

The Impact of the Rule of Opening Pretexts in the Saudi Criminal Procedure Regulations: A Study in Light of the Objectives of Shari'ah

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ABSTRACT

The principle of opening pretexts is a legal mechanism within the Saudi Criminal Procedure Code, operating within the framework of Islamic law to achieve a balance between societal security and individual rights. This study seeks to explore the application of this principle in three main areas: criminal cases and evidence-based procedures, investigations, and court procedures. Specific provisions of the Saudi Criminal Procedure Code are analyzed to highlight how exceptions to general legal principles are granted to preserve justice and the public interest. This research paper attempts to reveal that these exceptions are based on the principle of necessity in Islamic law, which allows for the overriding of prohibitions to achieve higher objectives, such as protecting human rights, maintaining social stability, and uncovering the truth. This study also highlights the balance between protecting privacy and enforcing justice, explaining how legal safeguards mitigate the potential for abuse of these exceptions. By linking these provisions to the objectives of Islamic law, the research confirms the Saudi legislator's commitment to aligning ethical values with procedural efficiency.

Keywords:

Evidence-based procedures, investigative authority, judicial procedures, legal necessity, the Code of Criminal Procedure, the objectives of Sharia, The rule of opening pretexts

INTRODUCTION

In the context of the Saudi Criminal Procedure Law, this concept facilitates the formulation of well-defined exceptions to foundational legal principles. This doctrine guarantees adherence to the overarching objectives of Shari'ah, which include the safeguarding of life, property, and human dignity. In the realm of criminal justice, it is imperative to achieve a meticulous equilibrium between the protection of individual rights and the assurance of public safety. From this vantage point, the rule of employing pretexts serves as a crucial mechanism, particularly within the confines of Saudi Arabian legislation. The implementation of this principle allows for changes from some established standards in situations deemed critical for the realization of justice. The objective of this research is to examine the implications of this provision within the Saudi Criminal Procedure Regulations, with a clear emphasis on its uniformity with the objectives of Shari'ah. The implementations of this rule are articulated through various articles of the Criminal Procedure Law, which offer explanations about how legal frameworks support justice while upholding respect for human rights. In the Saudi criminal procedure legislation, the

implementations of the opening of pretexts rule explain some of the actions, legislative provisions, strategic aims, and pragmatic procedures that have been adopted by the Saudi regulator and legislator in order to open and facilitate opportunities for attaining justice. Additionally, it elucidates their connection with the opening of the pretexts rule by utilizing the numerous implementations that were thoroughly explored in this study.

Reason for Choosing the Research

- 1- To demonstrate the relationship between legislation in the Kingdom of Saudi Arabia and the principles of jurisprudence.
2. To defend the legislation of the Kingdom of Saudi Arabia in light of the wave of attacks against it by hostile circles.
3. To demonstrate the innocence of the legislation of the Kingdom of Saudi Arabia in investigating charges of neglecting human rights.

Importance of the Research: The research gains its importance from its relationship to the Criminal Procedure Law and its relationship to the principles of jurisprudence. Its importance also lies in the fact that it is the only study that examines the regulation from this perspective. It will serve as an important reference for students of the regulation and its relationship to Islamic law and the principles of jurisprudence.

OBJECTIVES

- 1- To demonstrate the commitment of the Saudi regulator and legislator to the rights of the accused at all stages of the investigation.
2. To demonstrate the regulator's reliance on the rule of opening the door in most investigation articles.

METHODS

The issue will be presented at the beginning of the research by presenting its meanings, legal form, and evidence for it. The legal texts under it will then be tracked and compiled. Given the multitude of applicable examples, including all of them would double the scope of the research. Researchers are content with sampling the provisions of the law, analyzing them, and linking them to the principle of opening pretexts to illustrate the organizer's purpose in developing the text, along with any additional texts needed for the context of the study.

Research Plan:

It includes an introduction, including the reasons and importance of the topic, its boundaries and plan, the research methodology, and two main sections representing the theoretical framework, which constitutes the first part. The second section addresses opening pretexts in the Code of Criminal Procedure. The study concludes with a conclusion and a number of recommendations.

RESULTS

Theoretical Framework

First, a definition of the rule of opening the means

The meaning of opening the means in the language:

"Opening" in the Arabic language: The letters (fa, ta, and ha ف ت ح) are a sound root that denotes the opposite of closing. (Ibn Faris, 1979a, p. 469; Al-Farahidi, n.d., p. 194; Al-Jawhari, 1987, vol. 1, p. 389). The term 'blocking' "سد" in linguistic discourse is defined as the act of filling a void and ensuring cohesion. Ibn Faris and Al-Fayyumi explicate it as 'sealing a flaw and bridging a gap' (Hakami et al., 2025a; 2025b; Al-Fayyumi, 2020, p. 270; Ibn Faris, 1979, p. 66).

As for Pretexts (*thara'i* ذرائع), its meaning in the language is the plural of a pretext (*thar'i'ah* ذريعة), and it has several meanings, including "the pretext," "the excuse," and "the cause" of something. Someone may resort to a means of intercession. The term "pretext" also refers to a shield, specifically a camel that the

shooter uses to hide behind while aiming at prey (Ibn Faris, 1979, p. 350; Al-Jawhari, 1987, vol. 3, p. 1211; Ibn Manthoor, 1993b, p. 96).

Opening the Pretexts in Terminology: The books of earlier scholars have not established a specific definition for opening the means. However, the general meaning is benefited by those scholars who defined the pretexts in their general meaning, such as Ibn Taymiyyah, who stated that a pretext is that which is a means or a path to something (Ibn Taymiyyah, 1987, p. 172). Al-Garafi, on the other hand, says, "A pretext is a means to something" (Al-Garafi, 1973, p. 448). It combines both types of pretexts. Just as it must be blocked to prevent corruption, it must be opened for a greater benefit. Al-Garafi said, know that just as a pretext must be blocked, it must also be opened. It is disliked, recommended, and permissible. For a pretext is a means, and just as a means to something forbidden is forbidden, so is a means to something obligatory (Al-Garafi, 1973, p. 449). Among the scholars' sayings that clearly indicate, the principle of blocking the pretext to evil is Ibn Taymiyyah's statement: Whatever was prohibited due to a pretext to evil is done for a greater benefit (Ibn Taymiyyah, 2004a, p. 298). In addition, Ibn Al-Gayyim's statement is, This is the principle: whatever is forbidden due to blocking the pretexts is permitted when necessary and serves a greater benefit (Ibn Al-Gayyim, 1987, p. 71).

Secondly, the validity of the rule of opening pretexts: One of the pieces of evidence in the Holy Qur'an on the principle of opening pretexts is the saying of Allah Almighty:

(أَمَّا السَّفِينَةُ فَكَانَتْ لِمَسْكِينٍ يَعْمَلُونَ فِي الْبَحْرِ فَأَرَدْتُ أَنْ أَعِيبَهَا وَكَانَ وَرَاءَ هُمْ مَلِكٌ يَأْخُذُ كُلَّ سَفِينَةٍ غَصْبًا) [سورة الكهف، الآية ٧٩].
 "As for the ship, it belonged to Masâkîn (needy people) working in the sea. So I wished to make a defective damage in it, as there was a king behind them who seized every ship by force" (Al-Hilali et al., 1997, p. 397, verse 79 of Surat Al-Kahf). Meaning: He used to take every good ship by force, which is why Al-Khathir criticized the ship and broke it. This case is part of the jurisprudence of working with interests if their purpose is achieved, and it is permissible to recover all the property by spoiling some of it. This evidence indicates the opening of pretexts if the interests are prevailing (Al-Gurtubi, 1964, p. 36). This evidence includes several examples from the Prophetic Sunnah:

The Prophet Mohammad (peace and blessings be upon him) permitted some of the Companions (may Allah be pleased with them) to wear silk due to an itch they were experiencing (Al-Bukhari, 2012a, p. 151). The evidence is that "the established Sunnah of the Prophet (peace and blessings be upon him) permitted silk for women in general and prohibited it for men except for a need and a greater benefit" (Ibn Al-Gayyim, 1987, p. 70). In addition, the Prophet permitted looking at the fiancée and justified such an act by saying,

انظر إليها فإنه أحرى أن يؤدم بينكما"

Look at her, for it is more likely that there will be peace between you (Al-Termethi, 1996, p. 389).

The evidence: The meaning of "to perpetuate (yodam يؤدم) is to create harmony and reconciliation. To perpetuate "Yodam" means to lead to the continuation of affection and love between spouses. The command to do so after the prohibition is for the purpose of permissibility, to achieve a greater benefit by achieving harmony and affection between them (Al-Bahuoti, 1993, p. 624).

Third: Defining the Objectives of Shari'ah The Objectives of Shari'ah: The term "Objectives of Shari'ah" consists of two parts and can therefore be defined in one way the objectives of Shari'ah are considered as punitive. If we consider them punitive, then the objectives of Shari'ah can be defined as follows:

In the Arabic language, objectives is defined as the plural of "goal." The objective is a noun derived from the verb intended (qasd قصد), meaning "to aim." The meaning of (qasd قَصْد) is between extravagance and miserliness.

(qasd قصد) also means justice. Among its meanings in Arabic are "intention," "direction," "breaking," and "moving toward something," in addition to the meaning of "straightness without deviation." We say that

an individual intends a matter, meaning that he does not exceed the limit and is content with moderation (Ibn Manthoor, 1993a, p. 355). Accordingly, the most prominent meanings of intention "qasd" in the Arabic language are moderation, balance, and righteousness without extremism or deviation. Evidence of these concepts is found in the words of Allah Almighty:

(وَأَقْصِدْ فِي مَشْيِكَ وَاعْضُضْ مِنْ صَوْتِكَ إِنَّ أَنْكَرَ الْأَصْوَاتِ لَصَوْتُ الْحَمِيرِ) [لقمان: 19].

"And be moderate (or show no insolence) in your walking, and lower your voice. Verily, the harshest of all voices is the braying of the asses" (Al-Hilali et al., 1997, p. 553, verse 19 of Surat Luqman). Further clarification is what Al-Wahidi (1994), said: It is said: 'Someone walked moderately' if he walked in a straight gait (p. 444). The Messenger of Allah (peace and blessings be upon him) said in the hadith narrated by Al-Bukhari: ("وَالْقَصْدَ الْقَصْدَ تَبْلُغُوا") "with moderation, with moderation, you will attain" (Al-Bukhari, 2012b, p. 98). For further clarification, we add what Ibn Hajar Al-Asqalani (1970), said: Moderation is adopting the middle path (p. 95). The meaning of objectives as a term used in technical terms with its linguistic meaning (Ibn Zughaibeh, 1996, p. 38). As for Shari'ah, its linguistic definition is derived from its implicit meaning, which is a watering place, a place where a drinker can come to drink. It was given this name due to its clarity, apparentness, and plural form, Shari'ah. We clearly understand this through the example provided by Al-Razi and Al-Fayyumi, where they explain by saying, "He legislated for them; that is, He established a law. Allah's law is such-and-such: He made it manifest and clear" (Al-Razi, 1999, p. 163; Al-Fayyumi, 2020, p. 310). As for Shari'ah, it is the Book of Allah and the Sunnah of His Messenger, as well as what the early Muslims followed in their beliefs, conditions, worship, actions, politics, rulings, mandates, and gifts (Ibn Taymiyyah, 2004b, vol. 19, p. 308).

Accordingly, the definition of Shari'ah includes the meaning of obeying Allah, His Messenger, and those in authority among us in what is right (Ibn Taymiyyah, 2004b, vol. 19, p. 309). Allah Almighty said,

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا [سورة النساء الآية 59].

"O you who believe! Obey Allāh and obey the Messenger (Muhammad and those of you (Muslims) who are in authority. And if you differ in anything amongst yourselves, refer it to Allāh and His Messenger) if you believe in Allāh and in the Last Day. That is better and more suitable for final determination" (Al-Hilali et al., 1997, p. 117, verse 59 of Surat An-Nisā'). Considering that the objectives of Islamic law are defined as the goals set by the legislator to create and preserve the interests of creation in this world and the hereafter. (Al-Ghazali, 1993, p. 174; Al-Shatibi, 1997, pp. 62 and 289).

Implementations of the Opening of Pretexts Rule in the Criminal Procedure Law

This rule outlines some of the initiatives, legal provisions, strategic plans, and practical procedures undertaken by the Saudi regulator and legislator to open and facilitate opportunities for achieving justice. It also explains their relationship to the Opening of Pretexts Rule through the following implementations:

First: implementations of the Opening Pretexts Rule in Criminal Cases and Evidence-Based Procedures:

First implementation:

Article 33 stipulates that, in the event of a crime being committed, a criminal investigation officer may arrest a defendant who is present and against whom there is sufficient evidence to support his indictment. He shall prepare a report and immediately notify the Bureau of Investigation and Public Prosecution. In all cases, the arrested person may not be detained for more than twenty-four hours except by written order from the investigator (Criminal Procedure Law, issued by Royal Decree No. M/2 of 1435 AH).

Text Analysis: Arrest is defined as restricting a person's freedom, and the principle in evidence-based procedures is not to restrict the freedom of the accused. However, as an exception, a criminal investigation officer may arrest an accused person without obtaining a warrant from the competent authority in the case of being caught in the act and sufficient evidence to accuse him of committing the crime. Sufficient evidence, which is subject to the discretion of the criminal investigation officer, refers

to external signs and indications that justify placing the person under suspicion, subject to the supervision of the investigating authority.

It should be noted that the requirement for sufficient evidence in the case of being caught in the act does not add anything new. This is because caught in the act itself requires sufficient evidence; in fact, it is inherently stronger than this, as it is based on personal observation by the criminal investigation officer who arrested the accused, and he takes greater care in caught in the act than in other cases. It requires a degree of verification and clarity that may not be required by sufficient evidence, which is merely justified suspicion (Al-Zuhayli, 2015, p. 74; Aal-Thafeer, 2019, pp. 175-176; Al-Hargan, 2020, p. 102). The intent of Shari'ah is evident in the stipulation of an exception to the basic principle of the impermissibility of arresting an accused.

However, in the of being caught in the act, the police officer is permitted to exercise the right to arrest, provided there is sufficient evidence. This exception is one of the pretexts that are created to protect the security of society and preserve evidence of the crime. This concept includes the fundamental principle that states, Necessity permits the forbidden (Ibn Ashour, 1984a, p. 35). Restricting the freedom of the accused in the of being caught in the act is a necessity required by the fairness of the investigation.

Second implementation:

Article Forty-Two: A criminal investigation officer may not enter or search any inhabited place except in the circumstances stipulated by law and upon a reasoned order from the Bureau of Investigation and Public Prosecution. If the owner or occupant of a residence refuses to allow the criminal investigation officer to enter or resists his entry, the criminal investigation officer may take the necessary legal means to enter the residence as the situation requires. A residence may be entered in the event of a request for assistance from within, a demolition, flooding, fire, or similar incident, or the entry of an aggressor during a pursuit for arrest (Criminal Procedures Law, issued by Royal Decree No. M/2 of 1435 AH). Text Analysis: The law defines the term "homes" in Article 41, stating that the sanctity of a home includes any walled or enclosed space or any place intended for use as a shelter. Entering or searching homes is primarily an investigative function. However, an arresting officer may enter homes in special cases stipulated by the law, including:

- In the event of a request for assistance from within the home, such as if a distress call is made from within the home that requires immediate action. In this case, a search may not be conducted unless a crime has occurred within the home that requires the arrest and subsequent search of the perpetrators.
- In the event of a demolition, flood, fire, or similar incident.
- In the event that an aggressor enters the home during a pursuit to arrest him, the criminal investigation officer executing the arrest warrant may enter the home of the person against whom the warrant was issued if the warrant includes entry. He may also enter another home for this purpose if it occurs during the pursuit of the accused. If entry into a home is permitted for a specific procedure, the person authorized to enter it may not carry out any other procedure except following the provisions of this law. The system and its regulations are in place.

There is no need for prior permission. The ruling for these cases is similar to those based on the existence of a state of necessity (Aal-Thafeer, 2019, pp. 143-145; Khalifah, 2018, p. 139; Al-Hargan, 2020, p. 126). The intent of the Lawgiver is evident from the text: the explicit statement permitting entry into homes without permission in specific cases and opening up pretexts in cases of necessity. Allah Almighty says,

وَقَدْ فَضَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطَرَّرْتُمُ إِلَيْهِ [الأنعام:119].

"while He has explained to you in detail what is forbidden to you, except under compulsion of necessity" (Al-Hilali et al., 1997, p. 189, verse 119 of Surat Al-An'âm). Prohibitions are of various types, and exceptions are made for those individuals who are compelled to do so, which becomes permissible. The legal principle states that "necessities permit prohibitions" (Ibn Ashour, 1984a, p. 35) to achieve the greater interest of preserving lives from destruction.

Third

implementation

Article 57 stipulates that the president of the Bureau of Investigation and Public Prosecution may order the seizure of letters, correspondence, printed materials, and parcels. He may also authorize the monitoring and recording of telephone conversations whenever this is useful in uncovering the truth about a crime that has occurred. The order or authorization must be reasoned and limited to a period not exceeding ten days, renewable following the requirements of the investigation (Criminal Procedures Law, issued by Royal Decree No. M/2 of 1435 AH).

Text Analysis: The Saudi law has subjected the perusal of letters and the monitoring of conversations to inspection provisions, as they both share the same right (the right to privacy) and seek to achieve the same goal of uncovering the truth and seizing evidence.

Article 56 stipulates that postal and telegraphic messages, telephone conversations, and other means of communication are inviolable. They may not be perused or monitored except by reasoned order and for a specified period, in accordance with the provisions of this law. This provision includes all modern electronic means of communication. The Code of Criminal Procedure stipulates the same condition for the permissibility of reviewing messages and monitoring conversations as it stipulates for the permissibility of searching residences: obtaining a permit from the Public Prosecution Office, issued by the Attorney General based on reasonable grounds leading him to believe that seizing communications or monitoring conversations would reveal the truth regarding a crime that has occurred (Aal-Thafer, 2019, p. 155; Al-Zuhayli, 2015, p. 226; Al-Hargan, 2020, pp. 170-171).

The intent of Shari'ah text is evident in the stipulation that permission for the investigator to monitor messages and conversations is only achieved if it is deemed beneficial to reveal the truth, thus facilitating the investigation and attaining justice. What is permitted due to necessity is measured by its extent. The investigator may review information within the limits required for the investigation and must preserve the trust in his possession.

The Impact of the Rule of Opening Pretexts on Criminal Procedure and Evidential Procedures: Islamic law emphasizes the protection of human rights in their person, residence, and private life. However, the regulator has permitted, in some cases, the violation of these prohibitions based on the principle of opening pretexts and achieving greater interests. The first case is based on the saying of the Prophet Muhammad, peace and blessings be upon him, "All of a Muslim is sacred to another Muslim: his blood, his wealth, and his honor" (Al-Naysaburi, 1954, p. 1986). Contrary to this principle, the Saudi regulator has permitted restricting the freedom of the accused by arresting him in the event of being caught in the act. Being caught in the act of committing a crime indicates a destabilization of the security of society. Preventing harm by arresting him is more important than achieving benefits by not restricting a person's freedom.

The second case is violating the sanctity of one's home. The basis for such an act is the Allah Almighty's saying:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا ذَلِكُمْ خَيْرٌ لَّكُمْ لَعَلَّكُمْ تَذَكَّرُونَ [النور: ٢٧].

"O you who believe! Enter not houses other than your own, until you have asked permission and greeted those in them; that is better for you, in order that you may remember" (Al-Hilali et al., 1997, p. 470, verse 27 of Surat An-Nūr). The Saudi legislator has permitted violating the sanctity of one's home in cases of necessity, based on the legal principle that necessity makes the forbidden permissible. The story of Joseph (may peace be upon him) and his brothers indicates the legitimacy of searching. Allah Almighty says:

فَدَبَاؤُ عَيْتِهِمْ قَبْلَ وَعَاءِ أَخِيهِ ثُمَّ اسْتَخْرَجَهَا مِنْ وَعَاءِ أَخِيهِ كَذَلِكَ كِدْنَا لِيُوسُفَ مَا كَانَ لِيَأْخُذَ أَخَاهُ فِي دِينِ الْمَلِكِ إِلَّا أَنْ يَشَاءَ اللَّهُ نَرْفَعُ دَرَجَاتٍ مَن نَّشَاءُ وَفَرَّقَ كُلَّذِي عَلِمَ عَلِيمٌ [يوسف: ٧٦].

"So, he [Yūsuf (Joseph)] began (the search) in their bags before the bag of his brother. Then he brought it out of his brother's bag. Thus did We plan for Yūsuf (Joseph). He could not take his brother by the law of

the king (as a slave), except that Allāh willed it. (So, Allāh made the brothers to bind themselves with their way of "punishment, i.e. enslaving of a thief.") We raise to degrees whom We will, but over all those endowed with knowledge is the All-Knower (Allāh)" (Al-Hilali et al., 1997, p. 313, verse 76 of Surat Yûsuf). Meaning that Joseph searched their vessels and baggage, seeking the king's cup. He began searching the vessels of his half-brothers. He searched the vessel by vessel before his half-brother's vessel, as he had delayed his search. Then he searched the last of them, his brother's vessel. He extracted the cup from his brother's vessel (Al-Tabari, 2001, p. 184).

In the third case, it violates a person's privacy by reviewing his private messages, the basis of which is their sanctity. Allah Almighty says,

وَلَا تَجَسَّسُوا [الحجرات: ١٢].

"And spy not," (Al-Hilali et al., 1997, p. 703, verse 12 of Surat Al-Hujurât). This means, "Do not search for or pursue the private affairs of Muslims" (Al-Sa'di, 2000, p. 801). The Prophet of Allah and His Messenger, Muhammad, peace and blessings be upon him, also said,

فإن دماءكم، وأموالكم، وأعراضكم، بينكم حرام، كحرمة يومكم هذا، في شهركم هذا

"Your blood, your properties, and your honor are sacred to one another, as sacred as this day of yours in this month of yours" (Al-Bukhari, 2012c, p. 24). The Saudi legislator has permitted reviewing the private messages of an accused, contrary to the original law, while restricting this procedure to several safeguards that guarantee the accused's privacy. These safeguards require that such review be conducted only with the permission of the head of the department and that only the investigator may review them. A review must be conducted within a specific timeframe, and the most important safeguard is the requirement that it be beneficial to uncover the truth.

Second: Implementations of the Principle of Opening Pretexts in Investigation Procedures

First implementation:

Article 100: "If a witness is ill or has something preventing him from attending, his testimony shall be heard in his place of residence" (Criminal Procedure Law, issued by Royal Decree No. M/2 of 1435 AH). Analysis of the Text: The person charged with giving testimony may be excused and unable to attend, so the public prosecution member will move to his place of residence. Similarly, suppose the witness is ill or has something preventing him from attending. In that case, his testimony shall be heard in his place of residence to ensure that his testimony is heard and utilized regardless of the circumstances. The law underscores the value of testimony in proving a criminal case, as it focuses on material facts related to the criminal act, the perpetrator or victim, or items related to the crime. Testimony is the primary means of proving these facts (Al-Zuhayli, 2015, p. 251; Al-Hargan, 2020, p. 162). Thus, the intent of the legislator in the statutory text becomes clear: the explicit text indicates that the witness must be heard from the witness's location, based on the witness's inability to attend. This allows for the creation of pretexts that serve the investigation's interests, rather than restricting the hearing of testimony to the workplace. This is because it serves the interest of the witness by making things simple for him and avoiding hardship, based on the Allah Almighty's saying,

رِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ ... [البقرة: ١٨٥].

"Allāh intends for you ease, and He does not want to make things difficult for you" (Al-Hilali et al., 1997, p. 37, verse 185 of Surat Al-Baqarah).

The legislator's intent in the text:

Second implementation:

Article 107 stipulates that if the accused fails to appear, after being officially summoned, without an acceptable excuse, or if there is fear that he may flee. or if the crime is caught in the act, the investigator may issue an order for his arrest and bringing him in, even if the incident is one for which the accused cannot be detained (Criminal Procedures Law, issued by Royal Decree No. M/2 of 1435 AH). Textual Analysis: The Saudi Code of Criminal Procedure allows the investigator in all cases to issue an arrest

warrant for the accused if the circumstances of the investigation so warrant, even if the incident is one in which the accused cannot be detained. The investigator may also issue an arrest warrant for the accused in one of the following cases: if the accused fails to appear after being formally summoned without an acceptable excuse, if there is fear of his flight, or if the crime is caught in the act. If the accused is present, the warrant shall be for his arrest only. However, if the accused is not present, the warrant shall be for his arrest and detention (Aal-Thafeer, 2019, p. 98; Khalifah, 2018, pp. 150-151; Al Hargan, 2020, pp. 191-192).

The legislator's intent in the text is evident from the text's implication that the investigator may arrest the accused even if the crime is not one of the crimes requiring detention, based on the principle of opening pretexts and achieving a preponderant interest, such as protecting him for fear of flight or failure to comply with the order to appear at the investigation site. This statement reinforces the earlier point that, according to Ibn Ashour (1984b, p. 35), "Necessities permit prohibitions."

Third implementation: Article 120 stipulates that the investigator handling the case may, at any time—either of his own accord or at the defendant's request—order the defendant's release if he determines that his detention is unjustified. His release will not harm the investigation, and there is no fear of his escape or disappearance, provided the defendant pledges to appear when requested (Criminal Procedures Law, issued by Royal Decree No. M/2 of 1435 AH).

Text Analysis: The meaning of temporary release is that the competent authority may issue an order for the temporary release of the defendant if it determines that his detention is not required in the interests of the investigation. Temporary release may be absolute, meaning that it is not conditional. It may also be contingent on conditions that the person in pretrial detention must comply with. Temporary release is thus contingent upon the fulfillment of specific conditions, such as the investigator requiring the defendant to designate a place of residence, pledge to appear whenever requested, and not flee the execution of the sentence. If the person released violates a condition, they will be held responsible for the breach by being remanded in custody. The investigator or the court shall determine the timing of temporary release. Temporary release has no time limit; it may be granted during the detention period and at any time, depending on the circumstances of the investigation or trial (Al-Zuhayli, 2015, pp. 270-271; Aal-Thafeer, 2019, p. 197; Al-Hargan, 2020, pp. 211-212).

The legislator's intent behind the text is to indicate that the investigator may release the accused if there is no harm to the investigation process or if the accused is feared to flee, based on the principle of opening pretexts. What is permitted due to an excuse is voided when it ceases.

The effect of the principle of opening pretexts on investigation procedures

The effect of opening pretexts on investigation procedures is evident through the Saudi legislator's enactment of certain procedures that achieve the overriding interest in the investigation process, or for the accused. Among these procedures is the permissibility of hearing a witness's testimony from his location if he is unable to attend. Thus, the interest of the investigation is achieved by hearing his testimony, and the interest of the witness is achieved by avoiding hardship and unbearable burdens. Testimony is one of the most important pieces of evidence in an investigation. Shari'ah law commands the establishment of testimony, as Allah the Almighty says,

وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ [الطلاق: ٢].

“And establish the testimony for Allāh” (Al-Hilali et al., 1997, p. 770, verse 2 of Surat At-Talaq).

In the same context, it prohibits concealing testimony, as Allah the Almighty says,

(وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبًا) [البقرة: ٢٨٣].

“And conceal not the evidence for he, who hides it, surely his heart is sinful. And Allāh is All-Knower of what you do” (Al-Hilali et al., 1997, pp. 65-66, verse 283 of Surat Al-Baqarah). Concealing testimony is one of the greatest sins, as it results in the loss of the right of the one who has it (Al-Sa'di, 2000, p. 199). Among the measures that further serve the interests of the investigation is the arrest of the accused for

failure to comply with the summons or if there is fear that he may flee, which would obstruct the investigation. It has been narrated that the Prophet Mohammad, may Allah bless him and grant him peace, was imprisoned on a charge (Abu Dawood, 2009, p. 314). This procedure is consistent with the objective of justice and achieves the public interest of society by preserving its security and stability. To maintain the presumption of innocence of the accused and to safeguard his interests, the legislator permitted the investigator to release the accused on the condition that there was no fear of his flight and that it did not harm the course of the investigation.

Third: implementations of the pretext rule in courts and trial procedures

First implementation:

Article 139 stipulates that the accused in major crimes must appear in person before the court, without prejudice to his right to legal counsel. If he does not have the financial means to hire a lawyer, he may request the court to appoint a lawyer to defend him at the state's expense, in accordance with the regulations. In other crimes, he may appoint a representative or attorney to present his defense. In all cases, the court may order his personal appearance before it (Criminal Procedure Law, issued by Royal Decree No. M/2 of 1435 AH).

Text analysis: The law requires the accused to appear in person before the court in major crimes, such as kidnapping, extortion, premeditated assault, and others. The basic principle is that the presence of the accused and his client in trial proceedings is a right, not an obligation. The accused's presence at trial is also of enormous importance, as it allows him to play a positive role in refuting the evidence against him. His character is respected before the court, allowing for the indictment and inquiries and allowing him to raise and benefit from mitigating circumstances. In other crimes, the accused may be absent and be represented by a lawyer. However, the court retains the authority to order his personal presence, with emphasis on serious felonies and misdemeanors, and to mitigate the penalty for misdemeanors and violations for which a fine is imposed (Al-Zuhayli, 2015, pp. 336-337; Al-Hargan, 2020, pp. 255-656).

The legislator's intent is evident from the text: the explicit wording indicates that the accused may request a lawyer from the court to defend him, provided that he lacks the financial means, based on the principle of opening pretexts. This is to preserve the rights of the accused and alleviate the burden on the accused, as Shari'ah law permits the accused to appoint a representative, namely the lawyer, to defend him (Al-Kasani, 2005, p. 22; Al-Gathi, 1999, p. 607; Al-Shirazi, n.d., p. 162; Ibn Gudamah, 1997, p. 65).

Second implementation:

Article 154 stipulates that court sessions are public. The court may, as an exception, hear all or part of the case in closed sessions or prohibit certain groups from attending for security reasons, to maintain public morals, or if this is necessary to uncover the truth (Criminal Procedures Law, issued by Royal Decree No. M/2 of 1435 AH).

Text Analysis: As is clearly stated in the text of the article, the principle is that criminal trial sessions are public. Anyone who wishes may attend, which encourages everyone to exercise balance in their speech and to be moderate in their requests, defenses, and procedures. This reassures the accused that they will not be subjected to proceedings without public awareness. It encourages him to present his defense well. As an exception to the principle of open trials, the organizers have allowed the judge to hear all or part of the case in closed sessions. Alternatively, to prevent certain groups from attending, for security reasons, or to maintain public morals, or if this is necessary to reveal the truth. However, in all cases, the judgment must be read in a public session (Al-Zuhayli, 2015, p. 331; Al-Hargan, 2020, p. 250).

The legislator's intent behind the text: The text indicates the permissibility of holding secret trial sessions based on the principle of opening pretexts to maintain order, to observe public morals, or to protect the sanctity of the family. Such an arrangement ensures the preservation of the privacy of the accused and conceals their mistakes.

Third implementation:

The first paragraph of Article 184 stipulates that a ruling regarding the disposal of seized items may not be executed if the judgment in the case is not final, unless the seized items are perishable or require significant expense to preserve (Criminal Procedures Law, issued by Royal Decree No. M/2 of 1435 AH).

Analysis of the Text: Seizing and preserving items during an investigation is not an end in itself; rather, it aims only to uncover the truth. If the goal is achieved and the purpose is fulfilled, the law specifies how to dispose of them. If the item seized during the search is perishable, such as food or beverages suspected of being poisoned, or if the seized item requires expenses that would deplete its value, such as storing medicines and materials that require refrigeration, it may be disposed of even if a final judgment has not been issued in the case. Such a scenario can be explained by selling it by public auction, if permitted, and the proceeds are retained for the rightful owner (Al-Zuhayli, 2015, pp. 230-233; Aal-Thafer, 2019, p. 157). The legislator's intent behind the text: Based on the explicit text, the court may dispose of seized items that are prone to rapid perishing, even if a final judgment has not been issued in the case, based on the principle of opening pretexts, in order to preserve the rights of their owners. Retaining the proceeds for the rightful owner after the sale achieves the goal of securing benefits and preventing harm.

The effect of the principle of opening pretexts on courts and court procedures:

The effect of the principle of opening pretexts is evident in court procedures through the regulator's provision of certain guarantees for the accused during trial proceedings, thus ensuring a fair trial. The first of these guarantees, based on the above, grants the accused the right to request a lawyer if they lack the financial means. The role of the lawyer is to safeguard the accused's right to defend themselves during the trial. There is a need to appoint a lawyer in disputes. Because a person may have a right or be sued for a right and be unable to litigate it well or may be reluctant to undertake it himself, it is permissible to appoint a lawyer to represent them (Al-Shirazi, n.d., p. 162; Ibn Gudamah, 1997, p. 65). Among the guarantees for the accused during the trial is the permissibility of holding the session in secret, as an exception to the general rule that it should be held in public, to preserve their privacy, such as crimes related to public morals that affect their honor. This situation is explained by Allah Almighty's statement:

﴿إِنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ أَلِيمٌ فِي الدُّنْيَا وَالْآخِرَةِ﴾ [النور: ١٩].

"Verily, those who like that (the crime of) illegal sexual intercourse should be propagated among those who believe, they will have a painful torment in this world and in the Hereafter" (Al-Hilali et al., 1997, p. 469, verse 19 of Surat An-Nûr). The etiquette of this verse is that a believer should only do for his fellow believers what he likes for himself. Just as he does not like to spread bad news about himself, he should also not like to spread bad news about his fellow believers. This is because spreading immorality causes harm and damage to people (Ibn Ashour, 1984b, p. 185). One of the safeguards that preserves the rights of accused persons regarding confiscated items is the search process, which involves disposing of them to prevent damage. It falls under the ruling on trust, which Allah has commanded us to fulfill, as He says:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ﴾ [النساء: ٥٨].

"Verily, Allâh commands that you should render back the trusts to those to whom they are due; and that when you judge between men, you judge with justice" (Al-Hilali et al., 1997, p. 117, verse 58 of Surat An-Nisâ'). Controlled items also fall under the ruling on preserving wealth, the preservation of which is based on bringing about and increasing benefits, and its absence on warding off and reducing harm.

CONCLUSION

The exploration of the rule of opening pretexts reveals its dual essence: a tool for enhancing justice while simultaneously raising relevant questions about the infringement of individual rights. The findings have underscored the importance of a careful and considered application of this rule, ensuring that its invocation is both necessary and commensurate. The study has illustrated how Saudi legislation, through specific provisions, seeks to strike a balance between the imperatives of public safety and the sanctity of personal liberties.

The research concluded with valuable findings and recommendations, as follows:

First, the results: The research concluded with some findings, the most important of which are

1. A statement of the Saudi regulator's commitment to implementing the principle of opening pretexts in the Saudi Code of Procedure.
2. The importance of the principle of opening pretexts in the formulation of articles of the Saudi Code of Procedure.
3. The Saudi regulator's consideration of the valid Shari'ah objectives based on the principle of opening pretexts.

Second, the recommendations

Linking regulations to fundamentalist principles is a crucial task with significant applied scientific goals and objectives that satisfy people of sound mind. Therefore, I recommend that those concerned undertake this in all aspects of life and study all regulations according to this approach, including

1. Understand the remaining regulations and study them according to the principle of opening pretexts. This can be developed into a master's thesis or doctoral dissertation.
2. Study Saudi regulations in light of Shari'ah objectives.
3. Study the Saudi Code of Criminal Procedure according to the principle of balancing benefits and harms.

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