doctrine's slow rise in domestic decision-making. Lord Denning MR's decision in *Hook*, among others, shows judicial tendency to reason in a proportionality-like manner. Even though admitting that future reform may occur, the leading *Brind* case,[70] was explicitly rejected the doctrine's inclusion. Although decisions like Nadarajah,[71] indicate the 'ripple effect' of proportionality-style reasoning, the judiciary largely followed Brind. The most significant addition to the discussion in recent years has been the passage of the Human Rights Act and the subsequent judgment in *Daly*,[72] that the proportionality test should be applied in all matters involving Human Rights. As a result, courts have been required to apply the doctrine successfully in many review cases since 1998.[73]

As a used basis for review across continental Europe, proportionality requires judges to have more power to assess a decision's merits. In general, it demands a consideration of the balance of interests and objectives. The decision made must be shown to be both necessary and reasonable in order to achieve a valid goal. Therefore, it is a more rigid test for irrationality than Wednesbury. Judges have been obligated to use the proportionality test in matters with a European character since the UK entered the

[69]*Council of Civil Service Unions v Minister for the Civil Service* (1985) AC 374.
[70] *R. v Secretary of State for the Home Department ex parte Brind* (1991) UKHL 4.
[71] *R v Secretary of State for the Home Department ex parte Nadarajah (2005)* EWCA Civ 1363.
[72] *R v Secretary of State for Home Department ex parte Daly* (2001) UKHL 2623.
[73] Theo Barclay, 'The Proportionality Test in UK Administrative Law - a New Ground of Review, or a Fading Exception?' The Student Journal of Law.

European Union in 1973, and there has been increasing pressure on the court to incorporate the test into domestic administrative law.[74]

The modern procedural definition of a proportionality test is relatively straightforward. While Tom Hickman acknowledged various models, he identified the most common wording as a three-part procedure, stating that the review tribunal must consider: "Whether the measure was suitable to achieve the desired objective. Whether the measure was necessary for achieving the desired objective. and whether, even so, the measure imposed excessive burdens on the individual it affected".[75]

In English law, the question arises as to whether the scope of judicial review should be broadened by a test of proportionality. Such a move, allowing courts to assess the "merits" of administrative decisions by labeling them as "disproportionate," raises concerns about judicial overreach. Essentially, by declaring a decision to be disproportionate, the court comes close to stating that the decision-maker made an incorrect choice. This potential encroachment on executive power has historically made English courts somewhat cautious in this regard. In The case of Joseph Bergmann KG v. Grows Farm Grubtt (1977), sometimes known as the skimmed milk powder case,' was a council regulation aimed at lowering the large oversupply of skimmed milk powder. The law aimed to address the issue by requiring farmers to feed their animals skimmed milk powder rather than cheaper soya milk powder. Despite the fact that the Council had the authority to issue such a directive and that resolving the oversupply

[74] J. Jowell and A. Lester, "Proportionality and Wednesbury Unreasonableness: The Influence of European Legal Concepts on UK Law", in M. Andenas (ed.), *English Public Law and the Common Law of Europe* (1998).
[75] T. Hickman, "Proportionality: Comparative Law Lessons", *J.R. 31* (2007).

was a realistic goal, the ECJ found that the methods imposed were excessively burdensome on farmers and hence disproportionate to the problem.[76]

When the UK courts have considered the legality of government action within an area of Community competence since the UK's belated entry into the European Community in 1973, it has been important to acknowledge proportionality as a distinct and substantive ground of assessment. Academic and judicial arguments that proportionality should be included into domestic UK law have been common since the courts first applied the idea. Furthermore, since the passage of the Human Rights Act (1998), which mandated the application of the concept in situations involving violations of ECHR rights, impetus for reform has grown significantly. The most prevalent idea, and the focus of this paper, is to make proportionality a complete ground of JR.[77]

Sir Otto Kahn Freund had a different opinion regarding the proportionality test. He argued that "the line that separates the comparative method's use in lawmaking from its misuse is very fine. Concepts are to be considered only in the context of the entire theoretical constitutional framework. Whereas proportionality fits easily with the constitutionality nature of many continental European countries, enforcement in England could lead to blurred lines of authority, and the unfortunate situation of courts invalidating decisions of bodies that derive power from democratically elected institutions. Allowing the courts to empower themselves to overrule decisions on their

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[76] *Bela-Muhle Josef Bergmann KG v Groes-Farm GmbH* (1977) *25n26. 52/76. Also: Irvine 74. And* Binlebdah (n 5) 124.
[77] Ibid 187-189.

merits and substitute their own preferences would lead to judicial assumption of quasi-executive power. That would be said to be constitutionally inappropriate."[78]

Following the Brind case, some courts have specifically refused to accept proportionality as a review criterion, instead of implementing the Wednesbury test to the letter. Popplewell J stated in the International Stock Exchange case that "proportionality is not a freestanding theory in domestic law" and that applying it "would not be proper." The 1997 decision in Hargreaves demonstrates a strong aversion to departing from the rigid provisions of Wednesbury. In the *ABICIFER* case, Dyson LJ followed Brind in the Court of Appeal, reiterating that proportionality applied solely to matters with an EU dimension or that were subject to the Human Rights Act.[79]

The present thesis believes that, despite Brind 's strict ruling that the Wednesbury test still applies rigorously to decisions of domestic irrationality and Daly's ratio that proportionality is reserved for EU and human rights law issues, the courts have, in reality, implicitly moved towards this doctrine. The strictness of Lord Greene's Wednesbury test has been eroded and executive action is being routinely overturned based on the merits of cases, especially when decisions are in defiance of moral standards. Moreover, both before and since Brind, several decisions have included reasoning that seems to be analogous to the proportionality doctrine; Consequently, the current state of the law appears intricate and perplexing.[80] For instance, in the case of R. v. International Stock Exchange, ex p. Else, Justice Popplewell was tasked with assessing the proportionality of the Stock Exchange's decision, made under the EC directive, to remove a company's shares from listing. Recognizing that the contested

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[78] Kahn-Freund, 'On Uses and misuses of comparative law' Chorley Lecture 1973, *Modern Law Review* (1974).
[79] *R v International Stock Exchange ex parte Else* (1992) BCC 11.
[80] Qtaifan (n 8) 318.

action constituted an individual decision rather than a legislative policy, Popplewell acknowledged the suitability of employing the standard of proportionality for such cases. Despite this, the applicant did not prevail, as it was determined that the Stock Exchange's relevant committee had duly considered less severe alternatives.[81]Also, in the case of R. v. Chief Constable of Sussex, ex p. International Trader's Ferry Ltd. The petitioners, who were exporters of live animals across the Channel, faced substantial protests against their exports at the relevant docks. The respondent, Chief Constable of Sussex, initially deployed a considerable workforce to manage the protests. However, due to limited resources, he later concluded that he could only afford police coverage for the exporters on two specific days each week. The Chief Constable informed the International Trader's Ferry Ltd. (ITF) that he intended to restrict police operations at the port to allow one movement of seven to ten lorries per day. The ITF sought to challenge this decision, asserting its unreasonableness and violation of Article 34 of the EC Treaty, as it was deemed a 'measure having an equivalent effect' to quantitative restrictions on exports between member states.[82]

The thesis finds that In English domestic law cases, the courts do not appear to have an adequate and direct approach in examining proportionality. In some cases, they are ignored, while they are sometimes acknowledged, especially in sanctions and fundamental human rights issues.

This sub-Section has shed light on issues of unreasonableness and proportionality as grounds for challenging administrative action. The discussion reveals that the Saudi system does not have an exact equivalent to the unreasonableness test, which is commonly applied in the English system. Also, the BoG does not apply the test of

[81] R. v. International Stock Exchange, exp. Else [1992].
[82] R. v. Chief Constable of Sussex, exp. International Trader's Ferry Ltd [1999].

proportionality on the discretionary power exercised by the administrative bodies, yet it imposes a limitation that the body must not misuse its discretionary authority. The study considers that the BoG was not correct in preventing itself from reviewing such decisions, and giving the administration the full right to issue some unreasonable decisions as long as it did not violate the legal regulation, claiming that the government had more significant experience and knowledge in this field. This thesis believes that this matter should be addressed and reviewed and that BoG judges should be given greater authority in this regard.

II. Procedural Impropriety:

A- In the Saudi system:

The BoG may review administrative decisions on the grounds that government agencies have violated administrative procedures and official requirements. When the administrative authorities issue any administrative decision, they must comply with the procedural rules stipulated in the bylaws and regulations. These regular procedures are essential in giving a correct executive decision and leading to the non-violation of individuals' rights and their preservation. However, it must be distinguished here that these violations, if they happened, and the extent of the possibility of revoking these decisions differ according to the importance of these procedures and their vital role.

Unfortunately, regulations that contain the technical, formal, and procedural aspects of administrative decisions in the Saudi system are dispersed, uncodified, and scattered among legislative laws, administrative regulations, and ministerial decisions. But the frequently asked question within judicial circles and among lawyers is what to do when there is no legal text indicating the formal and procedural aspects to be followed on the administrative side. Here, the BoG often establishes its own understanding regarding

the scope of such a defect. Although the BoG Act in Article 13/B considers procedural and formal defects as grounds for invalidating administrative decisions, it does not provide a clear criterion that can be applied when the BoG wants to annul an administrative decision due to an official procedural or procedural breach. Here, perhaps one of the most influential theories that the author of this thesis wants to highlight is that it seems the Saudi decision-maker, when setting the BoG system in its current form, appears to have given a narrow space to the BoG judges allowing them to create their own concept through making judicial precedents that apply the rules of Islamic legal justice derived from the broad Islamic jurisprudence through which judges can exercise jurisprudence in a manner similar to the form currently found in English courts. The current study believes that it may be appropriate to consider expanding the scope of BoG judges' jurisdiction to include more areas, such as the authority to adjudicate cases involving Procedural Impropriety, leveraging the experiences and outcomes of the English judiciary in this domain.[83]

In one of the cases, the BoG found that the Military Appeals Board had violated the regular procedures; where the Military Appeals Board issued a decision to dismiss the plaintiff from military service in absentia without informing the plaintiff of the date of his trial before the council by the council itself. The council was satisfied with notifying the plaintiff's workplace only. Here, the decision violated the procedures contained in the Saudi conscription system, where the system stipulated that the military council must inform the accused himself of the date of his trial. This led to a procedural Impropriety decision from them. Accordingly, the court decided to cancel the decision

[83] Binlebdah (n 5) 144.

of the Military Appeals Board; the BoG declared that: "Administrative decision is invalid if the decision-maker ignored the procedures that the rules have established.[84]

In another case, the BoG invalidated the administrative decision due to some formal and procedural defects; as the BoG went to annul the decision of the (Committee to consider violations of private health institutions) punishing a plaintiff with a fine for employing a number of health practitioners who did not fulfill the conditions and failure to implement infection control procedures and regulations properly; Here, the court found that the committee formed to issue the decision violated the procedures of the Saudi health system, as the investigation committee failed to convene properly, as the system stipulated the validity of the investigation committee's meeting in the presence of the committee chairman or his deputy. Since it was proven that the head of the investigation committee nor his deputy did not attend the investigation session with the plaintiff, the decision was revoked due to the committee's violation of the rules and regulations.[85]

The Administrative Court also nullified the disciplinary case because The Bureau of Investigation and Public Prosecution did not take all the required procedures before filing the case. as the Bureau of Investigation filed a lawsuit before the BoG against an employee on charges of forging a bachelor's degree and exploiting what had been forged by submitting it to the Ministry of Health. The court found that there was a fundamental flaw and a procedural error by the branch of the Bureau of Investigation and Public Prosecution, as they were supposed to address the authority issuing this bachelor's degree and make sure that there was no forgery in it, which is considered a defect in the case. Therefore, the administrative court issued its ruling rejecting the

[84] The BoG decision No. I/5 in 2008.
[85] The BoG decision No. 6/1 in 2016.

claim due to the presence of A formal and procedural flaw. Through previous cases and others, it appears to the present thesis that BoG differentiates between fundamental and non-fundamental procedural Impropriety. If the formal and procedural requirements are simple and do not affect the administrative body's decision, the court often does not consider them. Comparing this with English law, as will be explained later, the thesis finds that the courts of both systems do not pay attention to simple procedural Impropriety, even if they exist.[86]

In view of the fact that the BoG generally considers the statute's procedural requirements, which are a small part of the principles of natural justice, but unfortunately, this study finds that the board does not tend to disclose the principle of natural justice clearly. The issue of natural justice is almost non-existent in the decisions of the BoG. However, when the Board examines administrative disciplinary procedures, it may sometimes timidly announce the cancellation of some disciplinary decisions if the court finds an apparent injustice. In one of these few cases, the BoG found that moving the plaintiff to another city was, in effect, a penalty against him, meaning that the defendant had abused their powers and used them to advance other irregular interests with the intent of harming that employee; here the plaintiff requested to revoke the defendant's decision, which included his transfer to another city, on the grounds of (public interest and work need); and it was established in the defendant's management procedures manual that the referral to the vocational Guidance Department must be for two reasons: negligence or incompetence on the part of the employee. The defendant did not provide evidence of the plaintiff's incompetence or negligence.[87]

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[86] The BoG decision No. 5/l in 2014.
[87] The BoG decision No. 147ff/3 in 2014.

The current study admits an apparent weakness in paying attention to the rules of natural justice and the rules of injustice by the BoG. Here, it is of great importance to study the rules of natural justice adopted by the English courts, "as will be clarified in the next sub-section," where the English judiciary practices and applies the principles of natural justice in its broadest sense. The current study strongly criticizes the Board for not using these rules already approved by Islamic Sharia when reviewing decisions of government activities unrelated to disciplinary decisions. This thesis believes that the BoG's review of administrative decisions solely based on the extent to which management adheres to rules, laws, and regulations without regard to the rules of fairness is in itself unfair to many individuals who claim their rights guaranteed by the Islamic Sharia system. ; An opportunity must be provided for the individual to participate in the decisions affecting him and to promote the quality, accuracy, and rationality of the decision-making process; It is necessary to ascertain whether the power is exercised correctly, and that decisions have been taken within the scope of justice and power granted.

B- In the English system:

This subsection analyses procedural impropriety in the English court, which is the last of the three grounds for JR set forth by Lord Diplock in Council of Civil Service Unions and Others v Minister for the Civil Service. Procedural impropriety occurs in the following cases: First, when the administration does not comply with the procedural requirements stipulated in the law. Second, when management fails to act fairly. Or when the rules of natural justice are not applied. In other words, it is the right to be

heard and the right to a fair hearing. To be clear here, the notion of acting fairly is still somewhat vague.[88]

It is important to note that not every procedural fault will invalidate a ruling in the English system. To determine whether a procedural defect would overturn the administrative decision, the English courts here will scrutinize the relevant legislation to determine the objective of the statutory procedures. Suppose the conclusion reached after this examination is that the procedural flaw invalidates the decision. In that case, the requirement is deemed (mandatory), and failing to comply with the requirement renders the judgment worthless. While if there is a less serious failure, here the condition will be stated as (directory), which means this expected condition will be met, but that failing to meet the criteria here will not render the decision incorrect. "…it should be made crystal clear that there is no suggestion here that affixing the label (mandatory or directory) to a condition enables the judge to determine the validity of an act mechanically without having regard to the relevant statute," Wade and Forsyth write. They also add that the judge's primary responsibility is to interpret the law in order to determine the significance of a procedural condition that has not been met.[89]

The distinction between mandatory and directory requirements can be seen in *Bradbury v Enfield London Borough Council*. There was a certain organization within secondary education between grammar schools and modern secondary schools, transferring students over the age of 11 to grammar schools. Then a new government policy was implemented to abolish this system and replace these schools with basic schools that accept all students regardless of their abilities. Here the local authority, through its

[88] John Stanton and Craig Prescott, *'Judicial Review: Procedural Impropriety', Public Law* (2nd edn, Oxford University Press 2020) 511.
[89] Forsyth and Wade (n 59) 184.

duties towards secondary education in its district, attempted to reorganize the former in its schools and to introduce comprehensive schools in accordance with the policy of the Government. The local authority here misinterpreted the law and failed to notify the parents of students who attend eight schools of their closure. The goal of this notice was to permit these parents to present any complaints they had about the proposals. This absence of consultation indicated that the process required by law was not complied with. The Court of Appeal finds that the local authority committed a procedural impropriety and that they had worked illegally. Danckwerts LJ stated: "it is imperative that the procedure laid down in the relevant statutes should be properly observed. In this respect, the provisions of the statutes are supposed to provide safeguards for Her Majesty's subjects. Public Bodies and Ministers must be compelled to observe the law, and it is essential that bureaucracy should be kept in its place." In this previous case, the public notice requirement was mandatory, meaning that the public authority had followed the mistaken procedure.[90]

Lord Mustill notes that the concept of 'fairness' is an 'intuitive' concept, meaning that what' fairness' or 'acting fairly' entails depends on the situation. Lord Mustill's ideas are essential in evaluating what is fair, it states that: first, the issue of fairness stems from the underlying premise that when Parliament distributes powers to a public entity, those powers would be exercised "fairly." and fairness criteria may alter throughout time and vary based on the judgment being made. Second, the statute that allows the public authority to decide is the most important component of what justice demands. Third, before a decision harm someone, fairness generally necessitates that they be given the opportunity to make representations to the decision-maker, allowing them to explain

[90] The Bradbury v Enfield London Borough Council case [1967] 1 WLR 1311.

their position. This condition will only be meaningful if the individual in question is at least aware of the 'gist of the case' against them.[91]

III. Conclusion and reflections:

This chapter has examined the issue of grounds of Challenge in both countries. The discussion has shown that, unlike English law, Saudi law has enlisted Grounds of review in its statutes. The codification of the grounds of Challenge in Saudi law has led to the fact that the courts cannot interfere unless there is a provision within the applicable laws or regulations that expressly indicates that the executive decision is illegal; therefore, the opportunities for establishing grounds for review are more flexible and broader in English law as compared to Saudi law. The study believes this codification in the Saudi system led them to commit significant faults regarding not applying some substantial Grounds, especially: the test of proportionality, the rules of natural justice, and rules of fairness, by claiming that the government had more significant experience and knowledge in this field; this is unfair to many individuals who demand their rights guaranteed by the Islamic Sharia system.

Also, this made the impression that BoG judges look like robots, "figuratively speaking," as they do not have the necessary discretionary powers; they only apply what is written in the laws and regulations issued by the ministries and government departments themselves. While the study finds that English Court Judges have broader discretionary powers and have greater confidence in expressing and clearing illegal administrative decisions. Therefore, the study emphasizes the importance of granting BoG judges more authority to issue decisions based on new principles such as justice principle, proportionality, or fairness, similar to the discretionary powers of English

[91] Stanton and Prescott (n 177) 513.

courts. This would ensure that judges can exercise their discretion in a manner that guarantees just outcomes.

Hence, the thesis proposes the addition of a new clause to Article 13/B of the BoG Law, that grant the BoG judge "the authority to consider grievances brought against government institutions based on reasonable and acceptable grounds, such as those relating to fairness or natural justice. If the Administrative Court of Appeal accepts the case, it must be referred to the Supreme Administrative Court, which may adopt this new ground of challenge as a judicial precedent according to its statutory authority."

Chapter Four: Time Limits

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Chapter Four: Time Limits

I. Introduction

Although the administrative court and tribunal in both systems have jurisdiction over the proceedings of administrative cases, there are several requirements for admissibility, such as "time limits," that must be met before the judge can examine the action's reasons.

Decisions made by public organizations will always be subject to the prospect of legal challenge via JR when there is no time limit governing the applicant. The thesis asserts that despite some concerns and complexity surrounding the topic of time limits; still, it is important to pay close attention to it, as it guarantees individuals and government agencies a certain level of certainty. Craig has stated that "in the modem state with its monopoly of control and regulatory machinery there will necessarily be a trade-off between the need for administrative certainty on the one hand and justice for the individual and administrative legality on the other."[1]

This chapter will discuss and examine the thesis's second central argument, which pertains to the issue of the lengthy time limits within the BoG, where the law stipulates that the limitation period for the most cases is ten years, which creates a state of uncertainty to some extent to government departments; the study claims that these periods are excessively lengthy, hindering the development of future plans that can be put into action, and leading to an overwhelming number of JR cases for the courts.

Additionally, the current study believes there are some flaws in the subject of time limits in the BoG, especially if compared with what is currently practiced within the

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[1] Craig (n 87) 211.

English courts. One of the initial flaws from the point of view of the current thesis is the issue of the permission stage, which is applied within the courts of the English system; in Saudi law, the requirements for access to JR, including time limits, are examined at the outset of the litigation process. They are examined by judges of the Board and in the presence of all parties involved. Whereas in the English system, it is usually examined at the permission stage. The approach of the permission stage in English is set to prevent abuse and exclude busybodies. The present thesis believes that it can gain interesting insights from this approach, as there is no statutory independent stage in Saudi law similar to the permission stage in England.

Another weakness in the Saudi administrative justice system that this thesis criticises is the process where a litigant before the BoG is not required to bring her/his case promptly within the permitted periods, as he/she can file his claim on the last day of the ten-year period stipulated; unfortunately, by the law, the judge here has no right even to question why this delay has occured. By contrast, in the English system, applications for JR must be brought promptly. The limitation period of three months usual in English law is not an entitlement. The primary requirement is that an application for permission must be made promptly. The study believes that solutions to some of these flaws within the English system are possible. It aims to highlight the most significant reflections, insights, and observations resulting from this comparison in the hope of providing a broad scope for learning and improvement. However, the study acknowledges that certain insights it intends to examine face opposition from voices within the English judicial system who are calling for their suspension or amendment. The thesis will review and analyze some of these opposing views, presenting some challenges that the study needs to consider.

The discussion in this chapter will start by examining the rules governing the requirements in English and Saudi law. Then it will analyse the justification for asking claimants in public law cases to seek proceedings within a short time period. After that, it will examine the need for the promptness in proceeding with applications for JR. Following this, it will look at the outcome of not seeking JR according to the time limitations. Subsequently, the thesis will analyze and study the starting point for the time limit in question, followed by an examination of reasons that excuse delays in the application proceedings. The final section will conclude by highlighting the essential reflections, insights, and observations that emerge from this comparison.

I. The statutory basis of time limits.

A. In the Saudi Law:

In 2014, the Law of Pleadings before the BoG was issued,[2] which indicates in Article 8 that in the cases stipulated in Paragraph A of Article 13 of the BoG law that both the civil servant and the military employee must raise their grievance to the Ministry of Civil Service or the military authority to which the employee belongs within a period of ten years from the date the alleged right arose. If the decision of the Ministry of Civil Service or the military authority to which the employee belongs is issued rejecting the grievance, the case may be filed to the Administrative Court within sixty days from the date of becoming aware of the decision issued for a rejection or if these sixty days have passed without giving a decision in his grievance or during the remaining ten years mentioned in Paragraph A of Article13, whichever is longer. Unless there is a legitimate excuse that prevents the lawsuit from being filed during this period that can be proven before the Administrative Court. Also, the decision issued by the Ministry

[2] This law is one of the most recent systems of the BoG, and it differs from the BoG Law.

of Civil Service or the military authority to which the employee belongs must be justified.[3]

If the decision of the Ministry of Civil Service or the military authority to which the employee belongs is issued regarding the claimant's entitlement to what he demands and the administrative authority does not implement it within sixty days from the date of his notification, the case may be filed to the Administrative Court within the sixty days following this period or during the remainder of the ten years mentioned in Paragraph A Article 13 whichever is longer.[4]

The BoG has firmly applied these time limits stated in Article 13 of the Law of Pleadings before the BoG. In one case, the plaintiff demanded that the defendant (the Department of Education in Qassim Region) be obliged to pay the allowance of a chemistry teacher in 1994. It was established that the plaintiff filed his lawsuit before the court in 2013, meaning that the regular period for filing the lawsuit ended without presenting any acceptable excuse to the court for this delay. The effect of this: The case was not accepted due to the expiry of the legal period.[5]

The BoG, in one of its decisions, also rejected the plaintiff's lawsuit on the grounds of his non-compliance with the time-limit requirements stipulated in Article 13 of the Law of Pleadings before the BoG. The plaintiff filed his lawsuit before the Administrative Court, demanding that the error in his civil ID be amended as a citizen, as he confirmed that the defendant (Civil Status Department) had deleted an address he previously deserved. Here, the court announced that the plaintiff, before starting his case before the BoG, was supposed to submit a request for an internal administrative review,

[3] Article 8 and 13 of the Law of Pleadings before the Board of Grievances.
[4] Article 13 of the Law of Pleadings before the Board of Grievances.
[5] The BoG decision No. 6/11 in 2013.

whereby he would appeal the administrative decision before the administrative body that took this action. He has to take such action in the appropriate sequence of time constraints, as explained in Article 13. Here the case was dismissed by the court for the reasons mentioned above.[6]

One of the challenges against the direction and approach of the current study is illustrated through one of the cases raised before the BoG; the Board rejected the argument of the claimant, who failed to comply with Article 13 of the procedural requirements, that the time limit required by the Rules of Pleadings was against the Sharia, which considers this right to be permanent, and does not expire even if it has not been exercised within a certain time.[7]The best response to this challenge is what was stated in the decision of the Board that: "the time limits that are required by the Rules of Pleadings before the BoG to be followed before filing the lawsuits do not conflict with the Islamic Sharia because there is a public interest lying behind it and superseding the interest of any individual. It provides stability to the function of the governmental agencies."[8]

A question may come to the reader's mind here regarding the Saudi system's capability of applying some of the ideas presented in this or other chapters from a religious point of view; the thesis believes that the proposals, thoughts, and observations proposed in this chapter and others may depend on the foundations of the flexibility of Islamic Sharia, which may have been narrowed in one way or another within the Saudi system at one time in the past; it may be appropriate not to address some complex issues from a religious point of view because this study is not in this regard. Nevertheless, the thesis

[6] The BoG decision No. A/2/Q in 2005.
[7] Binlebdah (n 5) 156.
[8] BoG decision No 164/2 in 1993

would like to highlight one important idea here; the *Quran* and *Sunnah* stand above all other laws and cannot be amended, as illustrated in chapter two. However, assuming they are muted or do not provide precise guidance on a particular issue, the Islamic government here has the right to provide explicit guidance in these new events with the assurance that their decision does not breach the general regulations of Sharia law. The thesis believes that many English procedural and substantive standards do not violate Islamic rules but are consistent with the Islamic minimum standard of justice (fairness). The study considers to some extent that the current general atmosphere within the Saudi system is prepared now to obtain some ideas coming from abroad if they are highlighted and presented in a respectful manner and commensurate with the traditional Saudi general environment.

B. In English system:

In the past, in the English system, only certiorari cases were subject to a set time restriction, which was six months, this was before the 1977 procedural amendments, as there were no statutory time limits for declarations and injunctions, but the court could consider a delay while deciding whether to award a remedy. Then the rules have been modified; the current deadlines for JR applications are outlined in sections 31(6) and (7) of the Supreme Court Act of 1981 and Rule 54.5 of the CPR.[9]

Moreover, The JR Practice Direction, which supplements Part 54 Civil Procedure Rules, states that: "Where the claim is for a quashing order in respect of a judgment, order, or conviction, the date when the grounds to make a claim first arose, for the purpose of rule 54.5 (l) (b) is the date of the judgment, order or conviction." also, the

[9] Qtaifan (n 8) 149.

court may, as part of its general authorities in the CPR regarding the case managing, expand the time limit provided in Part 54.

In addition, Section 31 (6) and (7) of the Supreme Court Act 1981 state: "(6) Where the High Court considers that there has been undue delay in making an application for JR, the court may refuse to grant — (a) leave for the making of the application; or (b) any relief sought on the application, if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the right of, any person or would be detrimental to good administration...(7) Subsection (6) is without prejudice to any enactment or rule of court, which has the effect of limiting the time within which an application for JR may be made."[10]

As Rule 54.5 states: "1- The claim form must be filed (a) promptly; and (b) in any event within three months from the date when grounds for the application first arose. 2- The time limit in this rule may not be extended by agreement between the parties. 3- This rule does not apply when any other enactment specifies a shorter time limit for making a claim for JR."

Both the English and Saudi systems stipulate that the basic time restrictions set for an application for JR are unaffected by any unique statutory time limits on petitions for JR relevant to any specific case. In English law, statutes prohibit challenges to the legality of decisions from being made outside of a limitation period within which statutory appeals are allowed. These statutes apply to various subject areas, including housing, town and country planning, and forced acquisition. Particularly, applications to the High Court may only be made within six weeks under town and country planning legislation. There are specific statutory exceptions to the usual time constraints in Saudi

[10] ibid 150.

law as well. For instance, the Civil Defense Law contains a clause that permits parties who feel wronged by decisions made by the Civil Defense Agency to file a complaint with the BoG (BoG) within thirty days after learning of the action, even if the statutory limit of 10 years stipulated in most cases has passed.[11]

It appears from the legal texts that govern the requirements of time limits that the position of Saudi law is more complicated by the statutory ten-year periods stipulated in most cases, which are considered too long and prevent the courts from developing future plans that can be implemented. Since Saudi Arabia is a country that is regarded as a large country to some extent, many areas are considered remote or on the borders; the Plaintiffs in those areas usually delay going to administrative courts due to the long distance. One of the plans of the BoG is to open courts in those areas. But the issue that continually appears on the surface is that these new courts in those areas become overburdened with a significant number of JR applications, which most of are weak or ill-founded due to the limitation period of ten years stipulated for most cases enables them to do so. whereas if the period is somehow less or if the Courts requests submitting the applications promptly as is now done in the English system, the plaintiffs here might become more serious, and weakly-founded cases may be reduced. The study believes that after considering the nature and privacy of the BoG, there may be some ideas and visions here that deserve attention and care by Saudi decision-makers. As Lord Diplock said in *O'Reilly v Mackman*, that "the public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-

[11] Rule 54.4 of the Civil Procedure Rules; and Section 31 (6) and (7) of the Supreme Court Act 1981. And Article 13 of the Law of Pleadings before the Board of Grievances. Binlebdah (n 5) 156–159.

making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."[12]

IV. The justification for time limits.

The readers of the present thesis may legitimately ask why not all government decisions are open to review at any time. Or at least, why requests for JR are not given longer time limits which might better serve individuals and guarantee their rights more. In other words, what is the justification behind the time limit requirement in JR proceedings? And what are the reasons that led to making the specifications of the time-limit regulations in the English system somewhat strict? While the Saudi system expanded them. Before going into some details, the thesis here would like to draw the reader's attention to an important point. Yes, it is undoubtedly true that the longer the deadlines for reviewing government decisions will comfort individuals and will lead to not losing their rights, however, still, in return, it will lead to crowding a large number of JR requests, leading to prolonged litigation and will create a state of uncertainty among government departments concerning the strength and legitimately of their decisions, creating perhaps, a form of mistrust between individuals and government decisions, which will thus regress and affect the rights of individuals in society. So, the thesis believes there must be a balance regarding JR time-limit, driven here by the country's cultural, social, and systemic state of society.

There is no explicit reference in Saudi law to justify time limits. However, courts and academics may justify the time-limit requirement on the grounds that leaving administrative decisions open to review for prolonged periods would create uncertainty in public administration. Thus, setting a shorter deadline for requesting proceedings in

[12] The case of *O'Reilly v. Mackman*, [1983] 2A 237.

common law cases can be justified by reference to a greater need for certainty in the field and because it may prevent steps already taken in implementing the contested decisions from reversing long after the decision has been made. In the English system, the case of *Adeyimi Odutola Odubajo v SSHD*, notes that the time-limit principle "...is an important principle in relation to good public administration that there should be certainty as to the correctness of administrative decisions. The time limit contributes to this certainty. Public authorities may, after the time limit have expired without requesting JR, proceed on the basis that the decision is valid. A third party with an interest in the subject matter of the decision can also proceed on that basis…"[13]

The case for imposition of time limits on applications for JR was put most forcefully by Lord Diplock *in O'Reilly v Mackman* in the following terms: "The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."[14]

In a speech published in 1986, Sir Harry Woolf supported the opinions expressed by Lord Diplock concerning the justification for the relatively short time limit for the institution of JR proceedings, "Delay can cause considerable uncertainty and inconvenience, not only for the respondent authority but members of the public as well."[15]

It may become apparent to the reader from the course of the current chapter that the thesis tends to try to persuade the readers or perhaps the Saudi decision-maker to

[13] *Adeyimi Odutola Odubajo v SSHD case [2020] CSOH 2.*
[14] *O'Reilly v Mackman, [1983] 2 A C 237.*
[15] Public Law and Private Law: Why the Divide? A Personal View' [1986] *Public Law* 220,230–1.

consider reducing and tightening the statute of limitations and others. Still, as the current study made clear at the beginning of the chapter, there are some challenges need to be highlighted; there are voices within the English judicial system may oppose some of the thesis propositions, the study believes this should be taken into account: For instance: Craig claimed that "the relatively short time limit forced by the English general rule may result in excessive and unwarranted resort to litigation and may also impede or discourage attempts to reach negotiated settlements." Craig does, however, consider that "there are good reasons for imposing time limits of shorter than three months for commencement of proceedings for JR of certain decisions, notably decisions to grant approvals or permits for land development."[16]

Also, Bridges, Meszaros, and Sunkin have suggested that the relatively short period provided for in English court rules may stimulate weak or early applications for leave to apply for JR and lead to some form of governmental illegality that goes unchallenged due to the short deadlines. They argue that "short time limits might further certainty, but they can also affect the scale and quality of JR litigation in ways which are not necessarily immediately obvious. For example, the effect of reducing the numbers of challenges that might otherwise have been made could be to lead to some forms of government illegality going unchallenged, possibly to the detriment of the quality of public administration. On the other hand, short time limits might also stimulate premature or weak applications for leave, thereby increasing the burden on the court system."[17]

[16] Craig (n 87) 794.
[17] Bridges, L., Meszaros, G., and Sunkin, M., (1995), Judicial Review in Perspective, Cavendish Publishing Limited, London, 112.

These views and others regarding JR time limits in seem slightly convincing. Yet, the thesis believes that the current time limit in England is exaggerated in shortness, while the situation in the Saudi system is so extended; the study thinks that it is beneficial for the Saudi system to take some insight from the English system in this field but by setting reasonable time periods that are commensurate with the Saudi system, and takes into account the balance between considerations of certainty and the necessity of the right to access JR.

V. The need for promptness:

Contrary to what is applied within JR time limits in the Saudi system, the English system views the issue of Promptitude as not only an obligation, but also as a commendable practice that benefits all parties involved. In recent years, the English Courts have repeatedly agreed with this sentiment. the term Promptitude when filing a JR claim is stated in CPR 54.5: "(1) The claim form must be filed (a) promptly..." Therefore, any JR's request may be denied even if within the three-month period if it is not filed request promptly.

In the case of R FinnKelcey v Milton Keynes Council, relating to an objection filed by the plaintiff to grant planning permission for installing seven wind turbines. The planning permission was granted on 14 January 2008. The claim was lodged on 10 April 2008, i.e., within the statutory three months period. Still with that, the Court of Appeal dismissed the appeal against the High Court's refusal of permission to seek JR of the Council's decision to grant planning permission for the construction of seven wind turbines on the basis that the claimant had not brought his claim promptly. The

Court emphasised the importance of acting promptly in cases that sought to challenge the grant of planning permission.[18]

It may appear that adopting the promptness rule brings certain benefits, notably expediting litigation and promoting swift legal action. However, it is crucial to clarify certain challenges associated with this rule. A key concern, as highlighted by Knight, is the potential drawback of neglecting valid claims hindered by technical delays or unforeseen circumstances. The case of *R (Faisaltex Ltd) v Preston Crown Court* demonstrates that courts retain discretion to accept delayed claims to prevent injustice. This safeguard prevents formalities from unjustly burdening meritorious claims, upholding the essential principle of access to justice.[19]

While in the Saudi system, the thesis finds that the situation is quite the opposite; in one of the cases before the BoG, the plaintiff (a temporary schoolteacher) demanded the defendant compensate her for the damages she sustained due to the defendant's failure to hire her on a permanent job based on the royal order to install all temporary employees in government agencies issued in 2015. 3/20. The court found that the defendants were at fault because he was waiting for the completion of some government transaction (which was the defendant's duty), resulting in her not being appointed to a permanent job. In this case, it appears that the plaintiff filed the suit before the court on 06/25/2005, while the royal order she relied on in her case was issued on 3/20/2015 AH No. (8422/AD). Here it is clear that the plaintiff did not file

[18] *R FinnKelcey v Milton Keynes Council* [2008] EWCA Civ 1067 [2009] Env LR 17R. (para. 47, per Keene LJ).

[19] *Christopher Knight, 'Promptness and Judicial Review' (2009) 14 Judicial Review 116. R (Faisaltex Ltd) v Preston Crown Court* [2008] EWHC 2832.

her case until about the end of the tenth year, yet the court accepted to consider the case.[20]

What is noteworthy in this regard in the English system from the current study perspective, and it believes it can be greatly benefited within the Saudi system, is what Bridges and other writers on English law tried to introduce in an attempt to reduce uncertainty in the promptness issue by presenting some factors which may require applicants to seek proceedings promptly. If none of them is applicable, an application will usually be accepted if made within the three-month time limit. These factors are:" 1. If interlocutory relief is required. 2. If time has already elapsed since the decision complained of was taken, and the respondent public body is not aware that legal action is being considered. 3. If the applicant is seeking access to a limited resource or facility. 4. If it is almost three months since the decision in question was made. 5. If it is known that significant administrative upheaval or expenditure is about to take place on the basis of the decision to be attacked. 6. If success in JR proceedings will result in significant administrative upheaval or expenditure. 7. If the decision in question affects the rights of third parties."[21]

Concluding his address on promptness in judicial review, Knight asserted: "In conclusion, promptness in filing a claim for judicial review is not only good manners, but it is the duty of the claimant. That duty is independent from the long-stop time limit of three months. Whether a claimant has acted promptly should be considered carefully in the context and circumstances of the case taking into account when the events became known to the claimant, what the policy of the relevant legislative context is,

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[20] BoG decision No 107/5 in 2015.

[21] Bridges, L, Cragg, S Hyland, G, Lang, B, Mullen, T and Poynter (1995), *"The Applicant's Guide to Judicial Review"*. Sweet & Maxwell. London. 11.

and what prejudice is suffered by the public body or those otherwise directly affected by the delays of litigation. Where a breach of the duty to act promptly is found by the courts it should be overridden only by a clear-cut case on the merits. Such an approach would best guarantee the need for good public administration, balancing avoiding public bodies escaping the consequences of unlawful acts or decisions and helping to foster a culture of compliance with the procedural rules of the legal system...".[22]

However, contrary to English law, the question of promptness has not yet been known in Saudi law; while applicants for JR in English law must always act promptly, applicants in BoG have a right to seek litigation at any time within the ten years period in most cases. The thesis believes that this issue deserves review by the Saudi decision maker. In general, even with applications for JR made within three months in the English system, the thesis finds that English courts have a broad discretion to make a balance between the interests of the applicant and the requirement of good administration.

VI. The permission stage:

There are two separate phases for JR in the English system: the permission stage and the full hearing. In the permission stage, the court would not usually listen to all parties involved; the court needs to be convinced at this stage that the applicant has fulfilled all the formal and spatial requirements. If permission is granted, the claim is listed for final hearing. Noting that less than 10% of claims reach a final judgment. The approach of the permission stage in the English system seems to have many goals, one of which is that it prevents abuse and excludes busybodies. While there is no statutory independent stage in Saudi law similar to the permission stage in England, the

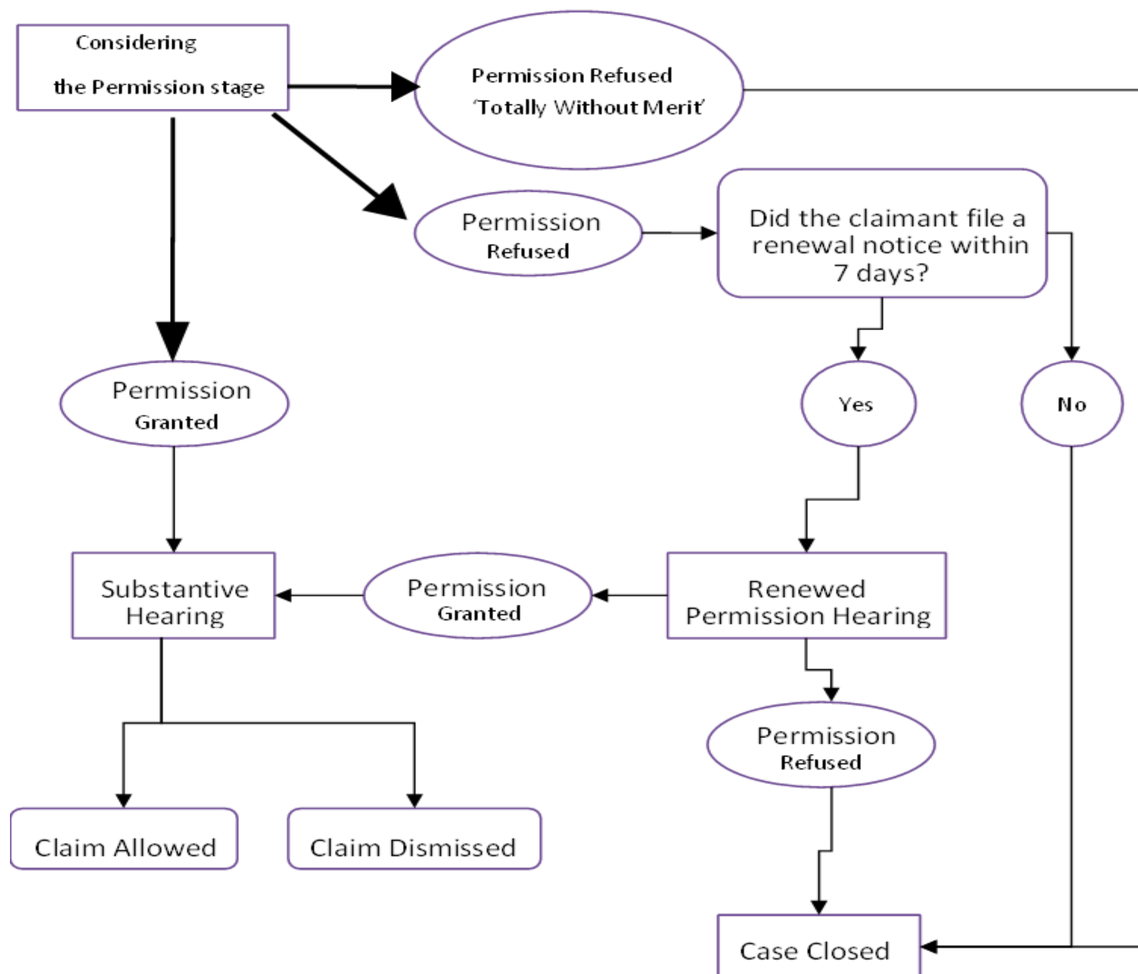
[22] Knight (n 19) 118.

requirements for access to JR, including the issue of time limits are examined at the outset of the litigation process. They are examined by judges of the BoG and in the presence of all parties involved. Therefore, when the issue of time limits or any other requirement is examined, all parties have the chance to participate in the discussion. Also, the decision as to whether an applicant has exceeded the time limit or requested an extension is deliberated by all judges' members of the Board's circuit.[23]

When an applicant wants to file a JR case against a decision in the English system, he must first apply to the Court for permission. As the thesis explained before, this should be done as soon as possible, usually no longer than three months from the decision date. However, in some circumstances, the courts here can decide to accept applications even after that time limit has elapsed. If the judge does believe the claim to be arguable, he will grant permission. In this circumstance, the case will normally go on to a full substantive hearing. But if the judge has decided that none of the grounds advanced by the claimant are arguable and the claim should not proceed to a substantive hearing; the judge here will record brief reasons in the order, and the permission will be refused. In some cases, the judge may decide that some of the grounds advanced by the claimant are suitable for permission, but others are not. After the permission is refused, if the claimant did not take any further action in the 7 days Period after receiving the order refusing permission, the Court would close the case. [24]

The following figure shows the steps the permission stage of the JR process goes through within the English Courts system which extracted with some modification from the Administrative Court JR Guide, Royal Courts of Justice, July 2021:

[23] Kolinsky, D., "*Standing (at the Leave Stage): Ex P. Dixon". Judicial Review* [1998] 213.
[24] The Administrative Court Judicial Review Guide, Royal Courts of Justice, July 2021.



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In *Dolan and others v Secretary of State for Health and Social Care and others*, the Court of Appeal has decided to refuse to grant permission in this JR claim. The appellants claimed that the government did not have the power to make this kind of Health Protection Restrictions, and they challenged the regulations made in response to this pandemic on 26 March 2020, commonly known as a "lockdown in England"; they submitted that the regulations imposed sweeping restrictions on civil liberties,

[25] A figure showing the steps that the permission stage goes through within the English system

which were unprecedented and unlawful. Lewis J refused to grant permission to apply for JR after hearing an oral argument. The permission was refused on the grounds of that the regulations under challenge have been repealed, and in any event, they are not properly arguable. Also, In *R. (on the application of Wasif) v Secretary of State for the Home Department*,[26] the CA stated that an application is totally without merit and is bound to fail because there is no rational basis upon which it could succeed. However, the judge considered that the claimant had a sensible argument, but he was confident that the argument was wrong; therefore, the case permission was denied.[27]

It should be noted here that the Bowman Commission, which cited Lord Diplock's findings in the IRC case, acknowledged that the permission stage filters out the hopeless claims and removes the uncertainty surrounding some cases. The Commission believes that the permission stage is helpful for plaintiffs who do not wish to pursue their cases and provides a useful case management tool. The Commission also thought that the permission stage should be rendered more efficient by removing the right of claimants to apply for permission to be considered at oral hearing.[28]

It appears that the permission stage in England and Wales is playing a critical role in determining the general dynamics of public law litigation and, more specifically, access to public law remedies. Its place in the system, although at times controversial, has for long been regarded as necessary in the interests of protecting public bodies from an unwarranted and costly challenge and maintaining the efficiency of the court system. This necessity, from the point of view of the English system, the current study may agree with it to some extent in its importance and seeks to shed light on it. Also, one of

[26] R. (on the application of Wasif) v Secretary of State for the Home Department (Practice Note) [2016] EWCA Civ 82; [2016] 1 W.L.R. 2793 13-21.
[27] Dolan and others v Secretary of State for Health and Social Care and others [2020] EWCA Civ 1605.
[28] Bowman Committee Report, p 64, para 12.

the most important advantages of the permission stage for claimants is it provides them with a relatively cheap and speedy method of obtaining an early neutral evaluation of the strength of claims.[29]

Moreover, it seems that one of the purposes of the permission stage is to eliminate early-stage hopeless, frivolous, or vexatious claims and to ensure that a claim only proceeds to a substantive hearing if the court is satisfied that there is a case fit for further consideration. Also, the requirement that permission is required is designed to prevent the time of the court from being wasted by busybodies with misguided or trivial complaints of administrative error. Furthermore, it removes the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative actions. Hieckman and Suankin point out that "... overall, the statistics paint a picture of relatively high rates of success in JR and that the permission stage provides an effective filter of weak claims."[30]

The thesis wants to point out some concerns and challenges regarding the permission stage, both in principle and in practice. Two major issues have been raised here by some commentators in England. The first concerns whether it can be suitable to require public law claimants to obtain permission to gain access to courts, especially when this is not required in other types of proceedings, including those against public bodies. The Saudi system may share the same concerns here because it believes that the right of individuals to access the judge is guaranteed to all. The second one is a practical concern related to the clarity of the criteria used by judges when filtering claims, the consistency of their decisions, and the fear that meritorious cases may be prematurely

[29] Varda Bondy and Maurice Sunkin, '*The Dynamics of Judicial Review Litigation: The Resolution of Public Law Challenges before Final Hearing*' [2009] The Public Law Project 49.

[30] T. Hickman and M. Sunkin, 'Success in Judicial Review: The Current Position' U.K. Const. L. Blog (19th Mar 2014) (https://ukconstitutionallaw.org/).

filtered from the system. Here, the current thesis would like to draw attention to the fact that perhaps in the future, if the Saudi decision-maker thought about formulating a principle similar to the permission stage, strict and transparent criteria should be set for it, whether for litigants or judges, where religious, social and customary considerations are taken into account.[31]

Through analysing the permission stage, one can clearly see some of the distinct powers that English courts have. The thesis believes that the Saudi system can benefit from some of this idea's features. The study here is not interested in the history of the permission stage, or the method of its application in the English system, but instead looks at it from a purely functional perspective which enables it to apply it consistently with the customs and traditions of the Saudi system and does not conflict with Islamic law.

VII. The beginning of time limits:

While calculating time limits is in months in English law, it is measured in days in Saudi law. The English and Saudi systems take different stances with regard to the day on which the time limits for JR applications begin to be calculated. Note that the Saudi system here does not calculate the first day that was issued in the administrative decision, but it calculates the last day. The thesis did not find in the English system what indicates the legal status of the first day on which the administrative decision was issued or the last day of the time limit, perhaps due to The fact that the English system calculates the time limits in months, not days.[32]

[31] Bondy and Sunkin (n 209) 2.
[32] Binlebdah (n 5) 170.

Regarding when the time limit starts, in the English system, there is a distinction between the quashing order on the one hand and other remedies on the other. Rule 54.5/1 of the Civil Procedure Rules provides that the time limit for applying for permission begins to run from the date when the grounds to make a claim first arose. More specifically, CPR 54.4/1 provides that where the relief sought is a quashing order, the date when the grounds first appeared is the date of the judgment, order, or conviction. But when the applicant seeks a prohibition order, the application must be made before the public body has acted ultra vires, if the order sought declares that a decision in question is unlawful or is an injunction to restrain its implementations. In that case, the time limit will start counting from the date of that decision.[33]

In *R (YA) v London Borough of Hillingdon*, (Admin) Keith J said: "Rule 54.5(1) of the Civil Procedure Rules requires a JR claim form to be filed promptly, and in any event no later than three months after the grounds to make a claim first arose. It is well established that the time runs from when the decision under challenge was made. It does not run from the date when the claimant first learned of the judgment under challenge, or from the date when the claimant first had the information which was needed to enable an informed decision to be made as to whether the decision could or should be challenged."[34]

De smith sees that, in general, the time limit to make a claim arise when the public authority does an act with legal effect, rather than something preliminary to such an act. He gives an example in the context of town and country planning; the time runs here from when planning permission is granted rather than from when a local authority adopts a resolution to grant consent, while the quashing order time limit begins to run

[33] Qtaifan (n 8) 167.
[34] R (YA) v London Borough of Hillingdon [2011] EWHC 744.

from the date of that judgment due in respect of any decision, order, conviction, or other proceedings, etc. However, he believes that the running of time is also subject to EU law principles and, where relevant, time will only be taken to have started running from the time when the claimant became aware or could reasonably have become aware of EU law grounds for the claim.[35]

While in the Saudi system, it seems that the starting of the calculation of time limits is somewhat more detailed, as the dates for starting the calculation of time limits are from the date of knowledge of the executive decision. Here, the Saudi system made it clear that the ways of knowing about the decision are either by publishing it, announcing it, or learning about it with certainty. It was mentioned in the system of pleadings before the BoG that the basis for realizing knowledge of the decision is by informing the concerned person, or, in the event that it is not possible to notify the concerned person, it is resorted to its publication in the Official Gazette, but only in the event that it is not possible to inform the concerned person for any reason, such as it is not possible to know his residential address or there is no way to contact him. Moreover, in case of the presence of other people of interest, but the administrative decision did not mention them; In this case, the Saudi system went to the fact that the dates for starting the calculation of time limits here are from the date of publication of the decision.[36]

Also, if the administrative decision was related to a large number of people, such as promotion decisions for collective employees or decisions about their transfers, in this case, the Saudi judiciary stated that the dates for starting the calculation of time limits are from the date of publication because it is difficult for the administration to inform each specific person. Furthermore, in the event that the concerned person knows with

[35] De Smith's and others (n 21) 941.

[36] Fahad Al-Dugither, *Ragabt Al-Qada Ala Grarat al Edarh* (Dar al- nahda Press 2014) 174–181.

certainty about the decision by way other than the method of publication or announcement, here, the dates for starting the calculation of time limits will be from the date of this certain knowledge; this happens if it is proven to the administrative judge that the person concerned has been fully aware of the decision in detail. The burden of proving this confirmed knowledge of the administrative decision of the person concerned rests with the administrative authority against which the case is brought, knowing that the Saudi administrative judiciary here accepts any evidence or a specific fact that can be used to prove this confirmed knowledge.[37]

In one of the cases presented to the BoG, the plaintiff demanded to compel the defendant (the Ministry of Education) to revoke her administrative decision that included her employment on the fourth degree of the educational hierarchy, as she claimed that she holds a bachelor's degree, and the system stipulates that she deserves to be employed on the fifth degree. In this case, the Ministry of Education submitted a copy of a decision that proves she started working after the appointment and requested the court to consider this as a certain knowledge of the decision issued against her. Here, it is established by the court that the plaintiff did not file the case until after the end of the statutory time limits periods starting from the date of her certain knowledge of the decision.[38]

This thesis believes that concerning the beginning of the validity of the time limit, greater authority is distinguished by the Saudi administrative court and applies the spirit of natural justice better than its equivalent in the English system. The writer of this thesis was thinking of withdrawing and not completing this sub-section because this study is not about finding the best visions for the English system. Still, after careful

[37] ibid 179.

[38] The BoG decision No. A/2247 in 2008.

consideration and reflection, the study finds a significant benefit in presenting this sub-section in this thesis.

VIII. The concept of premature claims:

One of the contentious issues in the English system is whether it is acceptable and permissible to challenge a decision during the process of making it or whether the applicant should wait for the administration to issue its final decision. Until recently, the English administrative system had not had a well-developed conception of prematurity cases in JR; its concern about the timing of JR has mainly focused on the effect of a delay in seeking a review and the circumstances in which a person would be required to do so, and the Issue of Alternative Remedies before a Judicial request review. However, the present thesis, by extrapolating from a number of recent administrative court decisions, believes that an applicant in the English system can exceptionally review any initial government decision if it has a material effect, for example, if it is established that there is a real risk of irreparable harm if the decision is not examined at an early stage, or when there is a real risk of A breach of justice.[39]

Lewis is of the view that "applications for JR may be made unduly early as well as unduly late...English law is beginning to develop a concept of prematurity. There are numerous dicta indicating that premature challenges should not normally be allowed, although so far it must be said that the courts have often found "exceptional" reasons why an otherwise premature application should be allowed."[40]

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[39] Jack Beatson, 'Prematurity and Ripeness for Review' in Christopher Forsyth and Ivan Hare (eds), *The Golden Metwand and the Crooked Cord: Essays in Honour of Sir William Wade QC* (Oxford University Press 1998) 222–225; also see Qtaifan (n 11) 162-168.

[40] Lewis, C., (2000), p.338.

One of the disadvantages of the prematurity case is the conflict of jurisdiction and whether the department involved in making the decision has the authority or not. *In R v Personal Investment Authority Ombudsman ex p., the Burns-Anderson Independent Network plc*. The Court of Appeal believed that it was premature to review a temporary decision by an ombudsman that he had jurisdiction. The Court questioned whether the fact that a clear issue of law emerged was sufficient to explain engaging in JR before issuing a final decision.[41]

Sunkin and Le Sueur recognized this matter in their study on a specific sample of 86 unsuccessful applications, of which ten applications were rejected because they were made prematurely. In their study, they determined the issue of prematurity as one of the grounds upon which JR permission may be refused. Similarly, De Smith and Jowell call attention to the opinion that "an application for leave that is made prematurely is almost as important a ground for refusing leave as is delay."[42]

As for the Saudi system, it is entirely different in this respect from the situation in the English system. One of the established judicial principles of the BoG is not to accept early requests before the administration issues a final decision. The Board has declared in many of its decisions that the Board will not consider any case that is not sufficiently mature. In one of the cases before the Board, the plaintiff demanded to obligate the municipal affairs to grant him a building permit for his land. The defendant replied that the plaintiff's land is located in a rainy region and that this region must be reconsidered as a whole and that it assigned this task to an engineering office for study, and it is awaiting the outcome of this study, and from Then the plaintiff's request can be

[41] R v Personal Investment Authority Ombudsman ex p Burns-Anderson Independent Network pie (CA,1997).
[42] De Smith’s and others (n 21) 667.

answered with either approval or rejection. The court decided to reject the case on the grounds that the plaintiff had filed it prematurely because the decision of the administrative authority had not yet been issued. One of the established principles is that it is impossible to accept a case filed before its time, and it is difficult to determine the amount of compensation required until after the administrative authority's decision issuance.[43]

In another case, the plaintiff asked the court to issue a decision obligating government agencies not to interfere in his farm that holds a poultry license, as he learned that a number of his neighbors were disturbed by the smells emanating from his farm and submitted a request to some government agencies to request a decision to cancel his license or move his farm and produce poultry in a place else. He also submitted a side application demanding compensation in the event of revoking his license or relocating his project site (an attempt to pressure government agencies not to issue any decision against him in the future). The court decided that both applications before it was premature because there had not yet been a governmental decision against the plaintiff.[44]

The current thesis believes that the strict Saudi position on the concept of premature claims is sometimes unfair in certain cases. This study considers it may appropriate for the BoG to be more open and receptive to this idea and give the judges of the Court at least the opportunity to analyse such issues in the hope that they will lead to building and establishing a unique concept that fits the justice systems of the Saudi system in the near future.

[43] The BoG decision No 7339/L in 2008.
[44] The BoG decision No 1569/T in 1990.

IX. Conclusion and reflections:

After analysing the time limits that litigants must abide by in both the Saudi and English legal systems, it can be concluded that the current legal texts governing time limits in the Saudi system are too lengthy, hindering the development of future plans that can be implemented. If these time limits period is shortened or if the Courts request prompt submission of applications, as is currently done in the English system, plaintiffs may become more serious and weakly-founded cases may be reduced. It is important to note here that the current time limit in England is excessively short compared to the Saudi system. Therefore, it is beneficial for the Saudi system to take some insight from the English system in this field but by setting reasonable time periods that are appropriate for the Saudi system that takes into account the balance between considerations of certainty and the necessity of the right to access JR. The thesis believes that by balancing these considerations, the Saudi legal system might be improved, and litigants might be better served.

Regarding that the claim needs to be brought promptly, and after the thesis clarified that the litigant before the BoG is not required to file her/his case quickly within the permitted periods, as he or she can file her/his claim on the last day of the stipulated ten-year period, The English system drew here one of the important solutions from the point of view of the study, which believes that the Saudi regulator should pay attention to it.

The thesis believes that the Saudi system can benefit from some of the permission stage features manifest in English system. And again, the study here is not interested in the history of the permission stage, or the method of its application in the English system, but instead looks at it from a purely functional perspective which enables it to apply it

consistently with the customs and traditions of the Saudi system and does not conflict with Islamic law.

The thesis urges the Saudi decision-maker to reconsider the concept of premature claims and to be more open and receptive to this idea, especially as it preserves the concept of natural justice and does not conflict with Islamic jurisprudence.

Chapter Five: The Issue of Standing

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Chapter Five: The Issue of Standing

I. Introduction:

Standing is considered a significant element in determining when courts refrain from deciding cases and controversies resulting from administrative actions, even if these actions conflict with the rule of law. Courts in both countries always dismiss complaints filed by people who lack standing.[1]

In both countries, the first step for initiating JR procedures against any administrative decision begins when the court has ascertained the requirements of standing, the court here will decide whether the case can proceed to JR, or rejects it when the claimant fails to prove standing requirement; thesis attempts in this chapter to study and analysis this topic, but from specific angles that emerged from the preliminary observations of the author, he believes that there are some flaws regarding the strict rules of standing in the Saudi BoG, especially if compared with what is currently practiced within the English courts. The most important of which is what the thesis put forward as its third central argument; which is that the BoG permanently refuses to examine the legality of a government action unless there is a direct personal interest between the subject matter and the applicant; as BoG stated in many of his decisions that "it is known in the theory of the lawsuit that the applicant must have a direct interest of the claim from the time the lawsuit has been filed, and that must continue until the final decision; otherwise the case will be dismissed." The study believes these strict rules of standing in the BoG have negative repercussions on society as a whole, affect some of the fundamental rights of individuals required to maintain their essential freedoms through the risk that no one will be able to file a JR against the legality of an administrative action because

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[1] Al-Jarbou (n 1) 353.

it does not affect a particular person directly but sufficiently affects a large group indirectly; also, it creates a state of uncertainty in the eyes of the public about BoG authorities. De Smith and Jowell,[2] consider that the policy of JR should encourage, not discourage, the public-spirited to challenge unlawful administrative actions, even if the individuals and groups concerned are not directly affected by those actions, and that "where there are strict rules as to standing there is always the risk that no one will be in a position to bring proceedings to test the lawfulness of administrative action for obvious illegality or questionable legality."

The present study considers that the English concept of "sufficient interest" may be closest to the system of natural justice, since it is unreasonable to require all litigants to have a direct interest in all the cases before a Court. Similarly, Islamic Sharia offers the concept of "Hesba Claim," empowering any citizen to file a lawsuit based on a compelling interest that benefits the community, family, or religious practices. Interestingly, this concept, though present in Saudi Sharia courts, remains absent from the BoG system and its regulations. [3]

To provide a clearer understanding of the risk associated with not accepting a case before the BoG unless there is a direct interest of the litigant, consider the following examples. The BoG will not entertain any claim against the Ministry of Education if a litigant perceives that certain content in one of the Ministry's books poses harm to his children. The court tends to reject lawsuits of this nature. Similarly, the Board does not accept cases against the Ministry of Municipal Affairs for damages incurred by a litigant due to the garden next to his house, which lacks periodic maintenance by the Ministry. In a specific case, the Board declined a plaintiff's request to compel the

2 De Smith's and others (n 21) 71–72.
3 Abdulmajed Aldehishe, *Shorot Alda'oa, Hesba Claim* (Alukah net 2012) 2–4.

Ministry of Health to open a medical clinic in his village, despite a similar clinic being established in the neighboring village. The plaintiff argued for fairness in having dispensaries in both villages. However, the court deemed that there was no direct interest in the plaintiff's application. Despite the evident significance of having a health center in his village, the court rejected the case without delving into the objective consideration of its importance.[4]

Therefore, an important question may arise from all this: in the Saudi system, where does the aggrieved person with sufficient interest go when he/she wants to sue the administrative authority that harmed him? From a purely functional point of view, the situation on the ground is that everyone who has a case of this kind should raise his claim to the same administrative authority that harmed him? Which, in turn, will present this case to a particular judicial committee within its administrative body and headed by it (such as the committees of public publications, municipal and village committees, and others, which were mentioned in detail in the second chapter of the current thesis), unfortunately, many Saudi jurists also believe that this is the appropriate solution to get out of this vacuum of competence. So in other words, this executive authority will be the opponent and the judge at the same time? Is it normal to accept such reasoning? Whereas in the English system a litigant may take his case to court if there is sufficient interest admissible to the Court. all of this will be analysed in detail in this chapter.

The current study considers that this issue and others related to the issue of standing, which will be analysed in this chapter, are important and should be examined with some accuracy and detail; it believes there are solutions for them within the English system,

[4] BoG decision No. A/5439 in 2015.

and therefore it attempts to highlights the most important reflections, insights, and observations resulting from this comparison, which the study hopes through it will provide a wide scope for learning and improvement. At the same time, the study acknowledges that with regard to some of these insights that the research would like to examine, there are currently some opinions within the English judicial system that are already opposing them; the thesis will review and analyses some of them also. Therefore, there are some challenges that the study needs to take into account.

This chapter is planned in four main sections to facilitate a close analysis of the question. The general meaning, implication, and purpose of standing are described in the first Section. Whereas the second Section will analyse the stage at which courts are supposed to examine the requirement for standing in both systems. Then the thesis will explore the nature of standing in the third Section. Then, the fourth Section will examine the formulation by looking at sufficient and personal interests between the two systems. The study in the fifth Section will address the types of standing. The chapter ends with concluding findings and some important reflections.

X. General Aspect of Standing and its stages of development between the two systems (*Locus Standi*):

"Standing" is a legal term used by Courts to determine the connection between the claim and the claimant to decide whether they have enough and acceptable interest. In general, the requirement of "standing" is fulfilled if it can be said that the plaintiff has a legally protectable interest in the case, or has suffered harm from a specific subject, in other words; if they can prove personal or sufficient interest between them and the case. It is often said that one must complain of a violation of a "legal" right in order to

present the case to appear in court or to request a review of the court's judgment.[5] In the English and Welsh system, Courts usually will not grant permission if that person does not have sufficient or personal interest, while in the Saudi system, the Court will dismiss the case if the person does not have a personal interest.[6]

The current thesis believes that it is essential for the Saudi regulator and decision-maker to be aware of the stages through which the issue of standing in the English system crystallized, and through which they may derive appropriate solutions to convince specialists of the importance of this subject and perhaps find among its lines some good ideas for development. In 1971, the Law Commission in the English system published a working paper proposing the establishment of a single method for obtaining JR.[7] With respect to locus standi, they were of the opinion that a uniform test should be adopted for the various forms of relief available. They pro-posed that such a test should be largely developed, so that any person who was adversely affected by executive action would have standing to have that action reviewed.[8]

In 1976, the Commission proposed its Report on Remedies in Administrative Law. They shortly noted that the law of standing was in a state of growth, and that "any attempt to define in precise terms the nature of the standing required would run the risk of imposing an undesirable rigidity." (Here, the mistake made by the Saudi regulator may become clear when formulating the BoG system, since a precise definition and framework of the issue of standing by which the courts have become somewhat restrictive has been established). Accordingly, the Commission suggested that the

[5] Thomas P Lewis, 'Constitutional Rights and the Misuse of "Standing"' (1962) 14 Stanford Law Review, 433–435.
[6] Vassilopoulos Ioannis., 'Public Interest in Environmental Issues and the Requirement of Standing.' (1997) 76.
[7] The Law Commission, "Remedies in Administrative Law", Working Paper No. 40 (1971).
[8] Janice Tokar, *Administrative Law: Locus Standi in Judicial Review Proceedings* (Manitoba Law Journal 209 1984) 219–223.

standing needed should be "such interest as the Court considers sufficient in the matter to which the application relates."[9]

Although it seems clear that the Commission had planned for its proposals to be enforced in preliminary legislation, the reform was impacted by an amendment to the Supreme Court Rules 88. Order 53 provides for a single application for JR, obtainable only with leave of the court. Rule 3(7) states that: "The Court shall not grant a permission unless it considers that the applicant has a sufficient interest in the matter to which the application relates".[10]

In 1982, the Supreme Court Act 1981 was declared in force. Section 31(3) embodies the provisions of rule 3(7) concerning the "sufficient interest" requirement for JR permission. While enactment in primary legislation overcomes the substantive or procedural problem, it does not guarantee that "sufficient interest" will be diagnosed as introducing a single test for locus standi, nor does it provide much direction as to the substance of such a test.[11]

The thesis argues that denying individuals access to the courts due to a lack of direct standing can raise significant issues that are important to both the individual and society. At its core, the question is whether it is appropriate for a court to deny a person with a meritorious objection against a government administrative decision the ability to challenge that decision on the basis that their rights or interests were not directly affected. In other words, if there is an executive decision that is legally flawed and subject to litigation, but the challenger does not have direct standing and only has a sufficient interest, should the court decline the case? Or does judicial review have a

[9] Law Com. No. 73, Cmnd. 6407 (1976).
[10] Rules of the Supreme Court (Amendment No. 3), 1977, 1955, as am. by the Rules of the Supreme Court (Amendment No. 4) 2000.
[11] J. Griffiths, "*Mickey Mouse and Standing in Administrative Law*" (1982), 41, L.1. 6 at 7.

broader scope that includes maintaining the rule of law? The present study believes that the judicial justice system, through administrative courts, has a constitutional responsibility not only to address individual grievances, but also to monitor legally flawed governmental decisions and maintain the rule of law.[12]

XI. The stage at which standing is relevant.

The stage at which standing requirements are appropriate for examination by the courts varies between the two systems; Whereas English courts may examine the standing conditions both at the stage of permission - as the thesis explained in the previous chapter - as well as at the full hearing, While the standing requirements in the Saudi system will be examined from the start of the full hearing stage as an initial procedural issue, as the BoG does not move to the substance of the issue until the applicant has an acceptable standing requirement at this stage.[13]

Here the thesis would like to clarify that the English system examines the requirements of standing at the permission stage for several reasons - as explained in the previous chapter - including that it prevents abuse and exclude the curious. Still, nevertheless, even if the court accepts the requirements for standing at the permission stage, English courts may reconsider standing requirements during any time of the full hearing, which may result in the court dismissing the case at any stage of the litigation.[14]

Many Saudi jurists believe that the term (direct or personal interest) means that the claimant is the one who benefits from filing the case, and that he has a specific or special interest that distinguishes him from the public interest; The BoG system did not thoroughly address this issue, covering it briefly in two articles. Article 13/B indicates

[12] De Smith's and others (n 24) 71.
[13] Binlebdah (n 5) 200.
[14] R. v. Secretary of State for the Environment, ex p. Rose Theatre Trust Co. Ltd, [1990] 504.

that the administrative courts of the Board can hear cases related to administrative cancellation claims only if the applicant is from "Thwe Alsha'n," signifying a direct link to the case. Similarly, Article 13/C reaffirms the term "Thwe Alsha'n," indicating that compensation claims must be submitted by directly interested parties.[15] In England, on the other hand, Section 31-(3) of the Supreme Court Act has made it clear that the court's consideration of the matter of standing is at the stage of permission, "The court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates."[16]

The current thesis notes that the judges of the English courts do not always have to abide by what is stated in some English legislative regulations, as there is more than one case - as will be mentioned - in which the judges improvise new methods, especially in the matter of the appropriate time to analyse the issue of standing. In contrast, the judges of the BoG always try to follow the regulations to the letter, as the board judges are obligated to examine the issue of standing at the first judicial session and decide on it before moving on to the subject and substance of the case. In the case of *R v. Inland Revenue Commissioners ex p. National Federation of Self-Employed and Small Business Ltd (NFSE),* the Inland Revenue agreed to a special arrangement not to prosecute certain newspaper workers if they agreed to pay all future taxes and use their real names and addresses. The National Federation of Self-Employed Persons and Small Businesses challenged this decision because it was illegal, and all taxes should be collected. The court permitted to proceed but later decided that the Patriotic Union lacked standing. But the appeals court overturned this ruling. Until the appeal reached the House of Lords. The House of Lords overturned the Court of Appeal decision as it

[15] Fahad Al-Deghaither, *Judicial Oversight over Management Decisions. Revocation Mandate before the Board of Grievances* (1998) 111.
[16] Section 31(3) of the Supreme Court Act 1981.

considered that the National Union lacked prestige because it was merely a body of taxpayers.[17] Here Lord Wilberforce says that, "There may be simple cases in which it can be seen at the earliest stage that the person has no interest at all, or no sufficient interest to support the application: then it would be quite correct at the threshold to refuse him leave to apply. The right to do so is an important safeguard against the courts being flooded and public bodies harassed by irresponsible applications. But in other cases, this will not be so. In these it will be necessary to consider the powers or the duties in law of those against whom the relief is asked, the position of the applicant in relation to those powers or duties, and to the branch of those said to have been committed. In other words, the question of sufficient interest cannot in such cases be considered in the abstract or as an isolated point. It must be taken together with the legal and factual context".[18]

In this case also, Lord Diplock says on sufficient interest subject generally: At the permission stage, if "on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case... then there would be sufficient interest and leave should be granted." also, if NFSE[19] could prove a "prima facie case of reasonable suspicion that the board in showing a discriminatory leniency", he would hold that it had sufficient interest. he adds, "if, in the instant case, what at the permission stage was suspicion only had been proved at the hearing of the application for JR to have been true in fact (instead of being utterly destroyed), I would have held that this was a matter in which the federation had a sufficient interest". he concludes that, "It would, in my view, be a grave lacuna in our

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[17] R v. Inland Revenue Commissioners ex p. National Federation of Self-Employed and Small Business Ltd. [1982] A.C. 617.
[18] Ibid. p.763.
[19] National Federation of Self-Employed and Small Business Ltd.

system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped."[20]

The approach in this case (*R v. Inland Revenue Commissioners ex p. National Federation of Self-Employed and Small Business Ltd*) has since been widely adopted. Therefore, in R. v. Horsham JJ., exp. Farquharson, a reporter and the National Union of Journalists, has been regarded as having sufficient interest to seek proceedings to quash an order prohibiting the publication of a report of committal proceedings made by magistrates under the Contempt of Court Act 1981. Moreover, In R. v. HM Treasury, ex p. Smedley, the Court of Appeal, held that the applicant had sufficient interest to challenge the legitimacy of a draft Order in Council authorising payments to the EEC, on the ground that he was a British taxpayer. In R. v. Felixstowe Justice ex p. Leigh, a journalist, was granted standing as a "public-spirited citizen and guardian of the public interest in open justice" to challenge a decision of regional justices that they should have anonymity. In R v Secretary of State for Foreign and Commonwealth Affairs, ex p. Rees-Mogg, a dissident counterpart was allowed 'because of his sincere for constitutional matters' to challenge the decision of ratifying the Maastricht Treaty on European Union. Also, in Dixon's case, the applicant, simply as a resident, was permitted to challenge planning approval to expand a limestone quarry in his locality.[21]

The thesis finds that there are more than one reasons behind the divergence between English and Saudi law of the relevant stage for standing. for example: the various procedures followed when requesting a JR; One can see that there is no independent

[20] Ibid. p. 644.
[21] Qtaifan (n 8) 125–129.

judicial stage for seeking permission in the Saudi system as in the English courts. In Saudi BoG, requirements for access to JR and standing requirements are considered at the beginning of the litigation process; they are examined by board judges and in the presence of all interested parties. Therefore, when the issue of standing or any other condition is examined, all parties have the opportunity to participate in the discussion, which the current study sees as distinct in the Saudi system on the one hand, as it ensures greater justice for all parties due to their discussion of the issue of standing requirements before the judge directly and the possibility of responding to all responses Immediately, but on the other hand, it is flawed by the fact that it occupies the time of the court and the judge with matters that the thesis believes are not fundamental to some extent and may be exploited by some Vexatious litigants (this issue was distinguished by the English judiciary, while the Saudi system did not give it any importance).[22] While in English law, the situation is different. The JR has two separate phases: the authorization phase (permission stage) and the full hearing phase. At the permission stage, it is determined whether or not the litigant has sufficient standing in the case. Noting that in some cases, even after the permission is granted and moves to a full hearing, the court may reconsider the granted permission if a new view formed in the court that the applicant did not have sufficient interest; Then the previously granted permission may be withdrawn.[23]

[22] The issue of Vexatious litigants has been reviewed and dealt with extensively by the English courts, as well as many books and literature have been written in this field. At the same time, unfortunately, there is not a single article or judge opinion on this issue. The current study believes that this issue should be raised in the Saudi system and benefit from the findings of the English system in this regard, because it greatly speeds up the judicial process and reduces the waiting time for litigants, noting that the current thesis did not favour presenting the subject of the Vexatious litigants in this thesis because there is no Similar, whether from afar or near, in the Saudi administrative justice system or the Saudi Islamic Sharia system. Therefore, it is difficult to raise such a topic and compare it with the Saudi system. Hence, the author of this study preferred to be content with referring to this topic only here, hoping that it will be a starting point for a future Saudi researcher perhaps.

[23] Binlebdah (n 5) 202–204.

The study considers that the courts should continue to examine the legitimacy of the decision, even if the litigant's interest shifts from direct to indirect, because the illegal act may continue to harm many other citizens if this aspect is overlooked. Therefore, it is important to consider the broader implications and potential harm caused by the administrative decision beyond the individual litigant's immediate interests.[24]

XII. The nature of standing and its challenges in both systems:

Article 13/B of the BoG Law states that "the BoG shall have jurisdiction to decide the case of objections filed by interested persons against an administrative decision…" From the text of this article, it is clear that those who can submit a request for JR against government decisions must be from the "interested persons", but unfortunately, no other interpretations or definitions of this term were provided either in the system of the BoG and its executive regulations. It seems that the Saudi regulator left the matter to the administrative judge's authority to set his own criteria for the issue of standing. Still, it must be emphasized here that if the person was harmed but not directly and the main people did not claim their rights, here mostly, unfortunately, the judge will refuse to consider the case because he is not one of the interested persons directly. In sum, the aggrieved person in the Saudi system bears the burden of proof that the administrative

[24] It may come to the mind of the reader that it will be more appropriate if the study takes some opinions and discuss some of the ideas that the writer presents with some judges of the BoG; Here, the study would like to clarify that before the start of the current doctoral thesis, the writer had prepared himself about the difficulty of conducting formal interviews with some of the Board judges due to the lack of it in any of the studies before (according to the experience of the thesis writer). Therefore, this was clarified from the beginning through the methodology section regarding the sources and methods that this study will pursue. But after saying all that, and after great encouragement from the supervisors to conduct such an interview, which something that was present in the writer's mind, and he was already looking for. Accordingly, the head of the BoG was addressed by an official letter. When the writer reached the current part of the thesis, he received an official call from the Board, telling him that the directive contained regarding the letter addressed to the Chairman of the Board is that the researcher may find some of the answers he is looking for in the case law presented on the BoG website through judges' opinions. Accordingly, the writer explained to them, via the same phone call, that many of the questions he would like to ask are very accurate, and there is no comment about them through the case law published on the BoG website; unfortunately, they politely apologized. The author will refer to all of this in the introduction to this thesis (under the section: Limitations and Importance).

decision directly harms his personal interest. In fact, it is a heavy burden from the point of view of the current practical thesis researcher, which he sees from a functional perspective and personal experience in the field.[25]

While In England system, section 31(3) of the Supreme Court Act 1981 states that: "no application for JR shall be made unless the leave of the Court has been obtained in accordance with the rules of the court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates."[26]

As this chapter explained in his introduction, de Smith argues that "the policy of JR should encourage, not discourage, the public-spirited to challenge unlawful administrative actions, even if the individuals and groups concerned are not directly affected by those actions." He also claims that "where there are strict rules as to standing there is always the risk that no one will be in a position to bring proceedings to test the lawfulness of administrative action for obvious illegality or questionable legality."[27]

The challenges facing the current study approach through its tendency to (sufficient interest) more than (direct interest) for the previously mentioned reasons can be seen via Sheiman's arguments that highlighted the defects of (sufficient interest); Where he stated that: First, allowing all those who have sufficient interest and not limiting them to those who have direct interest opens the door for more litigants who want to examine the legality of administrative procedures and decisions, which would divert the government from matters of real management and make them focus less on the quality

[25] Article 13/B of the BoG Law.
[26] Section 31(3) of the Supreme Court Act 1981.
[27] De Smith's and others (n 21) 71–72.

of decisions and more on "will the court overturn our decisions or not." Secondly, JR litigation usually applies diverse financial fees, including the cost of providing courts, judges, and other employees, in addition to the cost of providing officials to replace those involved in litigation. Allowing busybodies to seek more proceedings will likely raise the financial costs of JR litigation. Third, it is well known that administrative courts provide an appropriate venue for appealing against government administrative decisions, but the problem that courts face is if some applicants use this platform without having a direct interest, which will increase the number of litigants and will cause more waiting for others seeking proceedings against particular decisions affecting them directly (This matter may constitute to some readers as it contradicts some of the thesis's main arguments, which was about a lengthy litigation period, but the study made it clear more than once that reducing the litigation period should not be at the expense of quality or the individuals' rights and that there should be a balance between them).[28]

The current study would like to clarify the viewpoint of the Saudi system in this regard (which does not agree with it to some extent) through the opinions of some Saudi writers, as it is unfortunately clear from the majority of them, they are persuaded that a strict interpretation of standing is not only essential, but required in JR procedures. Although Article 13/B of the BoG Law defines "interested persons" as those who can pursue the invalidation of executive decisions, but it does not discuss the requirement of direct interests between the applicant and the matter in question in order to grant standing. Most of their opinions are based on the idea that pursuing proceedings without having a direct interest in the subject matter would challenge the courts' traditional role. Some of the Commentators in Saudi Arabia consider that the primary

[28] Schiemann, K. "Locus Standi". Public Law [1990]. 348.

role of JR is to support the rule of law. However, they claim that this function can only be achieved through a judicial process based on established principles, notable among which is the existence of a specific link between the applicant and the matter in question, distinguishing him from other community members. Here, the study considers that all these arguments may have been appropriate for past eras, but they are may not be appropriate for our current situation due to the fact that these strict rules of standing are affecting some of the fundamental rights of individuals required to maintain their essential freedoms and creates a state of uncertainty in the eyes of the public about BoG authorities.[29]

XIII. The Test of Standing in "Sufficient and Personal Interest" Formulations:

Through examining the decisions by the BoG, one can argue that it is a general procedural principle before the BoG that the claimant must prove that the challenged executive decision has caused him prejudice, in other words, that he has to have some legitimate personal interest in the proceedings. It means that the claimant must be able to show the concerned circuit of the Board that the executive decision in question is harmful to his interests. The BoG declared in one of its decisions that: "It is a judicially predominant principle that as a condition to accepting proceedings, regardless of their kind, the parties of the proceedings must have standing. Accordingly, if one of them does not have standing, then it is a requirement that the circuit before which the case is brought disregards and dismisses the proceedings." In another decision, the Board stated, "The plaintiff who is challenging an administrative decision has to be in a distinctive position which constitutes standing, in the sense that he must have a direct

[29] Sheha, A. (2006), *Al-Qada Al-Edary*, (Almaeref Press, Cairo), p. 378.; Hamadh, M. (2004), *Algararat Aledarih wa Raqabh Al-Qada*, (Dar Alfeker Press, Cairo), p.8.; Al-Dugither. (1998), p.98; and see also Basiony, A. (1983), *Welaih Al-qada ala Edary ala Amal Al- Edarh*, (Al- maeref Press, Cairo), p.65. Binlebdah (n 5) 213.

legitimate personal interest." That is to say; the Board requires that interest be "personal" in the sense that the claimant must be separately and directly impacted by the decision challenged.[30]

In the English system, the Law Commission had recommended in 1976 this ‘sufficient interest’ formula in order to allow further development of the law about standing, which they recognised was changing to meet new situations. The wisdom of this advice was shown by the decision of the House of Lords in the Inland Revenue Commissioners case, in which the House made use of the new rule to remodel the law radically.[31]

Both systems require any applicant for JR to have an interest in the subject matter, yet the rules of standing are different from one system to another. While the requirement of sufficient interest is enough in English law to pursue proceedings, Saudi law requires a personal interest to do so. The English law formulation, on the other hand, was created domestically. as the thesis explained before, Prior to the 1978 reform, there were separate rules of standing, and each remedy had a different test. When the Law Commission was asked in the 1970's to explore the procedural aspects of JR, the restrictive formulations of 'legal right', which had mostly been adopted, and the different tests of standing according to remedy sought, were disliked. In its final report, the Commission was impressed by the comments made on its Working Paper that "any attempt to define in precise terms the nature of the standing required would run the risk of imposing an undesirable rigidity in this respect," and accordingly proposed the formulation of 'sufficient interest' to allow further development. The proposed test was

[30] Al-Jarbou (n 1) 354.
[31] The Law Commission, "Remedies in Administrative Law", Working Paper No. 40 (1971).

adopted in Order 53, Rule 3 (7) which was then incorporated into the Supreme Court Act 1981.[32]

It should be noted here that in the Saudi system, the plaintiff does not always have to be the only one in a privileged position to meet the standing condition. In this regard, the BoG considered standing available to the claimant who was in his capacity as a student to challenge an executive act of the Ministry of Education. Therefore, the Board will not maintain the general grievances as sufficient and legitimate grounds for a person to obtain an action before the BoG. In one case, some citizens of a small town brought a lawsuit against the Director of the Municipality of the village, arguing that the Director violated the law and misused his authority in different incidents. The BoG dismissed the case, stating that: " The plaintiffs do not have particular direct interests in their complaint. In fact, their complaint is general in nature. Even if such a complaint is true, it shows that the Director and other employees of the Municipality are neglecting to perform their duties properly. Therefore, the investigating authority over public employees' misconduct is the Supervision and Investigation Board."[33]

Thus, if a person depends on the principle of the promotion of virtue and the prevention of corruption to challenge a certain executive decision without indicating what has been impacted him directly by the decision, the BoG usually will dismiss the case on the basis that the claimant has no direct interest ground that constitutes his legitimate standing. Permitting any person to depend on general grievances to review executive decisions would interfere with effective public administration governance since this right might be abused.[34]

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[32] Wade, H. and Forsyth, C. (2004), pp.678-690; see also Cane, P., (A) (2004). p.64. Binlebdah (n 5) 215.

[33] The BoG decision l/D/F/3 in 1990.

[34] Al-Jarbou (n 1) 335.

It should be mentioned here that the BoG would consider the standing condition to be fulfilled, even if the claimant's interest is purely "moral" in nature. Yet, as mentioned earlier, the interest has to be a direct personal interest. In one of the cases, the BoG stated that "One of the well-established principles in the judicial procedure is that one of the conditions for accepting proceedings is that the plaintiff must have a direct, personal, purely moral, or materialistic interest that has to exist as far as the proceedings exist. The question that might be asked is whether the personal interest ought to be a definite or merely a probable interest. Apparently, one cannot be too sure about the BoG method in this regard; however, by analysing the language of one of the cases that the Board decided, one can see that the BoG is willing to consider probable and future interests to be legitimate interests that satisfy the standing condition and allow the affected person to challenge the concerned administrative decision. The claimant, in this case, were residents in a particular residential neighborhood, challenging the decision of a city municipality that had given an individual a grant to build a building in the same residential area that would be used to conduct marriage ceremonies. The Board, when dealing with the matter of standing, talked about the claimant's probable interest in not having the hall built. Such interest included avoiding the noise that would be made in this hall and the traffic that may happen after establishing the hall. The Board declared that, "Although this harm has not happened to the plaintiffs yet, its taking place is certain.[35]

From a comparative view, each formulation has its benefits and weaknesses at a functional level. The personal interest formulation in the Saudi system may provide judges with straightforward direction, but at the same time, it restricts the judges' discretion powers, which the current study considers to be one of the essential

[35] The BoG decision number 73/T in 1985.

advantages of a liberal and fair judiciary, while the issue of standing is less controversial in England. Still, this study found that some commentators in the English system think that sufficient interest formulation may create cases of uncertainty in the law of standing; there is more than one example where the English courts interpreted the sufficient interest formulation differently in cases that had a similar subject matter and were determined within a short time of each other. This can be observed in the two following cases in which the subject matter and the identity of the claimant were quite similar, but different judges embraced two different understandings of the sufficient interest.[36]

In *R. v. Somerset CC and ARC Southern Ltd, ex p. Dixon*, the understanding of sufficient interest, in this case, was relatively well-developed. Mr. Dixon was permitted access to challenge the grant of conditional planning permission. Sedley J. was of the view that the claimant had sufficient interest and was absolutely entitled to pursue proceedings as a resident concerned about the illegality of the decision complained of, which might affect the natural environment.[37]

While in R. v. North Somerset District Council and Pioneer Aggregates, ex p. Garnet, a JR lawsuit was made by the local citizens worried and active in environmental matters against the extension of planning permission for quarrying at Ashton Court, a big public park owned by Bristol City Council. popplewell J. declined to grant permission to apply for JR on the grounds, inter alia, that the claimant had no sufficient interest in this case. Although they lived locally, and used and enjoyed the park, the claimants were held to

[36] Binlebdah (n 5) 215.
[37] R v Somerset C.C. and ARC Southern Ltd, ex p. Dixon. [1997] J P L. 1030.

be in the identical category as any other regular member of the public and so could not pursue proceedings.[38]

The current study considers that the formulation of the English law regarding sufficient interest, in contrast to the formulation of the Saudi law of personal interest, provides the courts and judges with the opportunity for continuous development and to ensure a certain degree of human justice. Jacobs asserts "English law contrasts with other European systems of administrative law in many ways, but in one respect is certainly more progressive than some others."[39]

XIV. Individual standing:

Although the English administrative judiciary is distinguished from its Saudi counterpart in the ability of plaintiffs to review their cases on the basis of sufficient interest, nevertheless, the most common and least controversial type of standing in the English system is that in which requests for JR seeking to take action on the basis of their personal interests. The range of situations in which individuals may claim to be competent to take action against decisions affecting their interests is so broad and evolving that it is difficult to list them all. However, for example, it is stipulated in English law that parents have the power to challenge the closure or proposed reorganization of public schools on the basis of their children's personal interests.[40]

In the Saudi system, individual interest is divided into two main types. First, they are the civil servants working in the government or the institutions in which the government owns the largest share, and the military employees. in challenging illegal

[38] R. v. North Somerset District Council and Pioneer Aggregates, ex p. Garnet, [1997] J P L 1015.
[39] Jacobs, F. (1999), *Public Law-The Impact of Europe*, Public Law 232, 1999, p.240.
[40] R. v. Secretary of State for Education and Science exp. Threapleton [1988] C.O.D. 102, Qtaifan (n 8) 135.

administrative decisions related to their job affairs, including their appointment, promotion, retirement, transfer, dismissal, punishment, etc.; For example, in one of the cases before the BoG, the plaintiff demanded to compel the defendant (Public Security) to pay the end-of-service gratuity for his work inside the mosque (as a mosque muezzin). The court established that the defendant acknowledged the plaintiff's entitlement to this reward and issued a decision to pay it to him, but the defendant's financial auditor refused to disburse this reward without a convincing reason, as he stated that the reward system does not include granting mosque employees this reward. Here, the court established the plaintiff's entitlement to this award and issued its ruling obligating the defendant to pay the end-of-service gratuity to the plaintiff.[41]

The second type is the interest of other individuals (other than civil servants or military personnel) in challenging illegal administrative decisions affecting their personal interest. For example, in one case, the plaintiff demanded that the defendant's decision that included the suspension of her commercial registration be rescinded. The court found that the defendant granted the plaintiff a license to register a sole proprietorship certificate to participate in cash sales and instalments, and then suspended it after starting work; The plaintiff argued that the finance companies control system did not include revoking valid licenses, only stopping the issuance of new licenses, and used this as a pretext to challenge the cancellation of the instalment sales system after the issuance of the finance companies control system. Subsequently, the court decided to revoke the defendant's decision.[42]

The thesis here would draw attention here to the fact that in the English system, employees of private companies would not, for example, be allowed to bring cases to

[41] The BoG decision number 11648/G in 2016.
[42] The BoG decision number 2617/G in 2017.

the High Court of Justice against decisions regarding their appointment, transfer, etc., simply because the High Court had no jurisdiction under the 1992 Act to hear such pleadings. Also, in England, government employees would not, in principle, be allowed to seek JR against the government as an employer because such claims do not fall within the supervisory jurisdiction of the English courts. But they can do so exceptionally if there is a legal basis, such as if there are legal restrictions on the process of firing employees, which would give the court's jurisdiction to intervene, or when the government, as a matter of public policy, takes action that affects employees in general.[43]

XV. Public Interest:

The purposes of JR based on the public interest in the English system extend from addressing individual or collective grievances, exposing and revising legal principles, and determining the balance of power between state institutions and society. These objectives are grounded in recognized values such as the rule of law, democracy, equality, freedom, authority, expertise, legal justice, administrative justice, rationality, and others. However, the plaintiff here has to be able to point out some "wrong" that fits the precedent, and cannot simply argue that the defendant acted undemocratically or against the public interest. Haddon-Cave J has pointed out: "There is an important public interest in ensuring that the decision as to the final resting place of the former monarch's remains is arrived at in an appropriate manner...the more important the decision, the more important the public good is due process of law." So it can be said here that the public interest is a set of liberal, individualistic, and possibly capitalist

[43] Qtaifan (n 8) 135–136.

interests which through JR of the public interest may have secured benefits to some of the most marginalized persons in society.[44]

In multiple cases, the English Courts have given public interest standing, for example, as Dixon and Rees Mogg cases record. In R. v. Secretary of State for Foreign and Commonwealth Affairs ex p. Rees Mogg case, a resident with a sincere concern for constitutional matters was given standing to challenge the ratification of the Maastricht Treaty on European Union. In R. v. Somerset C.C and ARC Southern Ltd, ex p. Dixon, the court granted standing to a person to pursue proceedings in the public interest. The respondent's submission was that in order to have standing, the claimant needed some form of property or personal interest, which was threatened by the decision. However, this was not accepted. Sedley believed that a claimant for JR did not necessarily need to have a distinct interest in the issue over and above the general interest to see the law obeyed and public duties properly performed. He counted that "there will be, in public life, a certain number of cases of apparent abuse of power in which any individual simply as citizen has a sufficient interest to bring the matter before the court."[45]

The issue of the public interest for litigants in the Saudi system is considered a rare matters that happening before the Courts of the BoG, where it must be proven after fulfil many conditions derived from some jurisprudential phrases within Islamic Sharia, which are not written explicitly, but the administrative judges consider them if they do not conflict with provisions of Islamic law; which means that this public interest must not be restricted or prohibited by the Qur'an and Sunnah. Among those conditions and requirements of a public interest lawsuit." First, this public interest must not conflict

[44] Nason (n 31) 93–97.
[45] R. v. Secretary of State for Foreign and Commonwealth Affairs ex p. Rees Mogg, [1994] 1 All ER 457. And R. v. Somerset C.C and ARC Southern Ltd, ex p. Dixon, [1998] 75 P & CR. 175.Binlebdah (n 5) 229.

with the higher sources of Islamic law. Second, it must be related to the public interest and not directed at particular private interests or groups. Third, the interest must be Realistic, tangible, and within the general principles of Islam. Fourth, the public interest should not conflict with the supreme public interest of the state". Also, some scholars believe that only Islamic Sharia specialists and those well-versed in Islamic law can demonstrate the fulfilment of these conditions.[46]

In one of the cases before the Board, the court dismissed the plaintiff's case because he failed to file his case within the prescribed limitation period according to the rules of pleadings. Then the plaintiff requested to change his case to be on the ground of a public interest, in which he claimed that the time limit required by the rules was and still is in violation of Islamic law, which does not stipulate a limitation period (and this matter from the point of view of the writer of this thesis is logical to some extent and also this topic is circulating within the judicial circles in Saudi Arabia because Indeed, Islamic Sharia did not stipulate the issue of statute of limitations.) Here, the court decided: that the deadlines stipulated by the system of the BoG must be followed before filing a lawsuit does not conflict with Islamic Sharia because there is a public interest that lies behind it and provides stability for the function of government agencies.[47]

XVI. Conclusions and Reflections:

Through the language of BoG decisions, the thesis believes that one of the main purposes of standing requirements in the Saudi system is to limit as much as possible

[46] Al-Jarbou (n 1) 30–31. See in this regard Saad Nasir al-Shathri, Al-Maslahah 'And al-Hanabilah [Public Interest According the Hanbali School of Thought], (Daral-Muslim Nashir wa al-tawzee, Riyadh, Saudi Arabia, 1997), at 23. See also Muhammad Yusof Musa, supra note 52, at 29-31.
[47] The BoG decision number 164/T/2 in 1993.

the citizen's access to the BoG by insisting that only the "directly affected person" can bring a JR claim. Here, the thesis strongly recommends that the BoG reconsider the concept of "sufficient interest" as a basis for filing judicial review applications, similar to its application in the English legal system. This adoption of this concept within the Saudi legal system will encourage government authorities to act more responsibly, provide judges with greater flexibility to make creative decisions, and ensure greater justice for individuals.

The current thesis believes that it may be useful from a functional point of view for the BoG to reconsider expanding the scope of the issue of the public interest in a way that does not contradict the provisions of Islamic Sharia through holding conferences and meetings and discussing this issue extensively because of its importance to the individual, society, and government. It also helps regulators and decision makers to exercise caution when writing regulations and laws, especially if they know that all government regulations and decisions may be subject to JR on the basis of the public interest.

In this context, the thesis author suggests a straightforward amendment to the BoG system, specifically targeting Articles 13/B and 13/C, which outline the requirement of the plaintiff's direct interest. The proposed amendment retains the existing language of these two articles but introduces a simple addition at the end of each, stating that "…The judge presiding over the case may choose not to adhere to the direct interest clause if he deems that there is a sufficient interest linking the plaintiff to the lawsuit and bringing significant benefits." According to the author, the incorporation of such an addition to the BoG system is deemed beneficial for reinforcing the discretionary authority of judges and affording individuals bigger rights, thereby contributing to enhanced justice.

Chapter Six: The Issue of Alternative Remedies

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Chapter Six: The Issue of Alternative Remedies

I. Introduction:

As the current thesis mentioned in some of its parts through the introduction section, JR is the original means of challenging the legality of government decisions. But still, in this chapter, the study would like to clarify that there are other ways through which individuals can obtain their rights and grievance against some government decisions. There are alternative remedies in both countries through which those who some government decisions have harmed can take their right even before the matter reaches the administrative courts.

Through this chapter, the thesis will review and analyse its fourth central argument; the thesis believes the mandatory grievance procedure, which requires individuals to approach the administrative authority that made the decision before initiating a JR proceeding, has several criticisms. The study claims that this requirement is problematic, as it lacks a basis in Islamic law and is primarily designed to benefit government agencies rather than protect individuals' rights.

In the English system, there is more flexibility in the exhaustion of alternative remedies as judges are empowered to determine their importance before bringing the case to court. In contrast, the Saudi system requires the exhaustion of alternative remedies before a judge can accept a case. This means that plaintiffs must follow all alternative procedures and rules, even if doing so may result in irreparable harm or an increased burden on them. From the initial view, the study believes that the principle (mandatory exhaustion of all alternative methods) may be harmful to the complainants. The study aims to highlight this flaw in the Saudi system and analyse the English experience from

this angle to extract the best ideas and valuable perspectives that may improve the Saudi system in this regard.

The current study will also examine one of the alternative remedies available in the English system. Specifically, it will explore the institution of ombudsmen, which the study believes may be beneficial to the Saudi system for reasons that will be discussed later. An ombudsman is an independent worker who handles complaints of mismanagement within public authorities. They issue non-binding suggestions in cases where complaints are supported, in order to provide remedies to individual complainants and improve the quality of public administration, and their services are typically provided free of charge.

The current thesis argues that the English form of the Ombudsman institution is crucial in expediting individuals' access to their rights. However, some readers may assume that a similar institution exists in the Saudi system; unfortunately, no institution plays a comparable role as the Ombudsman in the current Saudi system. Nevertheless, the concept of the Ombudsman has its roots in the Islamic Sharia system, and this chapter will provide a detailed examination of it. Additionally, the study will investigate the feasibility of introducing the Ombudsman institution in a manner that aligns with the cultural, social, and religious norms of Saudi Arabia.

This chapter contains three main sections that aim to provide a detailed study of the doctrine of exhausting alternative remedies before heading to the administrative courts and their practice between the English and Saudi system. The first Section analyses the arguments for and against the exhaustion of the alternative remedies principle in both legal systems including a review of some forms of alternative remedies available. The second Section will examine the ombudsmen Institution between the English and Saudi

system. Lastly, the fourth Section will discuss the most important conclusions and reflections.

II. The Arguments for and Against the Exhaustion of the Alternative Remedies Principle in Both Legal Systems:

Although (compulsory grievance before the administrative authority that issued the decision before filing the case) or the (compulsory exhaustion of alternative remedies) in the Saudi system has several advantages (which the current study will present as arguments against the author's approach in this chapter), there are many criticisms levelled at this type of compulsory grievance.

The exhaustion of alternative remedies in the English system has more details and history than Saudi law. Therefore, in this section, the arguments for and against these alternatives in the English system will be examined first to make them a basis for comparison with the current situation in the Saudi system.

III. In the English system:

In multiple cases in recent decades, the Administrative Court and its precursor have made plain that (in the absence of exceptional occasions) permission to proceed with a JR claim will be refused where a plaintiff has failed to exhaust other potential remedies. In each case, the question is (from De Smith's view) whether the court should exercise its discretion; "it would be both foolish and impossible to seek to anticipate all the elements that may properly influence the court's discretion."[1]

In general, the principle of exhaustion of different remedies indicates that court may resort to the JR remedy, after making sure that there is not an equally suitable and useful

[1] De Smith's and others (n 21) 16–014.

remedy that must be exhausted before proceeding to the JR remedy. This is in accordance with the notion that JR is a remedy of the last alternative. Lord Donaldson M.R. stressed that" ... it is not the practice of the court to entertain an application unless and until all avenues of appeal have been exhausted". While Lewis thinks that "The courts accept that the 'rule' [the requirement to exhaust alternative remedies] is a general one, not an absolute one, and there may be exceptions where an applicant should be allowed to proceed by JR notwithstanding the existence of an alternative remedy".[2]

Furthermore, Wade and Forsyth had taken a more strident view on this matter -from the current study point of view- as they claim that: There shouldn't, in general, be a categorical rule stating that administrative remedies must be exhausted before JR can be granted.[3]

While Cane believes that JR may be rejected on the grounds that (the alternative dispute-settling body) may have more experience on the ground than an administrative court. Also, he sees that in some circumstances, the leading case may raise other cases that are usually considered before the alternative dispute-settling body, not the administrative court. Lastly, he believes that the alternative procedure is likely to be faster than the JR case, which the current study may agree with to some extent.[4]

The thesis here would like to point out here that some English jurists believe that the issue of exhaustion alternative remedies in the English system must be dealt with some caution, as Lewis warned that there are some dangers, at least in the short term when the courts do not apply the principle of exhaustion of alternative remedies accurately

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[2] Binlebdah (n 5) 269.
[3] Forsyth and Wade (n 59).
[4] P Cane, *Administrative Law* (Oxford University Press 2004) 105.

that will place an additional burden on the courts. He believes that in the long term, the courts should set clear guidelines in this regard commensurate with their capabilities.[5]

In the English system, as Moles pointed out, numerous cases have established that the aggrieved party's right to pursue a case should not be denied merely because alternative remedies have not been exhausted. One of the pioneers of this principle was Lord Bingham C.J. in *R v Hereford Magistrates' Court ex p*. Rowlands. In this case, two plaintiffs facing specific charges sought to initiate a JR case after the court dismissed their adjournment request, which they deemed crucial for calling witnesses. Lord Bingham C.J. held that "…Judicial Review was not precluded by the availability of an appeal to the Crown Court or by way of case stated..." In *R v Peterborough Magistrates' Court ex p*., he indicated that prudent to preserve the right to raise the issue of JR for the aggrieved party. Additionally, he added that he believes JR is a crucial constitutional tool for upholding the principle of the rule of law.[6]

In *R (Fisher) v Durham County Council*, the claimant obtained a JR lawsuit challenging a noise abatement notice served on her by the defendant according to (S80-1 of the Environmental Protection Act 1990). The noise abatement notice was linked to involuntary shouting and yelling by the claimant, causing severe pain and sadness to the claimant's neighbors. Under s 80(3) of the EPA, any person issued with a noise abatement notice has a right of appeal to the magistrates' court. The Permission was granted for the JR, but the question that the alternative remedies had not been exhausted was left open for argument. At the substantive stage, Knowles J denied the defendant's argument that remedies should be rejected because an appeal under the EPA offered

[5] Richard Moules, '*The Exhaustion of Alternative Remedies: Re-emphasizing the Courts' Discretion*' 354.
[6] Ibid 356-357.

the claimant an alternative remedy. There was some uncertainty as to whether the statutory appeal would have permitted the claimant to bring all her grounds of complaint. But Knowles J's leading cause for exercising his discretion to hear the claim appears to have been that forcing the claimant to re-litigate under the statutory appeal process would have caused an unforgivable delay to the determination of what he characterized as a "troubling case".[7]

The study believes that in the English legal system, the arguments against exhausting the requirements of alternative remedies are primarily based on the rule of law principle and the desirability of allowing individuals to obtain a prompt and straightforward ruling without having to navigate a multitude of administrative procedures to challenge the legality of administrative acts. Conversely, the arguments in favor of exhausting alternative remedies promote orderliness in the administrative procedure, even in cases involving mistakes of law where the Court lacks expertise in the relevant subject matter. The underlying rationale is that if a case has passed through a proper administrative process and been dealt with appropriately (which includes several steps by which alternative remedies are exhausted), the Court of Review will need to intervene only narrowly, reducing the number of review cases and allowing the Court more space for review.[8]

IV. In the Saudi system:

The thesis argues that the condition for exhausting alternative remedies lacks the basis for Islamic law, and it is untrue that the rights of individuals in an Islamic country can

[7] *R (Fisher) v Durham County Council* [2020] EWHC 1277. This case was excerpted from an analysis by Jonathan Auburn QC, a barrister at 11KBW.
[8] Beatson, J., "Prematurity and Ripeness for Review" in Forsyth, C and Hare, I, The Golden Metwand and The Crooked Cord. (1998) Oxford University Press. p. 231. Also, Binlebdah (n 5) 303.

be lost for reasons not approved by Islamic law itself, and that the obligatory grievance is designed more in government agencies' interest than in preserving individuals' rights.

Additionally, the author regards the primary aim of the mandatory grievance procedure as irrational and peculiar. It is argued that its intention is to give the administrative leader an opportunity to review and potentially modify their previous decisions. The study reminds readers that an individual's rights are usually taken by force if there is a wrong administrative decision against them; it is not legally or customarily correct that individuals beg for their rights from the administrative official. Compulsory grievance within the Saudi administrative judicial system usually leads to three scenarios:[9]

1- While the administrative head has the power to accept a grievance, uphold the complainant's right, and revise the initial decision, these places the complainant in an embarrassing situation. It is the administrative official who should be held accountable for their erroneous decision.

2- The complainant may meet with the administrative official and discuss the obligatory grievance directly in front of them. However, this type of grievance may lead to increased resistance by the administration officials, and sometimes, they may engage in illegal behaviour.

3- The grievance to the same administrative makes them an arbitrator and an opponent simultaneously, which contradicts the principles of legal grievance.

Many writers and jurists interested in this field emphasized the importance of the idea of exhausting alternative remedies, as Al-Wakeel and others have noted that the use of alternative remedies, in general, can achieve several goals, including:[10]

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[9] Mohammed ALwakeel, *Altathalem Aledari Wa Maslak Aledrara Alejabe* (2008).
[10] ibid 46–50.

1- Ending disputes through the administrative way in its early stages, in a way that is easier for people, by reversing the appealed decision if the administration considers that the complainant is right to appeal.

2- Reducing the burden on the judiciary.

3- Resorting to obligatory grievance would reduce the chances of conflict between the individual and the administration, and show the administration, in the event of its acceptance of the grievance, the appearance of a person who respects the law and works its provisions, even if this results in withdrawing a decision issued by it, to more cooperation between the administration and individuals, which achieves the public interest.

4- Finally, the obligatory grievance is a crucial step in achieving the interest of the judicial facility, as it reduces the number of cases and relieves the burden on the court system, which is often overwhelmed with an increasing number of cases. The administrative grievance process, and particularly the obligatory grievance, is essential for the amicable settlement of administrative disputes, which can help to prevent these disputes from escalating to administrative litigation. This ultimately benefits everyone and serves the public interest, as justice can be achieved more quickly.[11]

The thesis emphasizes that all the previous advantages of exhausting alternative remedies are distinct and consistent. However, there is a difference in how this concept is applied in practice from a functional point of view. If alternative remedies become an obligatory condition for litigants, additional conditions are imposed on them. The thesis raises an important question here: If government departments are confident in their decisions and courts are sure of the quality of their judges, why not then make it

[11] ibid 50.

optional for litigants to choose the easiest, best, and least time-consuming option for them - whether by pursuing alternative methods or resorting to the court for review?

In the Saudi legal system, the BoG Law of Pleadings prescribes the doctrine of the exhaustion of the administrative remedies within the right time and through the right procedures. In Paragraph A of Article 13 of the BoG law stated that both the civil servant and the military employee must raise their grievance to the Ministry of Civil Service or the military authority to which the employee belongs within a period of ten years from the date the alleged right arose before rise his case before the BoG. If the decision of the Ministry of Civil Service or the military authority to which the employee belongs is issued rejecting the grievance, the case may be filed to the Administrative Court within sixty days from the date of becoming aware of the decision issued for a rejection or if these sixty days have passed without giving a decision in his grievance or during the remaining ten years mentioned in Paragraph A of Article13, whichever is longer. Unless there is a legitimate excuse that prevents the lawsuit from being filed during this period that can be proven before the Administrative Court. Also, the decision issued by the Ministry of Civil Service or the military authority to which the employee belongs must be justified.[12]

In one of its decisions, the BoG dismissed the applicant's case on the grounds that he did not comply with the procedural conditions of exhausting alternative remedies. The Board decided that: "The concerned individual is required prior to commencing his case before the BoG to apply for internal administrative review, under which he challenges the administrative decision before the administrative authority, which took

[12] Article 8 and 13 of the Law of Pleadings before the Board of Grievances.

the action...He must take such an action in the proper sequence time limitation...his case will not be entertained on its merit: it will be dismissed."[13]

The Board has precisely used the procedural requirements stated in Article 8 of the Rules of Pleadings before the BoG, in which the Board denied the argument of the complainant, who failed to comply with Article 8 procedural requirements. The Board held that: the procedural requirements that are required by the Rules of Pleadings before the BoG to be followed before filing the lawsuits do not conflict with the Islamic Sharia because there is a public interest lying behind it and super ceding the interest of any individual. It provides stability to the function of the governmental agencies."[14]

It is worth noting and emphasizing here that there is significant consequence for the failure to comply with the issue of exhausting alternative remedies in the Saudi system. One of them is that the defective administrative decision will become immune from JR even though it may include grounds that make it against the rule of law; and this is what the current study sees it as a major flaw in the Saudi administrative system, which could have been avoided if there were exceptions to the requirement to exhaust alternative remedies, either for plaintiffs or by giving greater powers to the board judges, because when looking at what is happening on the ground in the English administrative judicial system, the author does not find any indication that the defective decision can become immune completely, perhaps this is due to the idea of non-compulsory exhaustion of alternative remedies. In this regard, the BoG said about its decisions: Failure to comply with the exhaustion of alternative remedies stipulated in the rules of pleadings when filing a lawsuit and complying with it, will lead to the dismissal of the lawsuit, which

[13] The BoG decision number 25/T/2 in 1994.
[14] The BoG decision number 164/2 in 1993.

means that the contested administrative procedures become immune to nullification, and therefore they are as effective as any Legal action.[15]

The study finds that the alternative remedies available under Saudi law are fewer in number and more stringent compared to English law. However, they are mandatory. The thesis believes that making the exhaustion of alternative remedies optional, rather than mandatory, or granting certain exceptions to Saudi administrative judges in assessing cases that merit the benefit of alternative remedies, may be necessary and beneficial.

The thesis also concludes that the Saudi system continues to emphasize the importance of exhausting alternative remedies. This approach aims to provide the administrative body with the chance to revaluate its decisions and simultaneously decrease the number of cases brought before the Board. Here the study hopes that by reviewing the advantages and disadvantages of mandatory exhaustion of alternative remedies, the English experience, and the opinions of English commentators in this regard, that the subject may be re-examined and made optional as at least a preliminary solution.

V. The Ombudsmen Institution between the English and Saudi system:

Under the Saudi system, administrative bodies typically prioritize the legality of executive decisions and procedures, without providing an avenue for individuals to lodge complaints against unjust or inequitable decisions made by state authorities. From the thesis's initial view, transferring some of the advantages from the English Ombudsman institution to the Saudi system is considered a rational solution to fill some of gaps regarding these unjust decisions. Hence, this thesis would like to explain to the Saudi decision-maker some of the advantages of the Ombudsman in the English form,

[15] Al-Jarbou (n 1) 362–363.

with the caveat that there is likely to be some resistance to the introduction of the Ombudsman in the Saudi system, so this issue must be dealt with some precision.

An ombudsman is an independent official who addresses grievances related to mismanagement within public authorities. They provide non-binding recommendations to support complaints and offer remedies to individual complainants, ultimately working to improve the quality of public administration. The ombudsman's role is in many subjects, including enhancing services and standardizing internal complaints procedures in public authorities. It is primarily free, so it has been embraced as a mechanism that provides residents with an affordable path to justice and improves the quality of management's procedures. The first ombudsman in the English system was formed by the Parliamentary Commissioner Act 1967. since then, several other ombudsmen have been established. They cover most regions of public management across England, as the direction of ombudsmen systems was towards constructing a one-stop-shop ombudsman. The connection between the individuals and the government, and the effect of bureaucracy on individuals' lives, are the critical features of ombudsmen's functions. There is some controversy about the proper combination of roles for the ombudsmen, but the primary function of the ombudsman is to handle individuals' grievances against the administration. Nevertheless, the role of the ombudsman has been expanded over the years to cover other functions, including improving the quality of public management and human rights protection.[16]

One of the purposes of the ombudsman is to remedy the unfairness caused by the administration. Although there is no clear condition in the ombudsman principle

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[16] Budur Alnefaie, '*The UK Public Sector Ombudsmen: A Doctoral and Socio-Legal Analysis on the Possibility of Transplanting an Ombudsman into Saudi Arabia Inspired by the UK Model'* (University of Glasgow 2021) 12–13.

regarding the types of remedies that the English ombudsman can suggest, it can offer several remedies such as apology, economic compensation, and review of a decision or the procedures. The suggestions made by the ombudsman are not applied by force. The common view among legal scholars and ombudsmen themselves is that the lack of enforcement power is one of the essential elements of an ombudsman's work, as it allows the office to construct a cooperative connection with public management, and, therefore, make a more significant contribution in the executive justice system. This element has also been considered as a protection against any improper intervention in management that might reach high policy matters.[17]

So, in general, the thesis believes that the ombudsman follows an inquisitorial method, in the sense that it has the power to get official information relevant to the claimants, and to interview the plaintiff and any public servants involved in the complaint. On the ground, the ombudsman can use formal examination or informal processes to resolve complaints. By evaluating the English ombudsmen's performance, the study also thinks that the ombudsman has wide freedom to achieve its function and goals; this freedom can be seen by examining the emphasis of the ombudsman's work and the methods used to manage the institution's work over the years.[18]

A number of commentators and jurists believe that over the past five decades of the ombudsman's existence in the English system, it has improved administrative justice, and given citizens a cheap and easy way to complain against the administration authorities. As well as providing redress for people's complaints, the government sector ombudsmen in the English system have, on several events, highlighted systemic

[17] ibid 180–181.
[18] DC Rowat, *The Suitability of the Ombudsman Plan for Developing Countries. International Review of Administrative Science* (University Press of America 1984) 207–211.

failures by handling group complaints, or, as Harlow and Rawlings define it, conducting a "Big Inquiry". In this type of situation, the ombudsman groups together a number of similar complaints and runs one investigation for them, in a way that it would be difficult for other remedial mechanisms to do. The ombudsmen in the English system consist of several ombudsmen at the national and local levels. According to Harlow, the English system has "accumulated a plethora of public ombudsmen, who operate in rather different fashion under different statutory regimes." For example, there is the Parliamentary and Health Service Ombudsman, whose function is to examine complaints about the English system's central government branches, non-departmental bodies, and NHS services in England, in terms of the Parliamentary Commissioner Act 1967 and the Health Commissioner Act 1993.[19]

The investigations of ombudsmen are not judicial in nature; thus, ombudsmen's investigations are not adversarial, as are proceedings in the courts, and there is no right of intervention for the plaintiffs. The process of ombudsmen's investigations is not formal, and the ombudsman can invite the complainant and the government body concerned in the investigation to submit information (Law Commission, 2010). Typically, ombudsmen recommend a variety of remedies that aim to promote good governance, including urging administrative agencies to acknowledge errors, issue apologies to the aggrieved party, review and enhance their services and operations, and provide financial compensation for losses caused. Ombudsmen actively support initiatives that emphasize promoting good governance, encouraging government agencies to adopt best practices and improve transparency, efficiency, and responsiveness to citizens' needs. They also take a proactive role in identifying potential issues before they escalate, offering guidance to government departments to

[19] C Harlow, *Ombudsmen in Search of a Role. The Modern Law Review* (1978) 446–454.

address challenges and enhance overall performance. This proactive approach is facilitated by increased cooperation and consultations among government agencies, ombudsmen, and stakeholders, fostering a culture of openness and collaboration. Ombudsmen's dedication to promoting good governance contributes to a culture of continuous improvement within government agencies. Additionally, they may engage in capacity-building activities to empower agencies with the necessary skills.[20]

One of the ideas that preoccupied the writer of the current thesis is the idea of overlap or conflict of jurisdiction between the remedies of the Ombudsman and the JR. In *R. v Commissioner for Local Administration Ex p. Croydon LBC*, one problem was at stake in this case regarding whether the Ombudsman had accurately exercised a widely discretionary power to investigate the case, despite the availability of a judicial remedy of JR that would have provided more protection for the people that were criticised in the Ombudsman’s report. On this issue, Woolf LJ acknowledged that the Ombudsman’s discretion meant that "the courts do not have sole jurisdiction...the Ombudsman had exercised her discretion appropriately and found that the fact that JR had been available could not be taken to imply that the Ombudsman should refuse the investigation…to do so would lead to an absurd position of complaints to an ombudsman never being eligible, as there is almost always overlap in the jurisdiction of ombudsman schemes and JR...that being the situation, a choice had to be made, and by law the decision as to whether or not to pursue an investigation despite the apparent existence of a legal remedy was the legitimate discretionary power of the Ombudsman..."[21]

[20] Alnefaie (n 288) 77–80.
[21] In R. v Commissioner for Local Administration Ex p. Croydon LBC [1989] 1 All E.R. 1033.

The previous analysis reveals that the decisions of the Ombudsman lack enforceability, which is a notable characteristic that sets the Ombudsman apart. However, from a research standpoint, a question arises regarding the degree to which the English judicial system would consider and uphold the Ombudsman's decisions if they lack enforceability. There is generally a leading case in which the courts establish the basics of the position that should be adopted when reviewing ombudsman systems. The lead case is *R v Parliamentary Commissioner for Administration ex p Dyer*.[22] In which it was stated that, after all that was said in this case, the Court could not be lenient and interfere in estimating the size of the discretionary power that the Ombudsman possesses, and that the Legislature has clarified this matter upon its acceptance of the functions and powers of the Ombudsman. It is worth noting here that this case was followed by many explanations of the legal status of the Ombudsman and the courts' view of defining the powers of the Ombudsman. Kirkham and Allt indicated that "It is for the OIA ombudsman in each case to decide the nature and extent of the investigation required having regard to the nature of the particular complaint and on any application for JR the Court should recognise the expertise of the OIA ombudsman" they add "the Court should treat a decision of the Financial Ombudsma Service with respect and give it a reasonably generous margin of appreciation in order to reflect the particular expertise which the Financial Ombudsma Service has and which he will make use of in reaching any conclusion."[23]

Undoubtedly, most of the literature on the ombudsman in the English system has examined the organization from a non-religious perspective. Nevertheless, in the Saudi system, where the primary sources of Islam (the *Quran* and the *Sunnah*) are the

[22] R v Parliamentary Commissioner for Administration ex p Dyer [1994] 1 WLR 621.
[23] Richard Kirkham and Alexander Allt, 'Making Sense of the Case Law on Ombudsman Schemes' [2016] Journal of Social Welfare and Family Law.

constitution of the government, any legal opinion or organization must not contradict the directions of Sharia regulation. Thus, the thesis argues that any proposal to introduce an ombudsman in the Saudi system must be discussed in a religious context to ensure greater acceptance by the Saudi decision-makers; The reason for this is that implementing an ombudsman, akin to the one in England, is not a matter of simply adding a legal provision to an existing system. Instead, it requires the establishment of a comprehensive entity with multiple branches.[24]

As the Saudi system does not currently have an Ombudsman, the study aims to demonstrate the potential for its implementation in an Islamic country such as Saudi Arabia. To achieve this, the study examines the presence of an Ombudsman in another Islamic country that shares similar religious origins and principles of the Qur'an and Sunnah. Despite this country not being part of the Saudi regime or England, the writer makes an exception due to the topic's importance and the lack of any prior judicial applications of an Ombudsman in the Saudi system. The first Ombudsman in the Pakistani system was established in 1983; they called it (the Federal Investigator) or (Wafqi Mohtasib). Hussain noted that the Pakistani Ombudsman "has proven to be resilient and has lived up to his reputation in the eyes of many people in the country…These Ombudsmen are also seen as strong accountability mechanisms, although there is scope for further improvements and achievements." Although the legal roles of ombudsmen in Pakistan include dealing with individual complaints and investigating the systemic roots of mismanagement and corruption, the Ombudsman has focused on some practical parts but without making any recommendations regarding addressing the roots of corruption in some government departments and the

[24] E Van Eijk, *Sharia and National Law in Saudi Arabia. In: Jan Michiel, O., Ed. Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (2010) 140–179.

causes of unfair decisions. It was also noted that in the Pakistani system, there are some concerns about the independence of ombudspersons in aspects related to employment and funding. The present thesis holds that the idea of an ombudsman can be considered to some extent compatible with Islamic law when viewed as a modern institution for the application of Islamic doctrine from the perspective of the "Hisbah doctrine in the Islamic Sharia law."[25]

The idea of Hisbah throughout the ages has been a practical form derived from the *Quran* and *Sunnah*, advocating for good deeds and prohibiting evil ones. The Hisbah doctrine serves as a mechanism to promote social justice and general welfare. The term "Hisbah" is derived from an Arabic word signifying "accountability" or "responsibility." In the context of Islamic law, the Hisbah doctrine traditionally involves appointing a public official known as a "muhtasib," responsible for maintaining public morals and ensuring adherence to Islamic principles in economic and social matters. Historically, the muhtasib plays a crucial role in monitoring market activities, preventing fraud, enforcing trade regulations, and addressing issues related to public morals. Additionally, the Hisbah principle aims to maintain a just and moral society by preventing wrongdoing, protecting individuals from harm, and promoting economic justice. The Hisbah institution developed over the centuries; the scope of the institution and its functions of its head (i.e., the muhtasib) were gradually defined. However, historical and jurisprudential studies of the institution show that its scope never remained constant, as Islamic societies applying this doctrine differed in their systems and faced various problems. The nature of steps taken by Hisbah officials continued to change, and duties performed by employees of the Islamic State through

[25] SO Olalekan and NS Mohamed, *Ombudsman (Muhtasib) in Business Regulation: A Cross Cultural Analysis* (Journal of Islamic Thought and Civilization 2017) 18–40.

the Hisbah institution were sometimes transferred to the judiciary and other times to the police. One of the crucial functions of the Hisbah pertinent to the -current thesis- was its concern with preserving the public interest by curbing wrongful practices; The muhtasib defends the rights of weaker individuals of the society against potential government abuses. Here, the thesis believes that, despite originating from different legal traditions, the Hisbah principle and the ombudsman concept share some common goals, such as ensuring justice, protecting individuals from injustice, and holding public officials accountable. Both mechanisms aim to address grievances, promote ethical behavior, and contribute to public well-being. While the Hisbah principle is deeply rooted in Islamic jurisprudence by emphasizing moral and public interest aspects, the concept of the ombudsman has a more global application by focusing on administrative justice and accountability within the context of modern governance systems.[26]

The current study believes that the ombudsman institution in its English form is important to speed up individuals' access to their rights and that the absence of any party within the Saudi system that plays the role of ombudsmen is an injustice in itself to individuals.

VI. Conclusion and reflections:

This chapter throwed light on the requirement of exhaustion of alternative remedies for access to JR, in both English and Saudi law, and examined the fourth central argument of the thesis that the mandatory grievance procedure in the Saudi system has several criticisms, lacks a basis in Islamic law, and is primarily designed to benefit government agencies rather than protect the rights of individuals. The study concluded that the existence of an alternative remedy in the English system does not necessarily mean that

[26] Safir Akhtar, '*The Institution of Ḥisbah and Demand for Its Revival*' (2009), 89–104

the court does not allow JR before exhausting the alternative remedies. The thesis proved this by reviewing a number of cases in which the English courts gave permission before exhausting alternative remedies, for reasons that the judge of the case considers convincing. In contrast, the study found that the Saudi system considers the procedures for exhausting alternative remedies mandatory before filing a request for JR before the BoG, through which they hope to give the administrative body the opportunity to reconsider its decision.

The study finds that in the English system, the arguments against exhausting the requirements of alternative remedies are mostly founded on the rule of law principle, and the desirability of allowing an individual to obtain a straightforward ruling without delaying and without jumping a number of administrative procedures of action on the vires of administrative acts.

The study acknowledged in more than one place during this thesis that there is a kind of inefficiency or lack of justice in some government administrative decisions and that the individual who has suffered from the unfair management decisions may not have an appropriate tool to complain and obtain compensation; therefore, the examination of the roles of the Ombudsman mentioned in this chapter explains why the institution of the Ombudsman may solve some of the problems that exist in the Saudi administrative justice system and may provide a reasonable convincing remedy for the aggrieved persons.

The study found that the ombudsman can suggest several sorts of remedies, including an apology and financial compensation. Although ombudsmen's suggestions cannot be executed by force, there is a widely held opinion that this enables the ombudsman to launch a collaborative relationship with administration bodies.

Chapter Seven: The General Conclusion and Reflections of the Thesis

In conclusion, it is crucial to offer some reflections and recommendations that could enhance the process of judicial review in the Saudi administrative judicial system. Also, the hope here is that these reflections and suggestions will provide insights that will lead to some beneficial changes that will speed up the Saudi JR procedures and make them clearer and more flexible. This study has examined the law of JR in the English and Saudi legal systems, concentrating on four main issues: the ground of challenges, the issue of time limits, The Issue of Standing, and the issue of Alternative Remedies.

In terms of the constitutional basis of JR in both legal systems, the thesis found that the constitutional provisions underpin Saudi Arabia's justice system in the BoG is to only ensures that decision-makers are acting within the scope of their powers as laid out by enacted laws and regulations of the legislative authority, and that the BoG judges are required to adjudicate in accordance with statutory laws if these laws do not conflict with the provisions of the *Quran* or the *Sunnah*, while in the English system the constitutional justification for JR is based on the Ultra Vires principle, which is based on the idea that the power granted to the administration must be exercised within the limits of the power delegated to it by the legislature, unless the administration complies with this requirement, it will be deemed to be acting outside of its jurisdiction.

The study's findings indicate that it is impossible to find a single decision within the Saudi system where the Board of Grievances judge acknowledges that the administration's decision was made in bad faith. This is because the Board of Grievances does not treat bad faith as a distinct ground for appeal and instead evaluates

it under the scope of improper purposes. Perhaps this is due to the Board's assumption that ministers act in good faith and represent the role of the King in their ministries. However, the thesis challenges the accuracy of this assumption based on the reasons outlined earlier.

Regarding the thesis first central argument, the research revealed that codifying the grounds of challenge in the Saudi system has affected the administrative courts' powers to review administrative action, as they cannot interfere unless there is a provision within the applicable laws or regulations that expressly indicates that the executive decision is illegal. The strict regulations governing administrative courts in Saudi Arabia have caused claimants and lawyers to refrain from submitting requests before the Board of Grievances unless they are certain that a legal text expressly states that the decision is illegal. This thesis has shown that this approach may contradict the principles of the Islamic Sharia system, which is the highest law in the Kingdom of Saudi Arabia as outlined in the Basic Law of Governance. The thesis concludes that the English administrative court's more flexible and broader basis for grounds of challenge aligns more closely with the spirit of Islamic law than the courts in Saudi Arabia themselves.

The thesis has shown that the dominant test approach for mixed motives is applied in English courts, whereas such decisions are often overturned in the Saudi system. The Saudi system's trend is not positive in this regard, as the BoG invalidates almost all decisions with mixed motives, citing the Islamic jurisprudential rule that "what is built on falsehood will eventually lead to a false decision." However, the thesis has

demonstrated that this argument is weak and lacks merit. Therefore, the thesis suggested that it would be preferable for the Saudi decision-makers to reconsider the issue of the dominant test, as Saudi law does not draw a strict line between issues of legality and merit as is generally practiced in English law. The discussion came to the conclusion that when raising the question of mixed motives, the BoG should consider the dominant test approach as in the English language system.

The thesis suggested that the Saudi Administrative Court should adopt a more active role in investigating the factual reasons behind administrative decisions, rather than simply confirming their existence or absence. This could include utilising methods such as listening to witness testimonies, appointing expert committees, and conducting site visits, based on the experience of the English courts in this regard. By doing so, the Saudi system could enhance its ability to ensure that administrative decisions are based on accurate and reliable information.

The thesis revealed that the Saudi system does not involve itself in scrutinising administrative decisions based on unreasonableness or proportionality, except in cases where there is a statutory provision allowing it. However, the thesis raises the question of when the Saudi administrative judge will be liberated from the limitations imposed by the BoG system and be empowered with the rights stipulated in Islamic law and the basic system of governance. The study concluded that the administrative judge should be given the power to examine administrative decisions based on the grounds of disproportion or unreasonableness, even if there is no legal text that allows him to do

so; there is a great deal of space for learning for the Saudi system from the English system in this regard.

As regards the unreasonableness as a ground of review in the English system, the study found that it is a straightforward concept, based on sound constitutional principles for dealing with a residual class of clearly bad decisions and authorises the courts to have to make a secondary decision, leaving the preliminary decision on the merits of the matter to the public authorities, While the thesis has shown that it is almost impossible in the administrative court in Saudi Arabia to overturn any decision based on unreasonableness, as long as the decision is within the limits of its authority entrusted to it by law. The study examined several BoG decisions in this regard and unfortunately concluded that the Saudi administrative judicial system does not scrutinize administrative decisions based on the criterion of unreasonableness; the research stressed here that this issue should be paid attention to and benefit from the experience of the English judiciary in this regard and suggest that a window will be open here in the subsequent modernization of the BoG system, by allowing the BoG judge to examine administrative decisions on the ground of unreasonableness even if in narrow limits.

As for issues of unreasonableness and proportionality as a basis for appealing administrative procedures, the discussion shows that the Saudi system does not have an exact equivalent to the unreasonableness test, which is commonly applied in the English system. Also, the thesis finds that the BoG does not apply the test of proportionality on the discretionary power exercised by the administrative bodies, yet

it imposes a limitation that the body must not misuse its discretionary authority. The study concluded that the BoG was not correct in preventing itself from reviewing such decisions, and giving the administration the full right to issue some unreasonable decisions as long as it did not violate the legal regulation, claiming that the government had more significant experience and knowledge in this field.

The study has demonstrated that there is an apparent weakness in paying attention to the rules of natural justice and the rules of injustice by the BoG, and it shows that there is great importance in studying the rules of natural justice adopted by the English courts, where the English judiciary practices and applies the principles of natural justice in its broadest sense. Also, the current study strongly criticizes the Board for not using these rules already approved by Islamic Sharia when reviewing decisions of government activities unrelated to disciplinary decisions. The thesis revealed that the BoG's review of administrative decisions solely based on the extent to which the administration adheres to rules, laws, and regulations without regard to the rules of fairness is in itself unfair to many individuals who claim their rights guaranteed by the Islamic Sharia system; An opportunity must be provided for the individual to participate in the decisions affecting him and to promote the quality, accuracy, and rationality of the decision-making process and that it is necessary to ascertain whether the power is exercised correctly, and that decisions have been taken within the scope of justice and power granted.

The comparison of grounds for judicial review in both countries revealed that Saudi law is more restrictive compared to English law. While Saudi law has limited grounds

for review, which allow courts to intervene only if an administrative action appears to be unlawful, English law offers more flexible and broader opportunities for establishing grounds for review. Therefore, the thesis concluded that the Saudi system is more stringent in practice, which highlights the need for greater flexibility and broader grounds for review in the Saudi administrative judicial system.

The study here found that the BoG was committed a significant fault regarding not applying some Grounds, especially: the test of proportionality, the rules of natural justice, and rules of fairness; he has empowered the administration an important power to issue decisions without giving itself the jurisdiction to review them on the grounds above, by claiming that the government had more significant experience and knowledge in this field, and this is unfair to many individuals who demand their rights guaranteed by the Islamic Sharia system. Because of that, The thesis had proposed that an additional paragraph be added in the BoG law in Article 13/B, in which" the BoG judge has the right to accept the grievance submitted to the Court against any governmental institutions based on the grounds of fairness or the rules of natural justice. The defendant can challenge it before the Administrative Court of Appeal. If the appeal is rejected, the Appeals Chamber to which the case is referred must refer it to the Supreme Administrative Court, whether the defendant requested it or not. Then, If the Supreme Administrative Court approves this decision, the ground of this case in which the decision is based becomes a judicial precedent presented in the booklet of case law to be published annually according to the statements of the Chairman of the BoG. This will improve the work of the BoG Courts and increase the trust between individuals; also, it will lead to reducing the lengthy litigation period.

As for natural justice, the study showed that it is a principle that is not practiced in Saudi law except within narrow limits and in a less developed way than its English counterpart, and that the Saudi administrative justice system has certain doubts about it and about proportionality as well. The thesis suggests that steps be taken to enhance the judicial process towards detection and analysis Issues of proportionality and judicial justice being a promising matter in the Saudi system.

The thesis' conclusion highlights the adverse effects of the rigid codification of challenge grounds in Saudi Arabia on Islamic legal identity, as this codification lacks inspiration from Islamic jurisprudence and regrettably applies in an Islamic country, portraying Islamic jurisprudence as inflexible and incapable of accommodating modern judicial changes. The study found this portrayal to be inaccurate, as Islamic jurisprudence is comprehensive and integrated. Therefore, the thesis recommends that future research on this topic should prioritise exploring this aspect in more detail and giving it greater attention.

Regarding the thesis second central argument, which was about the requirements of time limits, the thesis found that the position of Saudi law is more complicated by the statutory ten-year periods, which the study considered too long and prevented the courts from developing future plans that can be implemented, and since Saudi Arabia is a country that is regarded as a large country to some extent, many areas are considered remote or on the borders; the Plaintiffs in those areas usually delay going to administrative courts due to the long distance. The thesis showed that one of the plans

of the BoG is to open courts in those areas, but the issue that continually appears on the surface is that these new courts in those areas become overburdened with a significant number of JR applications, which most of are weak or ill-founded due to the limitation period of ten years that enables them to do so; the thesis suggested that if the period is somehow less or if the Courts requests submitting the applications promptly as is now done in the English system, the plaintiffs here might become more serious, and weakly-founded cases may be reduced.

Also, regarding the JR time limits, the study found that, in general, the current time limit in England is somehow exaggerated in shortness, while the situation in the Saudi system is so extended; the study thinks that it is beneficial for the Saudi system to take some insight from the English system in this field but by setting reasonable time periods that are commensurate with the Saudi system, and takes into account the balance between considerations of certainty and the necessity of the right to access JR.

Concerning the issue of the promptness principle, the research demonstrated that this principle is not yet been known in Saudi law; while JR applicants in English law must always act promptly. The thesis shows that applicants in BoG have a right to seek litigation at any time within the ten years period. The study stressed that this issue deserves review by the Saudi decision-maker for the reasons mentioned during this topic.

In respect of the permission stage, which applied within the courts of the English system. the study shows that In Saudi law, the requirements for access to JR, including time limits, are examined at the outset of the litigation process; judges of the Board and

in the presence of all parties involved examine them. Whereas in the English system, it is usually examined at a separate stage called (the permission stage). The research found that the approach of the permission stage in English is set to prevent abuse and exclude busybodies. Through analysing the permission stage, the thesis clearly found the distinct powers that English courts have, concluding that the Saudi system can benefit from some of this idea's features. The study here also shows that it is not interested in the history of the permission stage, or the method of its application in the English system, but instead looks at it from a purely functional perspective which enables it to apply it consistently with the customs and traditions of the Saudi system and does not conflict with Islamic law.

The thesis concluded that the Saudi administrative court exercises greater authority and better applies the principles of natural justice than the English system with regard to the beginning of the validity of time limits. The author of this thesis was thinking of withdrawing and not completing this sub-section because this study is not about finding the best visions for the English system. Still, after careful consideration and reflection, the study finds a significant benefit in presenting this issue.

The thesis indicated that the strict Saudi position on the concept of premature claims is sometimes unfair in certain cases, and that the study considers it may appropriate for the BoG to be more open and receptive to this idea and give the judges of the Court at least the opportunity to analyse such issues in the hope that they will lead to building and establishing a unique concept that fits the justice systems of the Saudi system in the near future.

Regarding the thesis third central argument, which was about barring individuals from accessing BoG courts due to insufficient standing. The author of the current thesis found that preventing individuals from accessing the courts due to a lack of acceptable standing can raise some vital issues that are important to the individual and society; at its core lies the question of the principle of whether it is appropriate for a court to deny a person who has a meritorious objection against a government administrative decision on the basis that his rights or interests were not personally affected by the contested decision? In other words, if there is an executive decision that is litigable as it is legally flawed, but the challenger is not qualified enough to be a party to this case because he does not have acceptable standing(directly or personally) from the Court's point of view, should the Court invoke its lack of jurisdiction because the challenger is not qualified to raise the case? Or one could say that JR has a broader scope within which to maintain the rule of law? The study emphasises that the judicial justice system through administrative courts may not only be responsible for addressing individual grievances, but is also somewhat constitutionally responsible for maintaining the rule of law and monitoring legally flawed governmental decisions.

The thesis found that the subject of the relevant stage for standing in the Saudi system and whether that the litigant has a direct interest or does not affect the whole community; the study stressed the need for the courts to persist in assessing the legality of a decision, even if it changes from a direct interest to a sufficient interest, and this is essential as the transition to sufficient interest does not necessarily bring an end to the illegal act, and neglecting this aspect could have severe consequences for other citizens.

The study determined that the formulation of the English law regarding sufficient interest, in contrast to the formulation of the Saudi law of personal interest, provides the courts and judges with the opportunity for continuous development and to ensure a certain degree of human justice.

The study showed that in one way or another, through BoG decisions language that the general rule of standing requirements in the Saudi system in general aims to limit as much as possible the citizen's access to the Board by insisting that only "the aggrieved person" can file a claim in which he seeks compensation for the violation of public or private rights; in this way, time-consuming JR in some cases can be ruled out and limited judicial resources not being misused. The thesis here stressed on that the possibility of submitting such JR requests by the aggrieved on grounds (sufficient interest) against the executive or public authority urges government authorities to act more responsibly, which will have an impact on maintaining the rule of law and strengthening the concept of justice and give enough space for judges to be creative.

The study found that the discussion regarding the sufficient and public interest approach has shown that the English courts may often accept under renewed rules that provides them with the opportunity to develop standing requirements in a flexible manner and does not lead to depriving a person of access to court if it is based on sufficient or public interest and thus access to greater natural justice. On the contrary, Saudi law is restrictive in this respect, and there is no place to claim status on the basis of sufficient or public interest except within very narrow limits.

The thesis concluded that it might be useful from a functional point of view for the BoG to reconsider expanding the scope of the issue of the public interest in a way that does not contradict the provisions of Islamic Sharia through holding conferences and meetings and discussing this issue extensively because of its importance to the individual, society, and government. It also helps regulators and decision makers to exercise caution when writing regulations and laws, especially if they know that all government regulations and decisions may be subject to JR on the basis of the public interest.

The thesis suggests a straightforward amendment to the BoG system, specifically targeting Articles 13/B and 13/C, which outline the requirement of the plaintiff's direct interest. The proposed amendment retains the existing language of these two articles but introduces a simple addition at the end of each, stating that "…The judge presiding over the case may choose not to adhere to the direct interest clause if he deems that there is a sufficient interest linking the plaintiff to the lawsuit and bringing significant benefits." According to the author, the incorporation of such an addition to the BoG system is deemed beneficial for reinforcing the discretionary authority of judges and affording individuals bigger rights, thereby contributing to enhanced justice.

Regarding the thesis fourth central argument, which is about the mandatory exhausting of alternative remedies, the thesis had showed that the Saudi system is still insisting on adhering to exhausting alternative remedies before bring the case on front of the BoG courts, through which the BoG hopes to give the administrative body the opportunity

to reconsider its decision, and it also it hopes that it helps in reducing the number of cases brought before the Board. The study concluded that it suggests on the Saudi decision-maker that by reviewing the advantages and disadvantages of mandatory exhaustion of alternative remedies, the English experience, and the opinions of English commentators in this regard may help to reconsider the and make optional as at least a preliminary solution.

In respect of the ombudsman institution, the study found that the ombudsman in its English form is important to speed up individuals' access to their rights and that the absence of any party within the Saudi system that plays the role of ombudsmen is an injustice in itself to individuals.

At the end of this thesis, the study wants to clarify two issues that it believes are important:

The **First** one is regarding the ability of the Saudi system to apply the ideas presented in this thesis from a religious point of view, it concluded that the proposed proposals, thoughts, and observations may depend on the foundations of the flexibility of Islamic law, which may have narrowed in one way or another within the Saudi system at an earlier time for reasons that may be Political, and that in order for the study to succeed in cultivating some ideas from the English system to the Saudi one, it may be appropriate and wise not to address some controversial issues from a religious point of view. The study also concluded with one important idea here, which is that the Qur'an and Sunnah are above all other laws, and it is not permissible to modify them, as the study showed in the second chapter, and because it is silent or does not provide accurate

guidance on a particular issue, the Islamic government here has the right to provide explicit guidance in these new events with the assurance that its decision does not contradict the general regulations of Islamic law. The thesis insists and confirms that many of the procedural and substantive standards and English ideas put forward in the current thesis do not violate Islamic rules but are compatible with the minimum standards of Islamic justice (fairness), to some extent, the study considers that the current general atmosphere within the Saudi regime is now ripe for obtaining some ideas coming from abroad, if they are highlighted and presented in a respectful manner and commensurate with the traditional Saudi public environment.

The **Second** one is that the thesis strongly believe many social, legal, and political factors at the present time in the Kingdom of Saudi Arabia can be considered as motives for presenting the thesis visions in the Saudi system, especially with the presence of the ambitious national development plan (Vision 2030) launched by His Highness the Saudi Crown Prince in 2016 to achieve the full goals of Vision 2030, Which aspires to develop many laws and regulations in the Kingdom, including the BoG system. God willing, the writer of the current research will seek to translate this thesis into Arabic and will try his best to present it to decision-makers, intellectuals, and those interested in this field in Saudi Arabia, through which he hopes that they will take some of these ideas into consideration. The author also hopes that these insights gained from the English system will benefit the Saudi administrative judicial system and that he will return a little favor to the Saudi government, which sponsored all the author's expenses and stood with him to complete the current treatise, He hopes that the current thesis will be for more than passing the requirements for obtaining a doctorate and then

keeping it on the shelves of libraries; The author aims for this study to have an impact on the Saudi administrative judicial system.

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Thank you, God, for helping me finish my thesis.