

THE UNIVERSITY OF HULL

THE PARLIAMENTARY EXPERIENCE IN THE ARAB  
GULF COOPERATION COUNCIL (GCC) STATES: A STEP  
TOWARDS DEMOCRACY; FACTS AND AMBITIONS

Thesis submitted in fulfilment of the requirement for the award  
of the degree of Doctor of Philosophy in Law.

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**Dedication**

In Memory of My Brother

***HAITHAM***

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*“In The Name of Allah, The Most Merciful, The Most Compassionate”*

**“ And those who respond to their God, Perform the Prayers,  
and whose affairs are a matter of counsel (their ruling system  
is based on the right of shura amongst them), and who spend  
out what we bestow on them for sustenance”**

The Qur'an 42-38.

## Abstract

Literature on legislatures in developing countries shows two opposing views on their effectiveness and efficiency. In the light of these views, this study chronicles the rise of the GCC States' assemblies, focusing on their role, structure, legitimacy and mechanism, as well as their relevance and contributions to the GCC States' political system. Studying national assemblies is important for understanding the GCC democratic experience, in which the assemblies played a pivotal and positive role.

This study leads to the conclusion that despite the fact that the constitutional framework of the GCC States imposes limitations on the functions of the assemblies, they laid the groundwork for institutionalising the legitimacy of the political system of the GCC States, allowing room for various groups to participate in the policy process. Indeed, the GCC parliamentary experience can be appreciated when it is viewed as part of a political system aimed to reduce GCC State's vulnerability and contain external and internal threat. However, viewing the experience in the context of the Islamic teaching and from the perspective of Western democratic principles, the relevance and contribution of the GCC States' legislatures is not only elusive and intangible, but insignificant and undemocratic.



## Introduction.

During the past two and a half centuries the Gulf Cooperation Council States (GCC)<sup>1</sup> have been ruled by members of the ruling families. Despite this, the governments have not been based on a shared consultative responsibility between the rulers and the various family heads. Until the establishment of a National Assembly, the family heads consulted with their own people. Such consultations, over the years, became valued tradition<sup>2</sup>. Thus, the actions of rulers were strongly affected by both tradition and the influence of the family heads.

GCC States were characterised by paternalistic leadership. The ruler and members of his family received and distributed the revenues from oil and other sources without any type of budget or government report. He shared the responsibilities with his own family and, to an extent, with various members of the most prominent families in the society. These individuals occupied positions as heads of departments to assist the ruler with legislative and administrative matters<sup>3</sup>.

In due course, new groups were created by the policy of distributing the wealth from oil revenues for education, housing, health, job opportunities and social welfare programmes and by the policy of granting citizenship to eligible people. On the international level, the leaders of the GCC States were faced with several challenges; the first and most serious ones were the Iraqi-Iranian war and the Iraqi invasion of Kuwait in 1990. Second were the collapse of the totalitarian regimes in Eastern Europe and the worldwide move towards democracy. Developing a political system which would be able to meet these challenges required great skills and willingness of the leadership to diffuse power in the society.

The GCC constitutions have brought about a significant change in these states' political life. The most important aspect of the change was the establishment of parliamentary systems.

## **Theoretical Background.**

The central problem for all regimes and authorities is achieving and maintaining legitimacy. Classical and contemporary writers on government and political systems believe that it is difficult for regimes and authorities to have the essential capability for coping with the problems and challenges of their domestic and international environments without at least a modicum of legitimacy for their political system<sup>4</sup>.

Max Weber defines political legitimacy as people's belief in its own authority. He argued that people's willingness to obey authority is not manifest outside the institutional framework<sup>5</sup>. For him, the three types of institutional framework in which the people might hold such beliefs are traditional, charismatic and rational. In Weber's opinion, legislative institutions do not fit any of these types. He viewed such institutions as incongruous types of authority<sup>6</sup>.

Weber argued that with the expansion and increasing complexity of economic and administrative activities in modern states, bureaucratic institutions have gained tremendous power and have been identified with political authority. According to Weber, bureaucratic institutions are those which have the ability and the legal authority to facilitate the transformation of traditional societies to modern national states<sup>7</sup>.

Leading contemporary writers have identified numerous factors, which are relevant to a political system having the capability to cope with its external environmental problems and challenges. Almond and Powell<sup>8</sup> hold that the legitimacy of a regime declines and disappears when the existing structure and culture of political system is unable to cope with problems of challenges. According to Almond and Powell, there are five types of challenges, namely, state building, nation building, political participation, economic building and the distribution of wealth. These challenges are caused by internal and/or external factors. They argued that it took the West about four centuries to be able to cope with such challenges. During that time, the

West passed through three stages<sup>9</sup>:

1-The age of absolutism which was based on the development of cabinet, military and bureaucratic institution;

2-The age of democratization which depended on political parties, interest groups and the mass media;

3-The age of welfare.

While legislatures existed in the West in the three stages of development, Almond and Powell do not grant them much weight. Rather, they are concerned essentially with the roles played by executive, bureaucratic and military institutions and by political parties, interest groups and the mass media<sup>10</sup>.

Huntington's position is that the ability to cope with challenges of change must be based upon the institutionalisation of political organization and procedures<sup>11</sup>. He measures the level of institutionalisation by its complexity, autonomy and the coherence of its organisation and procedures<sup>12</sup>. Huntington not only neglects the legislative role, but he also cautions against the role of legislatures in the development process, particularly in that of developing nations. In Huntington's opinion, most legislative institutions in developing countries are dominated by the reactionary elites who are usually against change and progress<sup>13</sup>.

Lerner postulated that unless a country has achieved high levels of development in urbanization, industrialization, education and wealth it should not attempt to build democratic institutions. For Lerner, participation is the final stage in the evolution of the developed society<sup>14</sup>.

Randot argues that the infrastructures of a society are primarily responsible for the failure of the legislative institutions. He assumes that the lack of homogeneity and the domination of denominational tribal affiliations are the essential obstacles to the success of the legislative system in the



Middle Eastern countries<sup>15</sup>.

However, the work of these scholars is usually based on a perception of political development and experience influenced by Western contextual values which were not necessarily present in developing countries. Moreover, the purpose of utilizing certain aspects of western political development in the new nations was not entirely to promote desirable change<sup>16</sup>.

On the other hand there are some case studies which show that the experience of various legislative institutions in developing countries supports the assumption that legislatures can play a vital role in the process of development and decision-making.

Sisson contends that legislative institutions are affected by the nature of interaction and interdependence of factors -such as bureaucratic institutions, political format and the system of social stratification- in their environment. He concludes that in spite of these factors of influence, legislatures in new states can serve as agents of integration, of mobilization, of support for or against the regime or ruling authority and as a mark of sovereignty.<sup>17</sup>

Baklini and Heaphey evaluate the existence or absence of legislative institutions in a developed country (Great Britain) and three developing countries (Kuwait, Lebanon and Palestine) Regarding Great Britain, they are persuaded by DeJouvenal's argument that parliament and king together formed sovereignty and that without parliament, kings could not have developed the vast scope and depth of power that was formulated by kings and parliaments working together.<sup>18</sup> Regarding the developing nations, they hold that Kuwaiti and Lebanese legislatures have contributed to the transformation of the community from collection of groups to an organic entity. They conclude that the failure of Palestinians to establish a national legislature might have inhibited the development of a sovereign state.<sup>19</sup> Palestine after the 1996 peace agreement with Israel in which it gained its sovereignty has established its legislature.



A study by Agor of nine Latin American legislative institutions concludes that they played and continue to play, in different degrees, a significant role in the formation of public policy in the society. The study demonstrates that legislative bodies have a considerable influence on decision-making process in countries such as Chile, Costa Rica and Uruguay<sup>20</sup>.

Studies examining the ability of legislative institutions in developing nations found that there are two common themes to all legislatures. First, legislatures play an important role in the course of change and development in some societies. Second, the shortcomings of other legislatures are caused by various factors. Some of these factors are related to the origins and histories, their lack of autonomy and power and their inadequate organisational structure. Other factors are due to the absence or small number of skilled staff, or the relationship of the legislature with other institutions in the society<sup>21</sup>.

Legislatures are not necessarily the most important institution in the system they serve. Political scientists have paid more attention to electoral systems, political parties, pressure groups and bureaucracy. However, recent studies which are concerned with constitutional law aim to explore the legislature thoroughly as a major component of the constitutional structure of the state. The system of legislatures may vary in accordance with the relevant constitutional arrangements. Constitutions vary in the role they play in formulating legislatures and their powers. In some states the constitution is considered the supreme law and all institutions emanate from it and therefore, the constitution becomes the source of power that is claimed by the three branches of government. Despite the fact that the status of the legislature differs from one state to another according to its cultural and historical development, there are general principles with regard to the role and functions of legislatures, yet the position of the legislature under the GCC constitutions is, as will be seen, distinctive.

## Legislature institution in the GCC States.

The GCC States have many similarities that are reflected by the Arabic language, Islamic religion, homogeneous societies, similar economic resources (oil and other minerals) and similar political systems (monarchies). These states are probably some of the most financially and commercially integrated states in the world's capitalist system, exercising near total hegemony over GCC State's economic choices and developmental strategy. On the other hand, the GCC States are characterised by their small size in both area and indigenous population, large foreign labour force and limited political participation in the decision making process.

The discovery of oil in huge quantities has changed the GCC States and their inhabitants. The oil wealth enables these states to carry out explosive development programmes and economic prosperity has touched every facet of life in those countries. The whole infrastructure for social services, public services and industrial development was carried out in a few years. Demands for consumer goods increased a thousand-fold within a decade.

In examining the political participation in the GCC States, it is necessary to point out that these states, as Peterson described them, are newly emergent post-traditional states<sup>22</sup>. The traditional institutions are deeply associated with the Islamic and Arabic way of life. The GCC States are ruled by different ruling families. The traditional pillars of the ruling families' legitimacy were based on traditional power-sharing in tribal society and Islam as represented in Islamic law. Historically, the leader of tribal community essentially serves as a chairman rather than a ruler, who consulted tribal, religious and merchant notables of the community before taking action. Rulers also found it necessary to govern in accordance with, or at least with reference to, Islamic principle of consultation (*Shura*) and consensus (*Ijma*). GCC States attempt to marry traditional and rationalist bases of legitimacy by establishing consultative councils (*majlis al-shura*). They were the logical choice. *Majlis* represent the form of the institution and the *Shura* its

constitutional essence. *Majlis* is widely used for parliament through the Islamic world. Traditionally the *Majlis* is a place where relatively free exchange of ideas and opinion occurs on a wide variety of social, political and economic matters. Also the *Majlis* is an open meeting where anyone can petition their leaders, from the King down to the Governors of the Provinces and local leaders. In other words, leaders were accessible to the people.

In the GCC States, the society has been changed by oil wealth, with its opportunities for development, education, travel changes in lifestyle and rulers' personal goals. With the growing awareness of participation among the people of the GCC countries came the impetus for the six governments to make radical adaptations to changing circumstances and expectations representing transitional stages in the path of political evolution from traditional to modern societies. This tendency involved the adoption of written constitutions. These constitutions place emphasis on western-inspired principles of division of power between the branches of government and some degree of legislative sharing between the ruler and national council. In their written constitutions, the GCC states describe themselves as democracies, implying a commitment to political participation. The term democracy is not without ambiguity in these States. The move towards constitutional monarchies has not eliminated the Islamic and tribal sources of legitimacy. The GCC states have chosen the consultative councils (*Majlis al-Shura*) as a first step towards democracy<sup>23</sup>.

National Councils have functioned in all of the GCC States; some elected, others appointed (but not necessarily unrepresentative) with limited power to exercise political participation in such matters as legislation and other discretionary functions. Most of the written constitutions of the GCC States specify that sovereignty rests with the people. Theoretically, then, Governments are accountable to the people. Therefore, in a general sense the legislative powers of these bodies constitute a check on government policies and activities. It is important to emphasise here that the GCC States' political systems involve an assumption that they are rooted in idealistic constitutional



rhetoric rather than in realistic practice, namely, that the power and ultimate sovereignty reside in the people. Moreover, there is a strong limit to the term "democracy" in the constitutions where there are several groups excluded from participation in the political life.

The GCC States are no longer traditional tribal societies and ruling families increasingly risk being perceived as an elite class, acting on their own without political participation from the majority of the people, especially the liberal groups, in the decision making process. The GCC States consist basically of two societies: the conservative, a traditional group that resists changes and demands adherence to what they call the cultural values; and the liberal which demands more political participation in the government.

Indeed, claiming that the existing bodies of the GCC States' Assemblies are largely advisory, requires an insightful study of the GCC Assemblies.

### **Objectives of the Study.**

Before the discovery of oil in 1940 and the attainment by the GCC States of their independence, these countries were to a great extent neglected as a subject of scholarly inquiry. In recent years, a number of studies have been written about the Gulf, not only from the geo-strategic economic points of view, but dealing with the political structure of the Gulf States. It is gratifying to note the increasing number of writers who have taken an interest in the Gulf affairs. They not only provide general information but often do so with insight into the structure of society. The case study method is, of course, important; but it is not enough for developing an overall picture of the Arabian regime. The only studies by Gulf writers which have addressed themselves to the background of the political elite are unpublished doctoral theses submitted to Western universities<sup>24</sup>. Other Gulf writers paid little or no attention to a broader understanding of the subject. While writers in English have dealt with case studies on a single Gulf country, few studies are comparative studies about the political participation in the Arab Gulf States.



All studies are similar, however, in that they do not follow the political development in the Gulf. This study has followed the political development in the participation process in the GCC States until the end of the year 1999.

In this study, the structure and functions of the legislatures within the GCC States present political system will be examined. The study has three purposes: first, to shed light on the factors which brought the legislatures into existence; second, to explore variables which influenced the composition of the Assemblies membership; and third to examine the contribution of the Assemblies to each of the six nations' political life. Regarding the first purpose, it will be shown that the creation of the Assemblies was a result of the rulers' own political vision. It will be argued that the ruler's choice of establishing the parliamentary system was influenced by four factors, namely, the traditional democratic experience, the newly emergent groups in the society, Islamic doctrine and international considerations. With reference to the second purpose of the study, the social, economic and political backgrounds of the groups, which supplied the assembly membership, will be examined from a historical perspective. Regarding the third purpose of the study, the means granted to the assembly for performing its duties will be examined.

Indeed, there is at this juncture a need for a comparative study of the legitimacy of the regimes in these countries in order to know whether these councils do represent the people or merely serve as organs of the States. This study will be an examination of the extent to which each of the National Councils in the six States of the GCC has been allowed to participate in the regime and can serve as legitimate forums for criticism.

### **Research Methodology.**

The major problem encountered by the researcher was data collection because the topic touches upon what is considered in many developing countries as a politically sensitive institution. The researcher found that therefore, the questionnaire method was impractical in dealing with the role

and functions of legislature in developing society. The researcher was advised by the General Secretariat of four of the GCC legislatures not to adopt this method because of some precedents where legislature members declined to answer written questions.

Therefore, this study is dependent on many different sources, which vary from one chapter of the work to another. The main common sources for the whole work are legal documents, instruments and statutes and court cases. Apart from some general studies dealing with the political system<sup>25</sup> and others dedicated to the history of the GCC States, there is very little published on the GCC legislatures. The only studies which have addressed themselves to the background of the GCC legislatures are unpublished doctoral theses. The present study is distinctive, as it is the first attempt to make a comparative study of the legislatures of the GCC States.

### **Organisation of the Thesis.**

This study consists of six chapters and a conclusion. Chapter I will address issues that contributed to a greater appreciation of the GCC politics in general, especially how relatively peaceful change from tribal society to a prosperous and comparatively modern society was due in large part to the willingness of the elite of each state to establish a body for sharing power; and how the introduction of an assembly, despite setbacks, was these elites' contribution to sowing the seeds for future political development.

In chapter II we will discuss why the *Sahara democracy* with its Arab and Islamic precepts of consensus consultation and community cooperation was never meant to be a Western style democracy but instead an Arab-Islamic state resting on democratic institutions rooted in the GCC State's Arabic and Islamic culture.

Chapter III explains the constitutional framework of the GCC legislatures. The composition of legislatures is examined, including the method of selecting members and the aspect of the right to vote. This chapter

centres on women as a major non-voter group in the context of social, political and religious circumstances. Moreover, the organisation of the legislature will be discussed in relation to the most important aspects of leadership and assemblies' committees.

Chapter IV will explain and analyse the functions of the GCC legislature. The focus will be on the three main broad constitutional functions usually assigned to legislature: legislative, financial and political.

Chapter V is concerned with highlighting the system of government as reflected by the interplay between the powers, in terms of their controls and checks upon each other. To promote such an examination, a theoretical analysis of the concept of the separation of power is made. Then, the concept of ministerial responsibility is examined against the background of the theory of conventions, as well as many different techniques to enforce responsibility. This chapter pays special attention to the major technique by which legislature is usually limited and controlled, namely dissolution of parliament. Also, the court's role in interpreting the constitution and its position as an arbitrator between the different organs is examined and explored.

Chapter VI is the last chapter. From the discussion of the major issues raised in the study, this chapter will provide suggestions and recommendations for the various defects identified as a consequences of the whole examination of the participation process in the GCC States.

## Endnotes

- <sup>1</sup> -The Gulf Cooperation Council consists of Saudi Arabia, the United Arab Emirates, Bahrain, Kuwait, Qatar and Oman.
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- <sup>3</sup> -Rupert Hay, *The Persian Gulf States*. Washington, D.C: the Middle East Institute. 1951. Pp 100-101
- <sup>4</sup> -David Easton, *A System Analysis of Political Life*. London: John Wiley and Sons, 1965 pp.278-279
- <sup>5</sup> - Max Weber, *The Theory of Social and Economic Organization.*, trans., A. M. Henderson and Talcott Parsons. New York: Oxford University Press. P. 328
- <sup>6</sup> - Ibid.
- <sup>7</sup> - Ilse Dronberege, *The Political Thoughts of Max Weber: In Quest of statesmanship*, New York: Meredith Corporation, 1971, p. 176.
- <sup>8</sup> - Gabriel A Almond and G Bingham Powell, Jr, *Comparative Politics: A Developmental Approach*. Boston: Little Brown and Co, 1966, p.21
- <sup>9</sup> - Ibid., p.22
- <sup>10</sup> - Ibid., pp. 356-363.
- <sup>11</sup> -Samuel P. Huntington **Political development and political decay.** *World Politics*, April, 1965. P 393
- <sup>12</sup> - Ibid., 394
- <sup>13</sup> - -Samuel P. Huntington, *Political Order in Changing Societies*, New Haven: Yale University Press, 1968, p. 387.
- <sup>14</sup> -Robert A. Packenham, **Legislature and political development**, In Allan Kornberg and Lloyd D.Musolf, *Legislatures in Developmental Perspective*, Durham: Duke University Press, 1970, p. 578.



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- <sup>19</sup> -Ibid.
- <sup>20</sup> -Weston H Agor, *Latin American Legislatures: Their role and influence*. New York: Praeger Publishers, p.10
- <sup>21</sup> - Joel Smith and Lloyd D. Musolf (eds.) *Legislatures in Development: Dynamics of Change in New and Old States*, Durham; N.C. : Duke University Press, 1977.
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- <sup>23</sup> - Ibid., p.45
- <sup>24</sup> - Some of the most important theses are:
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## **Chapter One: Historical Antecedent of the GCC States**

### **Legislatures.**

#### **1.1 Introduction**

In the modern world, the demand for popular political participation is increasing. The modern history of the West, in one of its important aspects, exemplifies the process of political participation by which the masses have their right to participate in government. Rational technology and efficient bureaucracy have been the new orientation of the West towards the creation of a new kind of political organization. This new political culture has been emerging throughout the world, emphasizing the political respect of the ordinary man, or what Almond and Verb have called the “participation explosion”<sup>1</sup> A similar process is unfolding today in many developing societies, where the political changes have resulted in new forms of political activity and political institutions to accommodate them. In an eloquent discussion of this process, Wiener has stated that, “the transformation from monarchy to republic, from colonial rule to independence, from no party to party system, from limited to universal adult suffrage, and from dictatorship to democracy have all meant new relationship between the citizen and the State and new political participation.”<sup>2</sup> The widening of political participation seems almost inevitable in many developing nations which have embarked on a course of modernization.

This trend toward political participation can be viewed as a direct consequence of several social factors which operate in modernizing societies. According to scholars of political development there are five factors, each of which alone or in combination with others, generate an increased demand for political participation.<sup>3</sup> These factors are:

1. Social mobility, resulting from rapid urbanization, improved education and the spread of literacy.

2. The growth of the middle class, as a result of industrialization and commercialization.
3. The emergence of an intelligentsia with a strong commitment to nationalism and egalitarianism.
4. The competition among the elite to mobilize popular support.
5. The expanding scope of government and its concomitant relevance to broader segments of society.

All of these factors exist, to varying degrees, in the GCC States' societies, where socio-economic development has taken place at an impressive rate in recent decades. The GCC States are rapidly becoming urban societies, with more than half of their populations living in urbanized areas. Educational facilities have proliferated at all levels and become highly valued social provisions. Consequently, the populations are becoming increasingly better educated, and illiteracy has already become a thing of the past. With urbanization and industrialization have come the gradual emergence of the middle class.

Furthermore, Gulf intellectuals are intensely nationalistic in their outlook, partly because of the influence of the Arab Nationalist Ideology and of past independence struggles. They are also committed to the ideals of liberal democracy. Liberty, freedom and equality frequently invoked by the intellectuals, although these values are not fully realized in the Gulf societies.<sup>4</sup>

There are several means of active participation in the Gulf systems. For instance, there is the traditional participation through the institution of the *Majlis* or council and the *Shura* (these institutions will be discussed in Chapter Two). The rulers are not absolute monarchs, but their families form the primary decision-making bodies of the States, influence them, and display a wide variety of opinions. There is also indirect participation which occurs in some States through the activities of social and sports clubs, student organizations and professional societies. Finally, all of the GCC States have



formal councils at the national level. Despite all these opportunities, it cannot be said that today's Gulf citizens enjoy maximal opportunities for political participation.

The discussion in this chapter will focus on the various changes taking place as a result of the emergence of the modern States in the Gulf, which are having a substantial impact on political participation in the GCC States.

## **1.2. Defining Political Participation.**

Political participation is a complex, multifaceted concept. Scholars have offered many different definitions of the term, some broad and others narrow in scope. Weiner has identified ten different meanings and usages of the term in literature.<sup>5</sup> One of the most influential definition is found in Verb, Nie and Kims' book on political participation. They define political participation as "those activities by private citizens that are more or less directly aimed at influencing the selection of governmental personnel and/ or the actions they take."<sup>6</sup> In this definition they preclude what they regard as ceremonial or mobilized acts in support of the regime. They also ignore "unconventional" political actives such as participation in illegal protests, demonstrations, or subversive revolutionary movements. They justify their definition by clarifying their interest in what they call "democratic participation." Their explanation is the most restricted use of "political participation"<sup>7</sup>.

A broader definition has been employed by Weiner, who defines political participation as "any voluntary action, successful or unsuccessful, organized or unorganized, episodic or continuous, employing legitimate or illegitimate methods intended to influence the choice of public policies, the administration of public affairs, or the choice of political leaders at any level of government, local or national."<sup>8</sup> This definition is broader than Verb, Nie and Kim's formulation, because it includes all unconventional political activities. Also, Wiener's emphasis is placed on voluntary actions, as against the exclusion of all types of participation that do not involve citizens' real

choice.

Milbrath and Goel define political participation as “those actions of private citizens by which they seek to influence or to support government and politics.”<sup>9</sup> In their definition they include not only the active roles that people pursue in order to influence political outcomes but also the ceremonial and support activities.

In their work on political participation in developing countries, Huntington and Nelson state that “the purpose of political participation is to affect governmental decision-making”<sup>10</sup> In their usage, the term political participation includes the following activities<sup>11</sup>:

- 1- Electoral activity;
- 2- Lobbying;
- 3- Organizational activity that seeks to influence governmental decision-making;
- 4- Contacting decision-makers;
- 5- Violent activity.

Their statement implies that all forms of political participation have the same purpose of affecting government decision-making, while the redistributive goal of affecting governmental decision-making is only one purpose of citizen activism beside other different activities with different goals. Participation is about creating resources for individual and collective consumption, more than to alter the decision of formal governmental institutions.

A somewhat broader definition has been employed by Seligson and Booth. They define political participation as “behavior influencing or attempting to influence the distribution of public goods.”<sup>12</sup> In their definition they assume that most efforts are stimulated by individuals following their own best self-interest.

Clearly, then, political participation as it is defined is equated with a Western liberal-democratic political system, and viewed in terms of elections, voting and political parties, these terms being either restricted or nonexistent in the Gulf societies. Elections in the Gulf have taken place in Kuwait, Oman, and for a short period of time in Bahrain. Political parties are restricted in all GCC States.

For our purpose we shall adopt a definition for the term in its broadest possible sense to apply to the set of nations with which we deal. In his study of political participation in the Arab Gulf States, Peterson defines political participation as “ a process whereby individuals engage in activity that impinges directly upon the national power and authority structure of society; such activity can either challenge the system or support it.”<sup>13</sup> Clearly, it is a broader definition designed to take into account the political conditions of the GCC States.

There are several important reasons for adopting this broadest of definitions. First, there have been few systematic studies of political participation in the GCC States. Second, the question of political change is particularly relevant to these States. Socioeconomic transformations are occurring rapidly: the average citizen of the GCC States is now well educated, his economic life is organized around a distinctly modern market economy; his life-style reflects a predominantly urban culture; he has an easy access to mass media. Rapid socioeconomic transformation has effected important changes in the structure of political process. Citizens have become politically more aware, invested a great stake in political outcomes, developed a stronger sense of political efficacy; and become more actively involved in politics.

Broadly speaking, there are several means of active participation in the GCC systems. First, decision making in all States is in the hands of a small elite of members of a ruling family - as large entities, these families display a wide variety of opinions, strategies and goals - and of a small group of ‘civil servants’ or technocrats drawn largely from prominent merchants and tribal



families. Second, there is traditional participation through an Islamic concept of participation and through the tribal institution of '*Majlis*'. Further discussion of these two traditional terms will follow in Chapter Two. Third, there is indirect participation through the activities of public and semi-public organizations such as social and sporting clubs, student organizations and professional societies. Fourth, influence is exerted by specialized public or quasi-government bodies such as municipal councils and chambers of commerce, which often have elected members and in some States elected leaders. Finally, all GCC States have formal national councils, with election for these in Kuwait and Oman.

### **1.3. Modernisation and Political Participation in the GCC States.**

Modernization is essentially a complex term that can encompass various meanings. Perhaps the best-known and most highly acclaimed 'revisionist' theory is that of Huntington, who argues that modernization is a manifold process of socio-economic change which brings expansion in political participation.<sup>14</sup> Huntington and Nelson have identified three different routes to the expansion of political participation in developing countries.<sup>15</sup> The first route is taken by societies where participation is regarded as a goal in itself. The second route is mobilization by the government. In this latter model, participation is considered a means, rather than a fundamental goal in itself. The governing elites of these societies selectively encourage activities supporting the elites' goals, but not those of a more assertive kind which they regard as threatening to their power. The third route is greater participation as a consequence of socio-economic changes, increasing the levels of economic affluence, media exposure, and education accessible to the population, accompanied by a high level of political consciousness leading to demands for greater participation.<sup>16</sup> Participation, then, can be a by-product of socio-economic changes, with socioeconomic progress bringing citizens economic affluence, better education, greater political awareness, and a greater sense of involvement.



In the last three decades the pace of socio-economic change in the CC States has been truly spectacular.

### **1.3.1. Impact of oil discovery on traditional alliances.**

The discovery of oil has influenced and shaped the political systems in the GCC States. Oil has played a supremely significant role. Before the discovery of oil the Gulf people lived a simple life in and around oases and coastal communities. They lived largely in poverty and had little to contribute either to their own well being or to that of the world. Life generally was a struggle.

Oil receipts have opened new horizons, not only in the oil producing countries, but also in their non oil-producing neighbours.

The greatest impact of oil was that it gave rulers direct access to external revenues, generated outside the local economy, where once their revenues had to be squeezed from the population through the merchants, who in turn exacted a political price. These merchants' families were the link connecting the monarch to the money he needed.<sup>17</sup> They extracted revenues from pearl divers rather than from peasants and gave a portion of these revenues to the ruler through customs dues, pearling boat taxes and personal loans. Merchants' political power grew from their economic strength, and their ordinary input into decision-making derived from the social institution of marriage, and from *Majlis* which gave them informal but daily access to the ruler<sup>18</sup>. The new oil revenues snapped the link binding the rulers to the merchants. Oil revenues allowed the rulers to deal directly with the population by hiring nationals into the bureaucracy, and as a result merchants were deprived of a politically useful workforce. The external nature of oil rents, the enclave nature of industry and the size of the boom spared rulers the need to extract, through taxation and repression, economic and social resources obtained through other networks of obligations such as tribal and religious groups. The rulers were thus freed from their historical dependence on merchants.<sup>19</sup>

The immediate consequence of oil was the breakdown of the historical governing coalition based on economic interest between rulers and trading families, and instead the development of new and unstable arrangements which excluded the merchants from formal political life. Rulers came to rely on the oil companies for money which they used to distance themselves from the merchants, and States would no longer have to rely on port dues paid by traders. The dependence of the rulers on the merchants' families withered rapidly. The second consequence of oil revenues was that merchants were no longer united by a common tie to the production process. Once oil dominated the economy of these States it altered the merchants' historical economic base because the oil industry needs relatively few workers and generates few social and economic linkages.

In fact, the merchants maintained an unexpected and strong corporate sense and continued to function economically and socially as a collective body. The explanation lies in the fact that States' distributive policies not only favoured the historic economic elites, but favoured them through mechanisms that perpetuated their group identity. The mechanisms that States used were the preserve of an enclave (non oil) private sector, legitimated by a free enterprise ideology and direct aid and protection to merchants through grants of lands, money, and monopoly concessions<sup>20</sup>. Thus, the primary beneficiaries were the old trading families, since the private sector was their playground. The transition to oil was accomplished through a tacit deal between rulers and trading families, a trade of formal power for wealth. In exchange for receiving a sizable portion of oil revenues, the merchants renounced their historical claim to participation in decision making. As a result, trading families rose economically, but declined politically. Their informal access to the top declined as the rulers turned more to their family council and new allies.

### **1.3.2. The emergence of the modern States.**

The breakdown in the old ruling coalition binding the trading families and the rulers and its replacement by a new set of elites were a patterned

response to oil that occurs repeatedly. Oil gave these regimes the resources necessary to develop new allies among the national population through distributive policies. The benefits of oil have trickled down to most nationals. As a result, many groups which were previously unaffected have begun to feel the impact of these changes. The prosperity that citizens enjoy is manifested in two areas - social services and employment. Citizens are entitled to free education, health care, and a variety of subsidized goods and services, including housing, as well as direct transfers of wealth. The second mechanism for distributing revenues is employment. In order to provide a wide range of services there was a great expansion of bureaucracies, which the Gulf regimes favoured, since it was seen as a sign of modernism and a dignified way of disbursing wealth. The consequence has been the increase of bureaucracy in scope and size in these States. By 1990, more than 60 % of the national work force in the GCC States were working for the State.

Distributive and development policies rapidly increased the role and size of the State. To maintain control over the new States, rulers turned increasingly to the ruling families. Members of the ruling families constitute the most powerful subset of the GCC governing elites, joined by a small but influential group of prominent merchants and professional State administrators. This social coalition relies on tribal authority, control of the central bureaucracy and, when necessary, armed force to maintain its predominant position in the local society. The family was chosen because it offered the most reliable set of allies, a group with a vested interest in monarchical rule. The ruling family also provided a ready-made proto-institution.<sup>21</sup> The political role of the ruling families was an important break with the past. Until oil discovery, the ruling families were not a cohesive political institution; rulers were dependent on influential merchants' families, and members of the ruling families were excluded from the rulers' decisions. With oil, rulers strengthened family networks to provide more reliable elites as recruitment pools for increasing large and bureaucratic governments catalyzed by oil. The most distant family claimants were eliminated; the less distant received increased allowances, the nearer claimants sinecures and the



closest relatives high State posts. The rulers control politics and political institutions primarily through the ruling families. Critical decisions are made by ruling family council. As the ruling families became more cohesive and more powerful relative to the society, the rulers became less absolute and less powerful relative to their own family<sup>22</sup>.

The arrangements between rulers and the trading families have held together so far. As these States have become increasingly complex, there has been a direct dependence on bureaucrats. The local bureaucratic elites bear a strong familial and social resemblance to pre-oil merchants' elites. This is because the traders were the first to educate their sons, in the early years of this century; establishing a school in a GCC State was led by merchants rather than government. Prominent members of GCC States' commercial elites occupy influential posts within these countries' most important political institutions, enabling them to maintain their status. Three institutions represent particularly significant bases of power for the rich merchants: the central administration, the municipal councils, and the chamber of commerce. Each one of these institutions permits considerable latitude in the planning and implementation of programmes within its purview. As a result, policy debates among members of these institutions play a pivotal role in these regimes' political affairs.

The most important change in modernization has been the rise of a new middle class. This group has benefited from the educational, economic and career opportunities which have arisen in these societies. Its social position is derived from its expertise and technical skills; its members are to be found among educated citizens, experts, and State and private sector employees, with a common principle, that members of this group are likely to occupy their professions and posts through merit and achievement rather than their familial ascription. One of the distinctive features of this group is that it is seeking a more active role in public affairs, emerging as the most dynamic group in the society, and replacing the merchants in spearheading demands for greater political participation with the support of its dominant role in the



bureaucracy, its own political awareness and activism. Members of this group have recognized that to achieve this objective they should not rely on the official institutions of participation, but should also join sporting and cultural clubs and professional unions where politics can be discussed.

The role of tribal groups which had traditionally formed the core support for the ruling families has also changed. Following the discovery of oil, the nomadic tribes were encouraged to settle within the geographic boundaries of the State. They were offered housing and other material incentives to lead a *hadr* (urban) lifestyle. Many of these *Bedouins* were among the first to be exposed to the oil industry, seeking employment. The younger generations of Bedouins enrolled in the new government schools and were soon occupying prominent positions in the armed forces and government administration. Since the ruling families' dynasties of the GCC States sprang from the tribes, the tribes gave the ruling families their unstinting loyalty and support. Tribes were the pools of power that ruling families relied upon. Tribal *shaikhs* (chiefs) and notables generally continue to enjoy access to the rulers, and their relationship with the rulers has not been complicated, unlike the case of the rest of the society. Furthermore, when the new political institutions were established, National Councils were largely composed of tribal elements, and headed by tribal *shaikhs*. Moreover, tribes emerged through the electoral process as the most powerful group in Kuwait's and Oman's councils.

### 1.3.3. The growth of political awareness.

Education has been viewed by thinkers and political leaders alike as a tool for forming the citizens. Plato in his *Republic* relied heavily on education for the transformation for the formation of the good society. Recently, States of all ideologies have employed education to form the type of political perception and imagery that would perpetuate and glorify a specific political culture. This process of preserving and transmitting a political culture through childhood socializing experience is called 'political socialization'.<sup>23</sup> The school's role in this process is to form the mind of the child in such a way

that he will attach certain universal values to the political system within his environment. This inculcation of values fosters the emotions of loyalty, love, respect, and pride in regard to the political system.

As elsewhere, the school system has played a key role in political socialization in the GCC States. In the pre-oil era the educational system was entirely private, consisting of a network of *Quranic* schools. Islamic authorities thus controlled this primary instrument of socialization. Merchants began to encroach on the educational prerogatives of the religious elite, and unhappy with sending their sons abroad for higher education they established more extensive school systems in these States. Merchants have used the education system for their benefit at a time of social and political dislocation. With the oil era, education became one of the earliest priorities of the GCC States. Governments embarked on large-scale education projects involving school construction and the hiring of teachers. They also developed higher education, primarily through the establishment of universities. In other words, the education system of these States is well-funded, modern, and comprehensive. The GCC States have succeeded in introducing a curriculum that inculcates a national identity and that reinforces the role of the leaders.

In the absence of political parties, the clubs and societies, whose memberships include a majority of the GCC States' elite public, have exercised the essential functions performed by political parties in other political systems. Although none of the clubs and societies was established for political reasons or to perform an explicit political function, they have all provided the milieu for the elite public to develop political opinions and to articulate them. Clubs have performed a role in the political life of the GCC States such that both the ruling families and the elite public have perceived them as agents of political institutions.<sup>24</sup> Regarding the role of clubs in the GCC States as compared to the role of traditional political parties in developed or developing countries, it should be emphasized that, structurally or formally, the clubs have played a role in the growth of the GCC nations, especially in the strengthening of identity, legitimacy, and integration. As

they were the places where the educated met, the clubs though strictly nonpolitical, became in reality centres for things political.<sup>25</sup>

Another fact of the 'new awareness' has been the role of the press. The press in the GCC States, at least in its present form is a new phenomenon. According to Professor Pye's model of communications theory, there are five functions which should be considered to assess the impact of media, especially the press, on political socialization. Pye lists the influence of the press as follows<sup>26</sup>:

- 1- It sheds light on the entire spectrum of the social process.
- 2- It contributes to the understanding of political behaviour.
- 3- It provides a forum for individuals to develop a society wide dimension for their actions.
- 4-It injects mass politics with a measure of rationality, especially when the new society is emotionally engaged in establishing its political identity.
- 5- It debates the issues rationally. The process of communication also provides the political system with a sense of pragmatism- a method of separating the plausible from the implausible.

Societies which are modernizing should realize that the freedom of the press is an essential ingredient in the process of democratization, thereby providing the country's citizenry with the opportunity to share in the making of laws and the responsibility of voluntarily complying with them. The history of man has taught us that if the law is not understood or if the citizen does not resort to it for the preservation of order, the propensity for compliance will deteriorate, and lawlessness will surely follow. Good law is the medium through which the ruler communicates with the citizens, thereby, translating his authority into abiding decisions, and the press is the medium through which the people identify with and develop their membership in the political community.<sup>27</sup>



As in much of the Third World, the broadcast media are State- owned, with some of the print media in private hands. GCC States' governments have made effective use of the State media to encourage the development of national identity. Other State institutions, such as the Ministry of Information and the National News Agency, also publish a regular range of historical and cultural works designed in part to educate the population to recognize the importance of its specifically national identity. The printed media are more apt to draw on GCC States' Islamic, Arab, and even Third World identities. However, it must be pointed out that the media in GCC States cannot perform their functions fully because of the restrictions imposed by governments. The GCC press contribution to political socialization has been limited by such factors as:

- 1- The press is often subject to legal, primarily administrative, restrictions which often inhibit it from becoming an effective participant in the process of political development.
- 2- The GCC newspapers command a narrow readership because they do not address themselves to the major issues of the society.

By reading the major Arabic press from Egypt and Syria and Western press, the GCC elite public keeps abreast of events and trends throughout the region.

Changes in GCC States encompass many positive socio-economic and political elements which have increased political participation within these societies. These changes have brought clear transitions introducing modern institutions.

#### **1.4. Legislative Experiments in the GCC States.**

The old socio-economic structure allowed a relatively small group of people in the GCC States to participate in decision- making in these States. The rulers' dependence on the merchants for a major part of their income gave the trade families a say in the policy making process. In addition, the



support of tribes was important for the GCC regimes; therefore, *shaiks* (tribal chiefs) were consulted on local affairs. Consultation was and still is a basic component of social values in the GCC States. However, socio-economic changes have made a profound effect on the traditional *Majlis*, which became weaker. The traditional institution could no longer play the role assigned to it as the main channel for participation. New institutions were needed, and the merchants would lead the struggle for participation until the advent of the oil revolution and the rise of the middle class.

The social change caused by oil wealth, with its opportunity for development, education, travel, changing lifestyle, and rulers' personal goals, together with the growing awareness of participation among the people of the GCC States were the occasion for the six governments to undertake drastic adaptation to change circumstances and expectations, creating transitional stages in the political evolution from traditional to modern societies. This tendency involved the adoption of written constitutions which placed emphasis on western-inspired principles of division of powers between the branches of government and some degree of legislative power sharing between the rulers and National Councils. However, the path to modern parliaments has not been smooth in some of the GCC States.

#### **1.4.1. The Bahraini experience.**

Bahrain society is divided into four principal groups. The Bahraini of *Sunni* tribal origin form the traditional aristocracy, centered on the ruling family (Al-Khalifa) and their tribal allies. The *Sunni* of *Hawala* who come next in social rank, being families of Arab origin, migrated to the Persian side of the Gulf in the far past and then came back to Bahrain in the last several centuries. The *Shia'* majority of the population are divided into the Bahraini and the *Ajam* (Persian). The distinctions made between these groups have provoked economic and political tensions in the society.<sup>28</sup>

Before the institution of bureaucracy and the development of oil, the Al-Khalifa regimes were challenged internally by other Al-Khalifa claimants

or by war. Since then the challenge has drifted to the rising new force: *Shia'*, the labour force, the student population, and the underground political parties. After oil the content of challenges changed from the usurpation of power and property to legitimacy and authority, focusing on public representation, a standardized code of justice and a host of economic complaints and grievances.<sup>29</sup>

As a consequence, protests and clashes cropped up among the *Shai'* (1922), students (1928), pearl divers (1932), and Bahraini Petroleum Company employees in 1938, 1942, 1948, and 1965.

In 1923 the Bahraini nationalists convened a "Bahraini National Congress" to formulate a list of demands, including the establishment of a consultative council. These demands were presented to the Amir who, under the pressure of the reform movements and the guidance of the British adviser agreed to establish partly nominated and partly elected councils for the municipality, and education departments. Fading away as soon as they were formed, they failed to produce significant visible changes in the authority system.

In the mid-fifties students, exposed abroad to pan-Arab nationalist and social movements returned and displaced an earlier generation of more conservative opposition leaders. As a consequence, the *Al-Hay'a al-Tanfidihiya al-'Ulya* (Higher Executive Committee) was formed on 13 October 1954, which petitioned the government for a legislative council, the codification of criminal and civil law, the right to form trade unions, and the establishment of a higher appeal court.

The government rejected these demands but then entered into negotiations with the Higher Executive Committee (HEC) to discuss the reforms which the Committee had been demanding for more than a year. The negotiations resulted in the setting up of three, half elected and half appointed councils to supervise the departments of education, health, and municipalities. The elections for the Health Council and Education Council

took place in 1955 and the HEC candidates swept the balloting. The Municipalities' Councils were never elected. Neither elected council functioned because of the dispute over the appointment of their chairmen and the failure of negotiations to continue<sup>30</sup>.

From then until independence from Britain, political opposition had to operate underground, and confrontation turned into violence and a number of demonstrators were killed before the government was able to regain control after declaring a State of emergency. All advances made by the Committee had come to nothing, and another phase in Bahraini history was over.

#### **a) The Constitutional Assembly.**

In the first National Day speech (1971) since Bahrain's independence, the Amir referred to the immediate necessity of a constitution. He emphasized that a modern constitution was to be a prerequisite for the political organization of the State to produce the society's unity and to guarantee the citizens their basic individual freedom of education, work, social welfare, health, and free expression of opinion. Moreover, it would provide the people with the right to participate in the management of their country's affairs in a context of legitimacy and constitutionalism<sup>31</sup>. This commitment signaled a move by the ruling family to urbanize and modernize its tribal rule by attempting to establish a legitimate basis of government other than the traditional autocratic tribal system.

On 20 June 1972, the Amir decreed (Law 12/72) that a *Majlis tasisi* (Constitutional Assembly) be established for the purpose of discussing and ratifying a constitution. In the election held on 1 December 1972, twenty-two members were chosen out of 58 candidates by 27,000 male voters. The ruler appointed additional 8 members and the total membership has increased to 42 by the inclusion of the 12 members of the cabinet as ex officio members. The Assembly was charged with approving a draft constitution submitted by the Council of Ministers. The composition of the Assembly virtually assured the passage of the constitution without major changes.



On 2 June 1973 the Assembly approved a constitution. The Constitution provides for the separation of legislative, executive, and judicial powers, and called for the creation of a National Assembly. The Constitution vested legislative power jointly in the Amir and the National Assembly. According to Article 33, the government is not bound to take any elected members of the Assembly into the cabinet. Ministers are responsible to the National Assembly for affairs of their respective ministries, and the Assembly members have the right to address questions to individual ministers on matters within their competence; also, members can pass votes of no confidence against individual ministers.

The Bahraini ruling family has viewed the constitutional process as what Nakhelh has called “an expression of royal benevolence” rather than an admission that people had any legitimate right to participate in government.<sup>32</sup>

#### **b) The National Assembly.**

Bahrain was one of the first GCC States to have a constitution, popular election and a representative body. On 7 December 1973 Bahraini male citizens, who were 20 years old, including citizens who had been naturalized for 10 years, went to the polls to elect the first *Al-Majlis al-Watani* (National Assembly) in the history of Bahrain. The election resulted in the emergence of three main groups, the ‘*Popular Bloc*’ ‘*Conservative Bloc*’ and the ‘*Independent*’

The Popular Bloc was referred to as “leftist” since it was composed of Arab nationalists, socialists and Marxists. This group was strongly in favour of deepening the process and institutionalization of democracy, giving women the right to vote, reforming the education system, and moving Bahrain to closer links with Arab issues. The Conservative Bloc was composed of religious and traditional leaders. This group had a generally religious approach to such matters as co-education, the practice of Islamic ritual and moral conduct. The Independent Bloc was independent of either bloc and ideologically diverse, the group’s ranks including merchants,

contractors, pharmacists, and real estate dealers<sup>33</sup>.

The National Assembly had two sessions, the first lasting from December 1973 to June 1974; and the second starting in October 1974 and continued until June 1975. During the last legislative session meetings were characterized by rancour and open hostility between the government, the ruling family, the Popular Bloc and number of the Islamic group. Among the major issues that occupied the Assembly were inflation, housing, the national budget, and government expenditure. However, the most important issues were the proposed Security Bill and the American Bahraini Agreement, '*the Jufiar agreement*'.

In December 1974 the Amir issued a law allowing the government to arrest and imprison any person suspected of being a threat to national authority. The other conflict was over the *Jufiar* agreement, whereby the U S Navy had been granted naval and military facilities in exchange for an annual payment. The Assembly recommended that the agreement be re-considered since it was not in the national interest. With the hardening position, the Assembly had little opportunity to develop its constitutional role and it was not long before the Amir dissolved it.

The confrontation between the government and the Assembly led the government to boycott the last few sessions of the Assembly, which therefore had no quorum. The Prime Minister resigned and proposed to the Amir that the Assembly be dissolved and a new one elected. The Amir accepted the government's resignation and asked the Prime Minister to form a new government, and the Assembly was dissolved by the Amir in August 1975.

In 1992 a group of 300 Bahrainis representing all trends and sections of the society submitted a petition to the Amir calling on him to restore the parliament and the constitution. The Amir rejected their plea and instead appointed a consultative Council known as the *Majlis Al-Shura*. Members of the *Majlis* are divided between *Sunni* and *Shia* 'and appointed by the Amir. The *Majlis* debates marginal issues; however, it does not have the power to

introduce legislation, nor can it request to review legislation that the cabinet has not referred to it.

It should be pointed out that, in spite of well-articulated appeals by educated women for political equality, the Bahraini experiment has denied women the right to vote or to participate in the political life of the country.

#### **1.4.2. The Qatari Experience.**

A Provisional Constitution was issued on 2 April 1970. The Constitution was promulgated in the belief that Qatar would be a member of the Federation of Arab Emirates. The failure of this union to materialize, together with Qatar's separate independence, required constitutional change. However, the Provisional Constitution, which was to remain in effect until a permanent constitution was adopted, was amended to last for a "period of transition" and is still in force.

According to this Constitution, rulership is declared hereditary within the *Al-Thani* family. The Constitution also describes the formation and duty of a consultative council in detail. The original Provisional Constitution provided for the election of the Council which should consist of twenty elected members and the ministers as ex officio members. Four candidates were to be elected in each of the ten districts, from which the Amir was to choose two to represent the districts in the council.

The principal amendment deals with the composition and membership of the Consultative Council. Whereas under the previous system Council members were to be elected, the Amended Provisional Constitution specified that the first Consultative Council was to be appointed by the Amir<sup>34</sup>. The Amir believed that during the transitional period elections were neither necessary nor useful. So far, it seems, the transitional period has not ended and the Consultative Council continues to be appointed.

The *Al-Shura Majlis* (Consultative Council) was formed in 1972. Initially, the Council consisted of twenty appointed members plus the cabinet



as ex officio members, but it was expanded to thirty members in 1975. Originally, the Council was convened to serve for a single year (1972-1973) before elections were held according to the Constitution. However, its life has been extended since then at regular intervals. As a consequence, members have remained as they were appointed in 1975, with the exception of four new appointments necessitated by deaths and the new members have been close relatives of the deceased<sup>35</sup>. Members were chosen to represent the merchant community, important tribes, the educated and outlying districts.

The functions of the Council include reviewing and offering consultative opinions on legislation related to social and economic affairs, giving opinions on general policies presented by the Council of Ministers, drafts of laws proposed by the cabinet and referred to the Council for its recommendations, amendments and revision, and the Council discusses the drafting of budgets for major public projects. In addition, since the reform of 1975 the Council has the right to request written or oral Statements from members of the Ministers' Council, and individual members of the Council have the right to submit written questions to Ministers regarding the work of their Ministries. However, the appearance of ministers before the Council does not mean that the Council has the right to put a vote of no confidence to the government or any Minister.

Although the Consultative Council's legislative powers are severely restricted, it has recorded its refusal to accept the government's legislation on more than one occasion: the Council in 1974 refused a draft law on public housing, and in 1985 the council rejected decree laws regarding civil service and military pensions.

### **1.4.3. The Saudi Arabian Experience.**

Although the Saudi Arabia *Shura Council* (Consultative Council) is the youngest national council in the GCC States, the country has experienced several attempts at creating a consultative council. An early Consultative Council (*al-Majlis al-Ahli*) was introduced for *Mecca* in January 1925. Three

groups of the society were represented in this council: *Ulama* (religious leaders), *A'yan* (notables), and merchants. Each group was to elect three delegates to the council. Six months later this *Majlis* was replaced by a broader council. The new *Majlis* consisted of eighteen members: fifteen were elected members; two of which represented the *Ulama*, one the merchants, and the remainder, the twelve quarters of the city one member for each quarter; and three members were appointed by the King<sup>36</sup>. Similar councils were announced for the *Al-Madina*, *Jeddah*, *Al-Taif*, and *Yanbu*. These councils with the tribal Shaikhs were to elect the General Consultative Council of Al-Hijazi.

The most advanced reform was the establishment of a Constituent Assembly composed of eight elected and five appointed members. This Assembly was charged with writing a constitution for *Al-Hijazi*. On 3 September 1926 the *al-Ta'limat al-Isasiyah li-Mamlakat al-Hijazi* (Basic Instruction for al-Hijazi) was published. This document provided for the establishment of a *Majlis al-Shura* (Consultative Council) for al-Hijazi and a number of city and village councils. The Consultative Council began to function on July 1927, with four members chosen in consultation with prominent members of the community, and another four members appointed by the government. The Council was authorised to review economic matters such as budgetary questions, new projects and the legislation of laws and statutes. This Council continued to function until the formation of the Kingdom Council of Ministers in October 1953<sup>37</sup>.

In late December 1960 it was announced on Mecca Radio that a new constitution had been agreed. This constitution stated that Saudi Arabia was an independent Islamic State and that it would be a constitutional monarchy. There would be an *al-Majlis al-Watani* (National Council) with a third of its 120 members appointed and the other two-thirds indirectly elected through nomination by provincial councils, subjected to the approval of a committee of ten members appointed by the King. Trade Unions would be allowed to operate. At the social level people would have equal rights and have access to

housing, education, and health care. The constitution was never officially proclaimed and the Council never put into function.<sup>38</sup> Since then, the formation of a constitution and a consultative council has been broached a number of times but never brought to fruition until recent days, when King Fahad promulgated the *Basic Law of Government* in 1992.

The Basic Law (Constitution) set out in Article 68 the establishment of a Consultative Council. The new council has been established and its powers and operating framework have been defined by the *Shura Council Statute*. Initially, the Shura Council was composed of a chairman and 60 members appointed by the King from amongst scholars and men of knowledge and expertise's and the number was expanded to ninety members in 1996.

The functions of the Council include reviewing and offering consultative opinions on general policies of the State related to social and economic affairs and international law charters, treaties and agreements. The council has the right to interpret laws, participate in the preparation and implementation of government plans, review public services and utilities and make recommendations concerning their modification and development<sup>39</sup>. According to the powers given to the Council by the establishing decree, it is clear that the Shura Council is merely consultative, as it can only discuss specific Bills submitted to it by the government.

#### **1.4.4. The Kuwaiti Experience.**

Kuwait has had more experience with democratic institutions than other GCC States. The early efforts of notable Kuwaitis and the merchants in the 1920s were aimed at returning the balance of oligarchy traditionally enjoyed with the ruling family. However, the oligarchic institution could not be replaced until the establishment of the *Majlis al-Umma* (National Assembly) in 1962.



### a) The early attempts of Consultative Councils.

The economic difficulties of 1921 led the merchant community to work against the ruler. The loss of trade influenced by the ineffectual administration, together with the neglect of the traditional consultation drove a group of Kuwaiti notables to force the ruling family to agree to the establishment of a consultative council. The Council was composed of twelve appointed representatives of the merchant community. After a few meetings the Council faded away, its membership having fallen to six representatives including two from the ruling family, and the Amir as the head of the Council refusing to attend the meetings.

The demand for political reform was soon to resurface when a Municipal Council was created in 1930 and an Education Council was established in 1932. The two elected Councils had a stormy relationship with the Amir, who dissolved the two councils and replaced them with two appointed councils.

The tension created by the government's interference in the departmental councils convinced the reform groups of the need to embark on an activist and secretive course of action. An underground group called *al-Kutlah al-Wataniyyah* (National Bloc) was organized. The National Bloc had a simple two-point programme: the creation of a legislative council through free election, and the assignment of wide powers to the council to supervise the administration of the State. The group led the opposition campaign by distributing leaflets, writing political 'graffiti' and publishing critical articles in the Iraqi press<sup>40</sup>.

In the face of petitions from leading notables and British pressure, the Amir agreed to the formation of a council. A committee of a few notables formed to arrange the election. The committee selected 140 persons consisting of important Kuwaiti families, communities, and sects, and localities who elected fourteen representatives to the *Majlis al-Umma al-Tashri* (National Legislative Council). First in the order of business was the

drafting of a constitution, which was signed by the Amir on 6 July 1938. The early functions of the Council included revising customs regulations, administrative changes such as the creation of finance and police departments, the opening of three schools, the replacement of government employees and judges, and the formation of a new elected Municipal Council.

When the Amir found that the Council arrogated too much power to itself, instituted many reforms too quickly and acted ambiguously over the issue of unity with Iraq, he abrogated the old constitution and announced a new one giving the Amir a veto right, and transformed the Council from an executive body to an advisory one.<sup>41</sup> Moreover, when the Council refused to accept the changes the Amir dissolved it on 7 March 1939.

As a result of the uproar created by the opposition in the Iraqi press and the British criticism, the Amir agreed to establish a new advisory council. The Council was composed of fifteen appointed members; ten members were to be nominated by the Amir and the other five were to come from the ruling family. The newly appointed and ineffective Council soon faded away<sup>42</sup>.

In the following years, several advisory committees were established for municipalities, health, education and *awqaf* (religious endowments) departments, but the elected Committees failed to function because of abuse by the members of the ruling family in charge of these departments.

#### **b)The National Assembly.**

In June 1961 soon after Kuwait's full independence from Britain, a committee of senior members of the ruling family and representatives of the merchant community was formed to make preparation for an elected constitutional assembly. The new assembly was composed of twenty elected members and the cabinet ministers as ex officio members. Its principal role was to draft a permanent constitution. The committee was dissolved after it submitted the Constitution to the Amir who signed it on 11 November 1962.

Although the Constitution affirmed the political system of the country as a hereditary monarchy, it instituted significant restrictions on the Amir's power. According to Article 4 the Amir's authority to nominate his successor is subject to the approval of the majority of the National Assembly members in a process referred to as a *bay'ah*. The system of government is based on the separation of powers; the executive power vested in the Amir and the cabinet, the legislative power shared by the Amir and the National Assembly, and the judicial power held independently by the courts.

The Constitution set out in Article 80 the establishment of *Majlis al-Umma* (National Assembly). The Assembly consists of fifty elected members, who must be male, of Kuwaiti origin, over 30 years of age, and literate in Arabic, and includes also non-elected cabinet Ministers as ex officio members. The Amir has the right to dissolve the assembly, but must call for new elections within two months.

The first elections to the Assembly were held on 23 January 1963 and subsequent elections were held in 1967, 1971 and 1975 before the Assembly was suspended in 1976. The Assembly was restored in 1981 and elections held for the fifth time in the same year. The sixth Assembly was elected in 1985, a year before it was suspended for the second time. It was restored again in 1991 after the liberation of the country from the Iraqi invasion.

It is not surprising to find that candidates in the Kuwaiti system have to rely on every potential voter through the traditional institution of *Diwaniya*, which is held regularly by most members of the Assembly to provide a forum in which they may solicit public opinions on issues, in the absence of political parties.

During its functions the Assembly is responsible for firmly entrenching a number of fundamental innovations in the political system. Government actions and policies are open to public scrutiny within the Assembly, the old oligarchy finds itself sharing power with new elites, namely the emerging middle class, government officials, professionals, and



intellectuals<sup>43</sup>.

Far from being a rubber stamp, the National Assembly has taken its legislative role seriously and forced the government to concede and/or retreat on a number of issues.

#### **1.4.5 The United Arab Emirates' Experience.**

The United Arab Emirates (UAE) was formed as a federation of the seven former Trucial States of Abu Dhabi, Dubai, Sharjah, Ras al- Khaimah, Ajman, Umm al-Qaiwain, and Al-Fujairah.

In December 1971 the Provisional Constitution was promulgated for the Union of the new States, and this constitution was made permanent on 20 May 1996.

Article 1 of the Constitution specified the nature of the relationship between the federal entity and individual emirates. Each emirate retains sovereignty over its own territory and territorial waters<sup>44</sup>.

According to Article 120 the federal government shall exclusively undertake executive and legislative matters such as foreign affairs, defence, and the federal armed forces, federal security, federal finance and taxes, communication services, education, public health, banks, and major legislation in penal, criminal and civil areas.

The most effective federal institution on the Emirate level is the Supreme Council, or the Council of Rulers, which represents the supreme authority in the State. This council consists of all seven rulers or their deputies. The Council formulates the important matters of the union. Its decisions require the approval of at least five of the seven Emirates, including the most important Emirates, Abu Dhabi and Dubai.

It is necessary to examine the historical evolution of the legislature in the UAE especially during the pre-1971 era, so that one may understand the constitutional arrangement of the Federal National Council.

a) **The Establishment of the 1938 *Majlis*.**

In the early 1920s, Dubai was emerging as the commercial and financial centre of the Trucial States. The emirate was ruled by Said Al-Maktum in traditional manner according to Islamic principles (*Shari'a*). Said's rule was challenged by members of his own Al-Bu-Falasa clan, together with Dubai notables who were not satisfied with the way that the ruler was conducting Dubai's affairs. The hostility and mistrust between the two groups incited mass demonstrations against the ruler in March 1938. In the same year a list of demands was presented to the ruler, pressing for an official budget for the emirate, public health and education facilities, peace and order in the Emirate, removal of all sorts of corruption in the various departments, justice and freedom to all inhabitants in trade and other crafts, and a fixed allowance for the ruler and his family.<sup>45</sup>

When the ruler did not respond to the demands, opponents occupied *Dayra*, across the Dubai creek, where they established a representative council. The lengthy negotiations between the two sides ended in the signing of the 1938 agreement. By the terms of the agreement, the ruler was to receive an allowance of one eighth of the State revenue, and the establishment of a *Majlis* (Council) known as the Grand Council. The Council would consist of fifteen members selected by the notables of Dubai. The council was to discuss and approve all expenditure with the majority needed to pass decisions. The Council established its power through scrutinizing every decision taken by the ruler and it was more or less implicit in the agreement that the Council would have a dominant influence in the Emirate's affairs. The ruler of Dubai under the agreement had to get the approval of the council's members before any decision could be passed.<sup>46</sup>

The council proceeded to carry out reforms in the customs services, set up municipal and merchants' councils, establish schools, health services, and welfare systems, and improved security. The six months' existence of the Council resulted in the permanent adoption of some changes, such as improvements to the harbour and the town.

The attempt to reduce the ruler's income to a fixed sum was the last straw which put an end to the reform movements in Dubai. On 29 May 1939, during the marriage of the ruler's son in *Dayra*, *Bedouins* loyal to the ruler seized control of the town. Several members of the Council were killed on that occasion, while others fled to *al-Sharjah*. As a result of this seizure the 1938 Council was suspended.

The changes which were introduced by the movements was a first step towards reforming the system. However, citizens had to wait for more than thirty years for the creation of a legislative assembly.

**b) The Union National Assembly (UNA).**

The origin of the UAE National Council can be traced to the 1968 negotiations for federation between the seven Emirates now composing the UAE and Bahrain and Qatar. However, the negotiations foundered for several reasons. Among them was the inability to agree over the allocation of seats in the proposed council. As a result, Bahrain and Qatar declared their independence.

The UNA consists of forty members drawn from the seven Emirates as follows: Abu-Dhabi and Dubai eight seats each, Sharjah and Ras al-Khaimah six seats each, and four seats each to the remaining Emirates. The allocation of seats is distributed among the Emirates according to their population size, wealth, and influence<sup>47</sup>. Members of the UNA are appointed by the rulers for a two-year renewable term, although the Constitution gives each Emirate the freedom to choose the method of selecting its delegates. The majority of UNA members are businessmen, of tribal origin, and individuals close to the ruling families.<sup>48</sup> According to Articles 89 and 90, all federal legislation, including the budget, is referred to the UNA, which may approve, amend or reject Bills. However, the UAE president with the concurrence of the Council of Rulers may promulgate a Bill despite the UNA objections. The Constitution also imposes several restrictions on the UNA such as: the council is denied any right to question the government; the Council's ability



to debate issues of public concern is conditional upon the non-objection of the Council of Ministers, which may reject any recommendation of the UNA.

Even though the authority and powers of UNA are limited, the Council does not always meekly approve the draft of a law submitted to it. A strong debate accompanies the process of approving the laws; such as happened when the Council was debating the country's penal law.

#### **1.4.6 The Omani Experience.**

Oman has a long-standing tradition of consultation in local and tribal matters. The creation of modern institutions is an attempt to link the broad concept in Islam of *Shura* (consultation) with local Omani traditions of participation rooted in *Ibadism*<sup>49</sup>. Deeply ingrained in the informal social norm, consultation has since 1979 become an integral part of formal life.

One of Oman's well-kept secrets is its Municipal Council which existed in Muscat in the 1940s. By 1970 every major town possessed such a council. All leading citizens, including young merchants and officials, seem to get an opportunity to serve, and the Municipal Councils for larger communities have already become viable institutions for the management of local services. Municipal councils give citizens a taste of the complexities of formulating and implementing sound policy decisions<sup>50</sup>.

The first modest effort to broaden consultation was the short-lived council on Agriculture, Fisheries, and Industry, which was established in April 1971. The purpose of this appointed twelve-member Council was to discuss the economic future of the nation and to encourage citizens to participate in the process of promoting growth. The Council managed to draft the first policy recommendations to be made by an Omani consultative body. However, their recommendations were limited in scope, unpublicized and often confined to highly specific projects.<sup>51</sup> This Council was replaced by the State Consultative Council.

#### a) The State Consultative Council. ( SCC)

In October 1981 the Sultan issued decrees establishing the *al-Majlis al-Istishari lil-Dawla* (SCC) Council and appointing its members. The name has not gone unnoticed in Oman. *Istishari* in Arabic means, “to ask for advice,” not to engage in mutual consultation. In his speech at the first session of the SCC the Sultan described the Council as “a continuation of our policy aimed at achieving a great scope for citizens to participate in the efforts of the government to implement economic and social projects” through “the task of formulating opinion and advice.” He added, “Today we take another step towards broadening the consultative base in conformity with the country’s stages of development.”<sup>52</sup>

A small ministerial committee was responsible for selecting the members of the SCC and sending their names to the Sultan, who has accepted every nominee for all SCC sessions. Only the SCC’s president was directly chosen by the Sultan.<sup>53</sup>

Initially, the Council was composed of forty-three members but was expanded to fifty-five in 1983. Of the eighteen “government” representatives, eleven were under secretaries appointed by reason of their official function. Thus, if a new under secretary was appointed, he automatically assumes the SCC responsibilities of his predecessor. The remaining seven ‘government’ delegates are appointed by name.

The ‘people’ were represented by eleven delegates from the private sector and twenty-five from the ‘regions’. The Chamber of Commerce elected nineteen candidates, from which the SCC Ministerial committee had to choose eleven members. Each of the Sultanate’s seven geographic regions was represented by a varying number of members according to its population size and development needs. Despite the manner of their appointment, the twenty-five members officially represent all of the country.

The only permanent members were the eleven under secretaries; even the other seven government representatives served for a maximum of two

terms (four years). The remaining block who were limited to two terms, was rotated so that one-third was replaced every term. The original intention was to provide for a greater range of participation.

As its name implies, the SCC was strictly a consultative body, not a parliament or legislature; it was the most restricted national council mandate in the GCC States. In part this derives from the infrequent and highly formal nature of its meetings. Only three sessions were held each year; each session lasting three days until 1988, when the period was extended to five days or a week. The Council was restricted to making recommendations to the Sultan, who approves or rejects them. Issues on which the SCC had prepared recommendations were restricted to economic and social matters.

This highly restricted format was relaxed in the third term, and the first step was taken towards legislative review. Draft legislation in the economic and social fields were discussed in the appropriate committee in the council, and recommendations voted on for dispatch to the Sultan. The most important reform was the end of secrecy by reporting and televising the formal sessions. This, in its modest way, appears to have laid some groundwork for an SCC role as government watchdog. However, the appearance of ministers before the SCC does not mean that ministers can be put to a vote of confidence.

Despite the creation of the SCC, the decision-making process of the Omani government remained unchanged. This appears to have worried the Sultan who decided to reform the SCC, giving it more power and authority. In his speech on 18 November 1990, the Sultan announced that a new council was to be set up within a year.

#### **b) The Omani *Shura* Council ( OSC)**

The new council was established and its power and operating framework was defined by the Sultanistic decree of 12 November 1991. The OSC represented the fifty-nine *Wilaya* (province) and had fifty-nine members and a chairman. The number of members was increased to seventy-nine and a



chairman in 1994. Even though the decree stated that the members of the OSC were to be elected the reality was somewhat different. Each *Wilaya* with a population of less than 30,000 had to elect two representatives, one of whom was then to be nominated to the membership of the OSC. The *Wilaya* with more than 30,000 citizens elected four representatives, of whom two were nominated as members of the council. Members were chosen by a governmental committee for the OSC, from the candidates whom were indirectly selected in caucuses held in the *Wilayat* in which hundreds of leading citizens, including local dignitaries and people of 'valued opinion and experience' participated<sup>54</sup>. The final choice was made by the Sultan, who picked the seventy-nine members from the list of proposed names submitted to him, by the committee. He also selected and appointed the chairman of the Council.

According to Decree 94/91, the functions of the OSC include reviewing and offering consultative opinions on legislation related to social and economic affairs, giving opinions on general policies presented by the Council of Ministers, making proposals on new social and economic legislation, participating in the preparation and implementation of government plans, reviewing public services and utilities and making recommendations concerning their modification and development, identifying obstacles to economic development and recommending methods to solve them, and taking part in efforts to protect the environment.

Article 11 gives the OSC the right to pose questions to the ministers, individually, concerning their Ministries' plans. Indeed, the concept of 'question' used in the text of the Article is very broad and vague.

Omani political elites, as well as those of the GCC States, have attempted to broaden their political base by giving to specific tribal and notable families, to the emerging educated elites and to the merchants more decision-making power on socio-economic matters, while withholding from them the political power that would make political participation a reality.<sup>55</sup>

According to the powers given to OSC by the establishing decree, it is clear that the OSC role is merely consultative, as the Council can only discuss specific Bills submitted to it by the government.

The OSC is the most recent such organization within the GCC States. The only significant difference between Oman's council and those of other States, is the involvement of women in political participation. At the establishment of the OSC, women in Oman were allowed to participate in the vote for the first time and they were given the right to be nominated for representation in the OSC. As a result, two women have been elected to serve as representatives in the OSC. This is the first time in the GCC States' history that women have been elected as members of a national council.

In November 1996 the Basic Statute of the State (Constitution) was promulgated. The Constitution called for the creation of the Omani Council, consisting of the Shura Council and the State Council. While the Shura Council has the same powers and operating framework as of the previous Shura council, the State Council's members are appointed and their number should not exceed half of the Shura Council members. Issues on which the council can prepare recommendations are limited to giving opinions on general policies on economic and social matters, identifying obstacles to economic development and recommending methods to solve it. The role of women was increased when two women were appointed as members of the State Council.

### **1.5. Conclusion**

The era of modernization in the GCC States has possessed many positive socio-economic and political elements which have fostered the increase of political participation within these States' societies. The most important regime change has been the withdrawal from formal political life of historically influential economic elites. Oil allowed the rulers to force the merchants to choose between wealth and formal power in a way they are not normally forced to do. The merchants' withdrawal from formal politics was accompanied by the development of new kinds of ties: first between the

rulers and their ruling families, whose political role grew as rulers sought loyal allies; and second between the rulers and the citizen population, through social programmes and State employment. With the growth of bureaucracy, the decision-making elite also expanded. Many of the new decision-makers were recruits from the ranks of the middle class mainly employed by the growing government bureaucracy. This group of educated younger people has been imbued with a sense of political importance, and has sought to increase its role in decision-making and in the political system in general. Members of this group have recognized that these objectives could not be achieved within the traditional structure, and that a modern institutionalized framework for participation was required.

National Councils have functioned in all GCC States, although only two councils have approached the status of elected parliaments, these being the Kuwaiti National Assembly, the Bahraini National Assembly which functioned only briefly in the mid-1970s before it was suspended, and to some degree the Omani Shura Council. The other Councils consist of appointed members. Notwithstanding their severe limitation as democratic institutions, the National Councils do perform useful and important functions.

Although the GCC States have achieved the building of modern structures of governments, authority has remained strongly vested in the person of the ruler and his family. Move towards Constitutional Monarchy have not eliminated or even significantly reduced the emphasis upon traditional canon of dynastic legitimacy.



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- 25 - Ibid., PP. 48-51
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- “ My father says I am still young and do not understand - - understand what? I know he is poor. My government tells me I am dangerous to national security. Which nation? They think they are strong. They are strong today and I shall be strong tomorrow. I am forty years old, married and have two children. I have always been a yes-man. The ruler had me for the first half of my age; the second half is mine. From now on, I shall be no-man. (Quoted from Khuri, Op. Cit., P.88)
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- 48 - Peterson, Op. Cit., P. 99
- 49 - Al-Rokn, Op. Cit., PP. 315-17
- 50 -Ibadi Islam is the third, and numerically the smallest, of the three major doctrinal divisions in Islam, together with the Suuni and Shi'a. In addition to Oman, Ibadi communities are found in Libya and Algeria. Ibadism originated in seventh-century CE dispute over succession to leadership of the Islamic community. The doctrinal difference with Sunni is that the Ibadi recognize only the Prophet Mohammed's first two caliphs, or successors in all claims to authority prophecy. They also reject the notion that the caliphate or the imamate (spiritual leadership of the community) should be vested in any one descent group, even that of the prophet. The Ibadi are often called " the people of consultation" (*ahl al- shura*) because they select the most qualified member of their community as imam without regard to decent or tribal considerations. Since 730 CE there has usually been an elected Ibadi imam in Oman. Imamate ended in Oman in 1955.
- 51 - H. Rchard Sindelar III & Peterson J. E. *Crosscurrent in the Arab Gulf, Regional and Global Interests*. London, New York: Rotledge. 1988.P. 173
- 52 Dale F. Eickelman, " **Kings and People: Oman's State Consultative Council**". *The Middle East Journal*, Vol., XXXVIII, 1984. P. 55
- 53 - Oman 1983, Ministry of Information, Sultanate of Oman. P. 55

54 - Ian Skeet, *Oman: Politics and Development*. Hong Kong: Macmillan.  
1992.PP. 118-120

55 - Abdullah Juma Al-Haj “ **The Politics of Participation in the Gulf  
Cooperation Council States: The Omani Consultative Council.**  
*Middle East Journal*, vol., 50,No 4. Autumn 1996. P. 561



## **Chapter Two: Legitimacy in the GCC States: From Traditional to Constitutional Monarchies.**

### **2.1. Introduction**

The end of colonialism in the 20<sup>th</sup> century and the abrupt emergence of states which did not exhibit fully the characteristics of the ‘Western capitalist state’ led some political scientists to reconsider their initial models, or simply adapt them and expand their parameters to account for this proliferation of political entities. Some call such relatively recent political entities ‘states’, whereas others qualify the term ‘state’ with adjectives like ‘early states’, ‘archaic states’ or ‘inchoate states’.<sup>1</sup> The emergence of the GCC States is one such development, which has so far attracted the attention of scholars from various disciplines. As these states have special, some would say unique characteristics relating to the cultural, economic, religious, geographical and historical specificity of these countries, already established Weberian or Marxist state paradigms seem to be inadequate frameworks for understanding their political processes.<sup>2</sup>

The GCC States can best be described as newly emergent post-traditional states<sup>3</sup>. Compared to other developing countries they are well able to provide for the needs of their citizenry, and the few short decades of oil-fuelled modernization have been accompanied by a significant degree of political development. The most important effect during the period of political change has been the process of institutionalisation, which has included a number of aspects. There has been an emphasis on constitutionalism, both in the writing of a formal constitution and the creation of a broader constitutional framework, which defines the nature and organisation of the state and determines the scope and extent of activities of the regime. The GCC States’ governments became the source of authority and prosperity, and the legal structure of these states became more complex, partly Islamic and partly Western, embracing commercial, banking, labour, traffic, administrative and criminal regulations. With the

introduction of administrative reforms, a new source of “legitimacy” emerged: a corpus of laws, announcements, decisions and decrees made and enacted by an increasingly sophisticated government, followed by a system of representation, were created to give regimes an aura of “legitimacy” through public delegation<sup>4</sup>.

Legitimacy is a fundamental concept in any study of political change. It may be assumed that a political entity is legitimate when the people believe that it has not only the power but also the right to govern, when it is perceived as both adhering to the political goals and ideals of the community and actually carrying out the responsibilities that the people theoretically have entrusted to it. But legitimacy is not a constant<sup>5</sup>. The current standard of legitimacy in the GCC States differs from the traditional roots of legitimacy. The process of political change in response to shifting determinations of legitimacy, can be categorized in terms of three broadly defined phases. the traditional, the neotraditional and the modernizing or post-traditional<sup>6</sup>. Decentralization and limited central authority characterized the political system of the traditional phase. In explaining traditional authority, Weber noted that “obedience is not owed to enacted rules, but to the person who occupies a position of authority by tradition or who has been chosen for such a position on a traditional basis”.<sup>7</sup> Thus, traditional authority, by definition, is not rational; however, the institutions of the traditional phase of politics in the GCC States were rationally conceived within an Islamic framework, exercised authority with the consent of the community, and retained legitimacy as long as they performed designated functions in a prescribed manner. The neotraditional phase produced political systems based on the personal strength and direction of a single individual who introduced certain significant innovations into the system in a defensive attempt to maintain the traditional goals and values of the society. Weber’s traditional authority, therefore, may correspond more closely to this neotraditional category<sup>8</sup>. The neotraditional phase in the GCC States was known for a limited time, in the early years of the oil era, in only two instances: in Oman and Abu-Dhabi (UAE). The modernizing phase was initiated by radical attempts to replace existing regimes and redefine the scope and role of the state. The impact of socioeconomic

development and the process of institutionalisation have necessitated a reformulation of the basis of legitimacy.

The traditional pillars of the GCC ruling families' legitimacy were based on reference to an idealized notion of traditional power-sharing in tribal society and Islam as represented in the *shari'a* (Islamic law). Historically, the leader of the tribal community served as *primus inter pares*, a "chairman" rather than a ruler, who consulted tribal notables before taking action. Rulers also found it necessary to govern according to or at least with reference to the Islamic principles of *shura* (consultation) and *ijma'* (consensus). The Islamic basis of *shura* rests on the Quranic verse in the sura (chapter) of the same name *wa-amruhum shura baynahum*<sup>9</sup> (Whose affairs are conducted by mutual consultation). Reference is also made to the verse *wa-shawarukum fil-amr*<sup>10</sup> (and consults with them in affairs)

In recent decades, the impact of socioeconomic development and the process of institutionalisation necessitated a reformulation of the basis of legitimacy. The GCC States attempted to marry traditional bases of legitimacy through reference to the institutions of *majlis*, *shura* and *ijma* and by describing themselves in their written constitutions as democratic states. Of course, comparison with the ideal of a perfect democracy, or even that of a relatively mature democracy like the Western countries, is misleading and harmful comparison. GCC States are Arab states, non-Western societies, and developing nations. Thus, these states, in adopting democracy, will develop a form of democratic governance that is unique and that incorporates their Arab and Islamic cultural history and heritage, providing a sense of identity, self-worth and connection to the past and future, just as Western democracy reflects the Greco-Roman and Judeo-Christian secular heritage.

## **2.2. The Traditional Authority.**

Arabia has been influenced by two broad cultural traditions, often expressed in terms of the dichotomy between *badu* and *hadar*, nomadic and sedentary peoples, the desert and the town. The heritage of Oman belongs to the *hadar* tradition, while the origins and customs of the rest of the Gulf society have



tend to come from the *badu* tradition. Oman has produced a “hydraulic” civilization of great antiquity, and displayed a history of “national” political organisation that stretches even two millennia. Unlike elsewhere, in the Gulf, the acknowledgement of a legitimate central authority in Oman is a long tradition<sup>11</sup>.

Despite this conceptual distinction between Oman and other states of the Gulf, tribalism has served as a fundamental political force in both areas. The tribe, as the basis of social and political unit, was independent; and its members were tied together by tribal ties based on ancestry. The only authority was the habits and customs of the tribe, which provided the only law. The head of the tribe, the shaikh, was the father of the tribe and had a moral authority over its members. The identity and loyalty of members went to the tribe itself which fixed their rights and obligations. The moral authority of the shaikh of the tribe was exercised through the consent of its members and through the pressure of habits, customs and traditions, which supported his authority. The love of the tribesmen for freedom and their resentment of any action which would check their movement in search of the necessities for survival generated in them a basic hostility to any form of authority other than that of the head of the tribe.

The major impact of tribalism on the modern states has been the evolution of ruling families out of tribal leaders, and incorporation of a number of essential concepts, such as the idea of *majlis*, and *shura*. The incorporation of these traditional practices in the governments of the GCC States has contributed to a sense of continuity in the midst of rapid change.

### **2.2.1. Tribal Solidarity.**

The Arabs believe that all tribes were originally descended from one of two ancestors, *Qahtan* or *Adnan*, who respectively represented a division between the Arabs of the Gulf. Many recorded genealogies have disappeared and great tribal migrations have occurred, whereby some tribal groups split into small units while others amalgamated either by forming alliances (*hulf*) or gradually assimilating their client tribe or by adopting new names in order to claim an association with a stronger tribe. Although Arab genealogists concur that two factors - kinship and nobility- govern tribal relationship, there are

conflicting opinions concerning the actual composition of tribal groupings.<sup>12</sup> The tribal network has been divided theoretically into seven successively larger groups-*raht* (family), *fasila* (clan), *ashira*, *fakhdh* (division), *batn* (group), *qabila* (tribe), and *tamima* (tribal confederation). If possible, these were traced to their 'root', that is, Qahtan and Adnan.

The tribe is, then, a segmentary structure, which becomes increasingly remote to the individual as it branches, but which nevertheless binds him in a very real sense to the family tree. Factional strife was inherent in a segmentary tribal structure, particularly when political hegemony was being sought over large regions containing other tribes, as well as numerous settled areas. When threatened by external trouble, the lineages recognised themselves at the broadest level of identification as members of the same tribe and united for their mutual benefit<sup>13</sup>. In such chaotic and threatening circumstances, tribal solidarity was essential for survival. Tribal solidarity, writes Watt, is perhaps the only method in the circumstances of desert life of ensuring that crime will not be committed lightly and irresponsibly<sup>14</sup>. This sense of tribal solidarity, *assabiyya*, formed a network of mutual obligations among tribal members and with their client tribes that effectively became a form of nationalism. Ibn Khaldun conceives tribal *assabiyya* as a social and ethnic identity based on kinship when he states that "social solidarity 'assabiyya' is found only in groups related by blood ties or by other ties, which fulfill the same function"<sup>15</sup>.

Ibn Khaldun presents tribal solidarity as the positive and active expression of human beings' attachment to each other in a family, clan, tribe or nation. This expression can be translated into patriotism or nationalism. Rosenthal describes the concept of tribal solidarity as "a group feeling which results only from blood relationship or something corresponding to it."<sup>16</sup> Hitti believes that tribal solidarity is the spirit of the clan... a tribal spirit. He adds that *assabiyya* implies boundless and unconditional loyalty to fellow clansmen<sup>17</sup>.

Tribal solidarity was based on the natural bond of blood (kinship) relationship or an artificial bond through either *hilf* or *jiwar*. *Hilf* was a mutual oath or pact between two or more groups for the purpose of mutual protection.

*Jiwar*, on the other hand, was a formal commitment by virtue of their neighbourly association. The artificial form of solidarity concluded through *hilf* was usually agreed upon on the basis of equality, while the *Jiwar* association took the form of granting protection by a stronger or larger tribal unit to a weaker, or smaller tribe or clan unit. These artificial forms of solidarity extended tribal or clan membership and promoted social integration<sup>18</sup>. The concept of solidarity both, tribal, cementing the bond of the different clans and consolidating the unity of the tribe, and inter-tribal binding different tribes in a confederation, enhanced the Arab sense of unity. This unity stemmed from the national consciousness of the Arabs, a sense of belonging together based on common descent, language, tradition and shared values.

Desert life without an organised society was very similar to the state of nature when man's survival depended on his own power. The life of the individual outside the tribe was, as Hitti described it "that of an outlaw beyond the pale of protection and safety<sup>19</sup>". Tribal solidarity, then was the logical way for the individual to survive against the hostile forces of nature and the ambitions of his fellowmen.

The tribe functioned as a self-contained mini-state, with political autonomy reinforced by such factors as the postulation of shared kinship, economic self-sufficiency and recognised geographic limits. Tribal leadership was vested in the shaikh. Tribal self-containment gave rise to a decentralised centrifugal political system. Primary identification with the tribe meant that disputes and rivalries between tribes had a natural tendency to escalate into open warfare<sup>20</sup>. This decentralised system concomitantly produced a situation allowing the shaikhs of major tribes to acquire positions of power and influence far beyond the confines of their own tribes. As a result, real power was held by a handful of paramount shaikhs, who dominated tribal confederations.

### **2.2.2. Tribal Political Institutions.**

Authority in Arab tribal society was exercised by the male heads of successively larger kinship units, from the family to the tribe as a whole. The control exercised by the family head was immediate and affected a wide range of



activities; that wielded by the tribal shaikh reached the average tribesmen more indirectly and tended to be more limited in the areas of its concern: for example, defence and interunit disputes.

The tribal shaikh was selected from among the adult members of one specific lineage segment within the tribe. He was generally the most prominent or promising member of his lineage, chosen by his close kinsmen, and approved by the tribesmen at large through the elders of the various sections, subsections and lineages of the tribe, through the concept of *mubaya`ah*, denoting homage, allegiance and acknowledgement as sovereign, to the tribal leader<sup>21</sup>. A number of special qualities were sought in a prospective shaikh; among the most important were leadership ability, generosity, courage, luck, prestige and wisdom. The shaikhly position was not necessarily passed from father to eldest son, but might fall upon a younger son or a nephew by reason of his superior mental and physical qualities. Some tribes had a more visible process of *intikhab* (selection) or approval of shaikhs than others.

The key figure in the tribal political system was the *tamima*. Although the word is frequently translated as paramount shaikh, the *tamima's* function went beyond that of shaikh: he was at the head of a unified tribe and his decisions were binding on members of that tribe. According to Peterson, the definition of a *tamima* included the authority to impose the death penalty on tribesmen guilty of wrongdoing. Nevertheless, the institution was limited to a few tightly-knit tribes; there were only a few *tamimas* at any one time.<sup>22</sup>

The ability of some *tamimas* to extend their influence beyond the tribe was a direct result of the forcefulness of their personalities. In consequence, the strength of a tribe depended not only on its degree of cohesiveness but on the character of its *tamima*- that is, if it was cohesive enough to generate a *tamima* in the first place. An important function of the *tamima* was serving as guardian of the peace and the arbiter of dispute in his province. The *tamima's* personal stature, as well as his ability to call forth an impressive number of fighters, made him the only recognisable figure of authority. The title of *tamima* was frequently

hereditary- through the immediate family, if not in a father-son sequence- and the tamimaships of many tribes tended to support minor dynasties.

In his study of Arab tribalism, Gabrieli states that:

“ Within its democratic and patriarchal structure, the tribe acknowledge a freely elected head (shaikh) with limited authority confined particularly to advice and guidance ..... The affairs of common interest are discussed and decided by the assembly of the entire tribe where great prestige is attached to the wisdom of old age, powers in war and to eloquence and skill in poetry”.<sup>23</sup>

Tribal life enjoyed some aspects of democracy such as equality, freedom and representative authority.

Tribesmen were highly dependent upon their shaikhs for security of person and property. Anyone wishing to sell or exchange property did so only after consulting with the tribal shaikh or with one of his agents, generally another member of the shaikly lineage, acting as judge. Intratribal disputes were invariably referred to the shaikh.

The formal consensus among tribal notables implied by the notion of selection was an important component in establishing shaikhly legitimacy. Tribesmen distinguished between shaikhs who ruled with the consent of the community or collectivity (*jama'a*) and those who did not. Shaikhs who made illegitimate exactions or who failed to settle issues according to justice as locally understood were considered *jabbars* (tyrants).<sup>24</sup> The tribesmen considered their best shaikhs to have been those who possessed reputations as men of learning or for accepting the counsel of learned men, as well as effectiveness in practical tribal politics. Shaikhs and their immediate supporters recognised that unpopular decisions which could not be justified in terms of Islamic tradition would be resisted. Although tribesmen emphasised the unity of the tribe to outsiders, rivalry for control of the tribe limited the arbitrary exercise of shaikhly authority.

The shaikh exerted most of his influence over the tribesmen as the leader of the *majlis* (council). The *majlis* at the level of camping unit was composed of all responsible adult males, and the views of its most senior and respected

members carried the most weight. At higher levels of the tribe, the *majlis*, meeting on call, was composed of representatives of some or all of the basic units, and responsible males were also eligible to sit with the council. The shaikh held open *majlis* daily in his guesthouse, and during these sessions the tribesmen discussed all matters of importance to the local unit. A *majlis* could be said to be in session when several tribesmen gathered with the shaikh. It was the common practice for individual tribesmen to appear before the *majlis* to present their problems and to state their grievances. It was the duty of the shaikh and the *majlis* to attempt the solution of problems and disputes. When disputes or problems could not be solved with the unit involved or when they involved two or more units, disputes were referred to a *majlis* of *rashids* (local headmen of the units). This procedure was to be repeated up to the highest tribal level: the *tamima majlis*.

It can be assumed that the above system was very close to the democratic system. The nature of democracy stems from the clear hierarchy of the tribal system where the view or discontent of the people could easily be expressed to the shaikh. Moreover, freedom of speech was maintained, since members of the tribe have the right to present their needs and disputes to the *majlis* freely, without any obstacles. However, democracy in the tribal system could only be understood in a traditional sense; the practice of such democracy was acceptable to all members of the tribe as it was compatible with their perception and tradition. Thus, if democracy means freedom and equality of people, then these terms were certainly fulfilled according to Islamic tradition and tribal values.

### **2.3 The Legacy of Islam.**

In Islamic history, there are a number of very important concepts and images that shape the contemporary vision of what a just human society should be. These are the foundations for the Islamic perceptions of democracy. Despite the great dynamism and diversity among contemporary Muslims in terms of political views, there are core concepts that are central to the political positions of virtually all Muslims. What varies is the definition of the concepts, not recognition of the concepts themselves<sup>25</sup>. According to a contemporary scholar,



the political system of Islam has been based in three principles: *Tawhid* (Unity of God), *Risalat* (Prophethood) and *Khilafah* (Caliphate)<sup>26</sup>.

Muslims of all traditions agree that acceptance of *tawhid* is the core concept of Islamic faith, tradition and practice. Although it may be expressed in many different ways, *tawhid*, simply defined, is “the conviction and witnessing that there is no God but Allah”. Building on this base, in terms of political philosophy, Muslims affirm that there can be only one sovereign and that is Allah. Since man will fear only one power, and is answerable before only one judge, *tawhid* then bestows upon man independence and dignity. Submission to Allah, the supreme norm of all being, impels man to revolt against all lying powers.

A second important concept related to the understanding of the Islamic political system is the *Caliph*. In the studying of Islamic political thought, this concept has been primarily related to the issue of defining leadership for the community. The title of the leader of the Muslim community following the death of the Prophet (Peace Be on Him) was ‘*caliph*’, and the general political system is called ‘caliphate’.

In presentation of Islamic conceptual frameworks, much attention is given to some aspects of social and political operation such as *shura* (consultation), *ijma* (consensus) and *ijthhad* (independent interpretive judgement). Like many concepts in Western political tradition, these terms have not always been identified with democratic institutions and have a variety of usages in contemporary Muslim discourse<sup>27</sup>. In broader discussions, consensus and consultation were frequently seen as the effective basis for Islamic democracy operating in modern terms. The concept of consensus provides the basis for acceptance of systems recognising majority rule. Since there are no explicit formulations of state structure in the Qur’an, the legitimacy of state according to some scholars, then, depends upon the extent to which state organisation and power reflect the will of the *Ummah*. In other words, the legitimacy of state institutions is not derived from textual sources but is based

primarily on the principle of *ijma*. On this basis, consensus can become both the legitimation and procedure of democracy in Islam.

It is difficult to understand the polity of Islam without understanding the concepts of *caliph*, *ijma* and *shura*.

### 2.3.1. Islam and State.

The concept of the nation-state, or its Arabic equivalent, *dawlah*, is a relatively recent development in Europe, as is the concept of sovereignty. The nation-state system is linked to the Treaty of Westphalia, while the concept of sovereignty was first systematically enunciated by Jean Bodin in 1576. Therefore, the concept of state is neither used in the Qur'an, nor was it in vogue at the time of the Prophet (Peace Be on Him) The early Islamic scholars used the terms *khilafah* or *imamah* to denote the idea of political order<sup>28</sup>.

Although the term "state" does not occur in the Qur'an, the essential elements that constitute a political order were referred to in the Qur'an, which clearly indicates that the concept, if not the term, was meant in the Qur'an. The Qur'an refers to a set of principles or functions such as: *ahd* (contract), *amanah* (trust), *ita'ah* (obedience) and *hukri*(adjudication) which either imply the existence of sociopolitical order, or in some cases, the use of an organised authority for its realisation. More importantly, there are certain religious obligations such as *zakah*, the punishment of criminals and *jihad*, which may not be effectively accomplished without the formal intervention of political authority.

The Qur'an provides a number of important principles. The first is *tawhid*, meaning the indivisible, inalienable divinity of Allah. This principle denies anyone, be it a human agency as with a Hobbesian monarch, or a legal function in the form of a state, as in John Austin, the right to order others, in his own range, to do or not do certain things<sup>29</sup>. For, as the Qur'an declares, 'The command rests with none but Allah'.<sup>30</sup> The second principle is the *shari'ah*, which is the ultimate source of authority. That means that no acts, procedures, dispositions and final decisions of the public authorities at any level can be valid

and legally binding upon the people unless they are in conformity with the law. By upholding the *shari'ah*, Islam affirms the necessity of government on the basis of norms and well-defined guidelines, rather than personal preference<sup>31</sup>.

The next principle is *addalah*, to establish justice for all, 'even as against yourselves, or your parents or your kins, where it be against the rich or poor. Believers are commanded to be just for 'justice is next to piety'<sup>32</sup>. To emphasise the significance of justice, the Qur'an uses multiple words like *sunnat* Allah (the way or tradition of Allah), *mizan* (scale), *qist* and *a'dl* (both meaning justice). *Adalah* postulates two fundamental principles of freedom and equality. It is an essential condition and consequence of the establishment of justice that people should be in possession of freedom to act according to their own moral convictions, to make ideological or intellectual choices, and to take decisions on the basis of these convictions and choices<sup>33</sup>. The Qur'anic dictum *la ikraha fi al-din*,<sup>34</sup> meaning there is no coercion in *al-din*, refers not merely to matters of faith but to every conceivable area of human life<sup>35</sup>. In Islam, the concept of freedom basically stands for the ultimate responsibility of man. The famous phrase, 'if you are responsible, you are free', significantly corresponds to the Islamic system's application of the concept of freedom. From its outset, Islam has recognised freedom of belief or thought, which is ideologically the significant foundation of the concept of freedom. Islam is not, by any means, an enforceable dogmatic ideology to be followed blindly or even supported by polemical logic. The freedom espoused by Islam is not confined to believers but extends to minorities and non-Muslim citizens of the Islamic polity. This freedom presupposes equality to all - equality in rights, liberties, opportunities and public duties. These are to be enjoyed by all, irrespective of race, language and creed. There is no room for privilege under a system which subjects all, equally, to identical law. The Qur'an recognises no grounds for the superiority of individuals or nations to one another except that moral rectitude and *taqwa*<sup>36</sup>.

Finally, the Qur'an lays down the principle of *shura* (consultation) guiding the decision-making process of the political system. The Qur'an directed Prophet Muhammad (Peace Be on Him) to "consult them in the conduct of



affairs<sup>37</sup>” and refers to believers as those who conduct their affairs by mutual consultation.<sup>38</sup>

According to the text and context of the Qur’an and the *Sunnah*, *shura* means a decisive participation of the people in governing themselves. It is based on the conviction that matters of fundamental importance are best left to the collective intelligence of the people, provide they are guided by the *shariah*. *Shura* can be operationalised only if the people prevail the two fundamental principles of freedom and equality. Therefore, *shura* not only ensures the participation of the people in public affairs, but also acts as check against tyrannical rules

The Islamic government is distinguished by its unique theoretical foundations and structural features. Terms coined by orientalist like “theocracy” and “universal monarchy”, are not properly applicable to Islamic government. There is a great difference between the concept of “theocracy” and the Islamic ideal of government. Some Shi’ites believe in divinely appointed leaders and hold that while the *Imams* are present, no one else is entitled to rule. However, this concept has nothing to do with ‘theocracy’. In a ‘theocratic’ state, rulers are regarded as representatives of divinity, as ‘mini-gods’, shadows or Son of God.<sup>39</sup> Some kings, like the despotic kings of Europe invented the theory of Divine Right of Kings to justify their rule and make people fear their oppression. In the Islamic concept of state, only law can claim divine origin, not the government. The government is of the people; the governing law is that of God.

Since there is no consensus on the exact meaning of democracy as a political system and there is no single form of government, whatever its ideological underpinning or its social and economic configuration that is entitled to the epithet ‘democratic’, scholars predicated a number of principles which formalised its laws. The most important of these principles are a recognition of the worth of every human being, irrespective of any of his or her qualities, the acceptance of the necessity of law and the justifiability of state decisions on the basis of popular consent, and a high degree of tolerance of unconventional and unorthodox opinions<sup>40</sup>.

As has been stated earlier, Islam contains many basic principles which make it highly responsive towards some of these moral and legal, as distinct from sociological, prerequisites of democracy<sup>41</sup>.

However, the Islamic State, by this consideration, is not merely a secular democratic state, as it is certainly not a purely religious one. It is indeed, the democracy of Islam, the fundamental dual and unique responsibility which incorporates the temporal and spiritual vocations and operation. Its dispensative character promotes and applies, in its full capacity, the instruction of the Qur'an and Sunna internally as well as externally. The Islamic state fulfils the role of 'Midmost Nation' by perpetuating justice, freedom and equality among mankind.

The Islamic State, unlike other democratic States, is of limited sovereignty. Its legislative competence, its executive and judicial powers are all subject to the command of God. In Islam, neither the State nor the Caliphate can go beyond that which is ordained by God. But the injunctions of God do not cover all aspects of human life, nor give all the details.

The legislature is the major structure of the Islamic State, the nucleus of all distinguished offices in the governmental order, including the presidential office of the Islamic State. From the Prophet's closest advisors and *shura* committee, who took precedence, the Prophet appointed governors, political envoys, army leaders and state officers, and the four Right-guided Caliphs were chosen after the Prophet's death. The legislature formulated the law in accordance with the Qur'an and *Sunnah*, as well as the laical will of the Islamic State. The legislature exercises a degree of supervision and control over the branches of the government<sup>42</sup>. The power of legislature may incorporate four main functions: constituent, electoral, law-making and supervisory power.<sup>43</sup> In terms of legislation, a distinction has to be made between the part of *Shariah*, which has a permanent and unalterable character, and what is flexible. The basic constitutional elements, the directive principles and values revealed in the Qur'an and *Sunnah* are of permanent character<sup>44</sup>. These can neither be questioned nor tampered with, but must be accepted *in toto*. The flexible part relates to the daily concern of existence not covered by the Qur'an and Sunnah. This part is very

wide and subject to modification according to the needs and requirements of the changing circumstances. In short, the legislature is to enact the explicit directives of the *Shariah* and to formulate laws, where basic guidance is not available, in conformity with the *Shariah* and its terms of freedom, justice and equality.

The Islamic State was the abode of Islam and ideology. The political authority was a trust shared by both rulers and ruled. The political functions of state were<sup>45</sup>:

1. The establishment of justice among the people.
2. The maintenance of peace and order through the state.
3. Defending and protecting the state against foreign threat or invasion.
4. Managing the financial affairs of the state.
5. Providing for civil service and military force.
6. Ensuring the active participation and personal responsibility of the head of the state (caliph) in affairs.

The purpose of the state was to maintain the *shariah* and promote the welfare of its inhabitants. The obligation to ‘command the good and prohibit the evil’ remained the responsibility of every Muslim, whether a public official or private citizen. The fundamental principles of sovereignty of Allah and the primacy of *Shariah* were manifested in the justice of rulers, in obedience of people, and in the mutual responsibilities between rulers and ruled. According to a contemporary scholar:

“The innermost purpose of the Islamic state is to provide a political framework for Muslim unity and cooperation, the goal (of the state) being the growth of a community of people who stand up for equity and justice...a community of people who work for the creation and maintenance of such social conditions as would enable the greatest possible number of human being to live, morally as well as physically, in accordance with the natural law of God, Islam”<sup>46</sup>.



The conduct of public affairs in the Islamic State must be based on justice. The ruler is expected to apply the *shariah* equally to all cases, individuals or groups, including his own person; provide for the total welfare of the state and its citizens and subjects; and render his trust faithfully. Justice is a basic fundamental principle of political authority in the Islamic State.

### **2.3.2 Political Institutions in Islam.**

There is no doubt that the Islamic Nation influences greatly the political activities of the state. The *shariah* has granted certain powers to the Islamic Nation to participate in its political and social institutions, articulated in the Qur'an by the Arabic word *shura*, or the right to participate in choosing the leader of the Islamic State and in any decision that is not covered by the *shariah*. However, the Islamic Nation has in return been commissioned by the *shariah* with certain duties that have to be carried out by all Muslims. These institutions are *shura* and the Caliphate.

*Shura*, or suffrage, is a privilege granted by the Qur'an to an expressly designated group of the Islamic Nation, entitling them to participate in the choice of their leadership. The Qur'an has enfranchised each individual citizen in the Islamic State, male or female, who has reached the age of discretion, to perform religious duties. Such power has been articulated in the following verse:

“ and those who respond to their God, perform the prayers, and whose affairs are a matter of counsel(their ruling system is based on the right of shura amongst them), and who spend out what we bestow on them for subsistence”<sup>47</sup>.

This verse describes some of the believers' characteristics. Among these is the full, indispensable right of the Islamic Nation to participate in the selection of those who will be responsible for running its affairs and applying the *shariah*.

*Shura*, the word used in the Arabic version of the verse, is a discussion held by a group of people in order to reach a firm decision in any matter. It can also be an alternative resolution for a person who seeks an opinion concerning a certain problem. The major principle of *shura* is the people's right to choose their

leadership from among themselves by a complete consensus, or by an absolute majority. Although the Qur'an firmly emphasizes the right of Muslims to discuss and choose in such important matters as the leadership, it refrains from specifying the methods by which this right is to be exercised<sup>48</sup>.

The most important subject of *shura* is the Caliphate. When the Prophet (Peace Be on Him) died without appointing anyone in his place, the Muslim Community had to choose someone to succeed him, a Caliph. The selection of the Caliph was confined to an intermediate group of able and responsible persons of the capital of the State, Medina. This group have been dubbed by Islamic jurists *Ahl al-Hal wa al-'Aqd* or *Ahl al-Shura* (those who untie and bind), followed by the *baya* (ratification of the choice) by the Muslim Community. So the initial selection, *Ahl al-Shura*, is for those who have knowledge in religion and those in a position of authority or leadership, but the *baya* is for all the Muslim generally<sup>49</sup>. At the time of the Right-guided Caliphs (*Calipha al Rashidun*), leaders were inaugurated after certain *shura* procedures which confirmed the principles of the right choice and discussion. The respective succession- after the Prophet's death- of the four Right-guided Caliphs as the leaders of the Islamic Nation did not take place forcibly nor inherently. They were elected in conformity with prevailing circumstances. The idea that the caliph was supposed to be chosen by the Islamic community remained embodied in the institution of the *bay'a*, or oath of allegiance. A caliph was not legally a caliph until he had received the *bay'a* of the *ulama* and other notables, just as the Prophet (Peace Be on Him) had received the *bay'a* of some his earliest followers<sup>50</sup>. For the *ulama*, the *bay'a* was, in principle, a contract obligating both the ruler and the ruled. The ruler committed himself to rule justly in conformity with *shariah*(Islamic law), whereas the ruled committed themselves to obedience only so long as the ruler fulfilled his part of the bargain. Rationally, it is impossible to expect people living around the middle of the seventh century to have held an election of equal standard to those held today.

The prescribed procedure for the selection of the leader of the Muslim Community was followed in the election of the Calipha al Rashidun. However,

the system of *Shura* was abused by Mu'awaiya who appointed his son to succeed him. At this point the *shura* institution began to be corrupted.

*Shura* was required of the Prophet (Peace Be on Him); it was adhered to by the Caliph al Rashidun and is mandatory for every leader of an Islamic polity. The Caliph or *amir* should use the *shura* not only to enlighten himself on various aspects of the issue, but he must, as well, adhere to the conclusions reached through consultation. Muslim jurists and political thinkers upheld the view that whoever is entrusted with the task of governing the affairs of *Ummah*(nation) should discharge his duties in consultation with *ahl al-shura*<sup>51</sup>. According to Rashid Rida, *ahl al-shura* are the only people qualified to pass judgement on the conduct of the Caliphs and to depose them if they contravene the *Shariah*<sup>52</sup>. However, throughout Muslim history, the deposition of Caliphs was done only once after due consultation with *ahl al-shura* when the *shura* council impeached Caliph Rashid bi-Allah.

After the Prophet's death in 632, the question of unity was immediate and presented as the first crisis. The problem of leadership was met by creating a central authority concentrated in the hands of the Prophet's successors. The unification of Arabia under one religion and its expansion into neighbouring land made it necessary for Arabs to develop effective means to meet the new political problems which suddenly faced them. Within a short period of time they found themselves in possession of vast empire which they undoubtedly had not expected to subdue. The office of caliph, therefore, emerged quite unexpectedly as the central authority to administer, control, and rule the vast territories conquered by the Arabs within a few decades following the Prophet's death<sup>53</sup>. The conditions under which the caliphate emerged are well stated in Arnold's words:

“ The circumstances under which the caliphate arose were entirely different. It grew up without any deliberate pre-vision, out of the circumstances of that empire which may almost be said to have been flung in the face of the Arabs, to be picked up with the minimum of effort”<sup>54</sup>.



The Arabs' limited and primitive tribal organisation found itself unable to cope with all of the problems it faced in the newly conquered lands. The Arabs were not accustomed to any centralised authority, and it is not surprising, therefore, that when they suddenly came to power they moved to establish a political institution quite unprecedented in Arabia.

The name given to the new office was derived from the closest related concepts in the pre-Islamic Arabic language. The word *Khalifa* has “a varied semantic development in Arabic,” and denotes different meanings in various contexts. *Khalifa* in its most common means successor. Its plural form *Kholafa* refers to a group of people or a tribe who settle in land previously owned or used by others. Despite the common use of the term *Khalifa* with its manifold meanings among the Arabs of the *Jahiliya* (pre-Islamic era), it was never used to represent a political institution<sup>55</sup>. Muslim jurists and theologians based their justification in using the term *Khalifa* for the highest political authority on Qur'anic verses, one of which is of great importance. Here Allah addresses Prophet David as successor and judge:

“O David, verily we have made thee a successor [Khalifa] in the land; then judge between men with truth, and follow not by desires, lest they cause thee to err from the path of God”<sup>56</sup>.

Traditionally, *Khalifa* is translated into English by both Muslim and non-Muslim writers as an equivalent of the term ‘vice-gerent’. Actually there is no relation between the two terms, especially considering that most writers assume that ‘vice-gerent’ refers to one holding power through the delegation of God.<sup>57</sup> Usually, writers use the term *Khalifa* to mean God's deputy on earth. However, the original root of the term is the verb *khalafa*, which generally means ‘coming after the other’. The actual meaning of the verb is determined by the preposition ‘in’ or ‘on’ that follows it. In the two Qur'anic verses that use the term ‘*khalafa*’ (Caliph) the word is followed by the preposition ‘in’. However, if the two verses had used the preposition ‘on’ (Caliph on the earth instead of Caliph in the earth) it would indicate that the *Khalifa*, in question is meant to be the vice-gerent of God who has taken over the responsibility without the permission of those whom

he rules. In fact, the use of the preposition 'in' indicates that the *khalafa* is the one who is deputised by his people, with their obvious or implicit consent to carry out or enforce law<sup>58</sup>.

The first four caliphs 'the Right-guided Caliphs', were elected within the framework of familiar pre-Islamic customs. According to these customs, the authority of leader was not binding unless *bay'a* was given by the electors or the members of the community. Even during the lifetime of the Prophet, his followers on different occasions had proclaimed their allegiance to him and promised to obey his command. After his death a similar oath of allegiance was made to Abu Baker upon his election as the first caliph<sup>59</sup>. It seems that the *bay'a* was an essential part of the political process. Even in later periods, when the caliphate was no longer functioning effectively, the *bay'a* was required whenever a new caliph assumed office. The *bay'a* practice continued until the sixteenth century when it was abandoned by the Ottoman sultans who added the title caliph to their names, despite the fact that the people had no part in electing them.

The first four caliphs not only entered office by election but they also administered the affairs of the *Ummah* in consultation with *ahl al-shura*.

Hereditary leadership was not practised under the four caliphs. Umar, the second caliph, barred his son from the office and Ali, the fourth caliph, when asked if his son should be appointed as successor, replied, "I do not ask or forbid you to do so. You can see for yourself". Arnold summarises the nature and character of this period as follows:

"There was certainly some form of election in the case of the first four caliphs—Abu Baker, Umar, Uthman, and Ali; in neither instance was there any question of hereditary succession, nor was the choice of any of these caliphs influenced by consideration of relationships"<sup>60</sup>.

The nomination and succession to the office of the caliph does not entail particular rituals such as consecration or ordination. The simplicity of the

procedure, however, should not be mistaken for a laxity in the qualification of, and the requirements for, a prospective leader of the Ummah. The criteria and standards for measuring the quality and capacity of a nominee have been a subject of intense study by Muslim scholars and theologians of different *Madhhabs* (schools) for centuries. Most scholars and theologians agree on the fundamental requirements which should be met by a candidate for the office of the caliph who should be a Muslim and free man. These requirements were *adal* (justice); *'ilm* (religious learning) so that he could exercise independent judgement; *kifaya* (efficiency), the capacity and competence to carry out the government and administrative duties; bravery to protect Islamic territory and to undertake *jihad* against the enemy; *wara'* (fear of God); and to some Islamic sects the descent from the Quraish tribe, *nasab*<sup>61</sup>. In scholar's lists of qualities, the predominant role of justice and its ethical sanctions are quite clear. This vision is diametrically opposed to the one espoused by political realists like Machiavelli, who had a great impact upon the development of Western political theory.

The caliph maintained authority and responsibility similar to those assumed by the Prophet. He played the role of spiritual leader and was considered the 'symbol of unity' who inherited the worldly powers of the Prophet and thereby wielded force to defend the faith and administer justice. His religious duties were to expand the doctrines of Islam and to uphold the religion against heretics. He had the judicial responsibility of protecting the rights of the faithful and ordering appropriate punishment for offenders who violated the *shariah*. It was his responsibility to protect Islamic territory so that people could earn their livelihood and move about freely, safe from risk to life and property. He was called upon to collect *fay* and *sadaqa* (legal alms) according to the prescriptions of the *shariah* and to distribute them without fear or favour<sup>62</sup>. The caliph was, in short, accountable for all aspects of governmental administration and was to carry out these functions in accordance with the principles of *shariah* to the best of his ability by basing his decision on the dictates of his righteous, honest and humble conscience.



Theoretically, and to a great extent actually (at least during the early Islamic period) the before mentioned qualifications and functions characterised the caliphate. The result was a unique government in which there was no distinction between the secular and the religious aspects of the culture, the spirit of the religion being, indeed, all-pervasive<sup>63</sup>.

The caliphate was a unique institution peculiar to the characteristic of the Arabs; their social mores, cultural values and traditions. Its mechanism and functions were different from all other political systems prevailing at that time. It had no precedence in the pre-Islamic history of the Arabs. Yet it maintained a continuity with the traditional Arab procedures for election, the people's declaration of consent and the ruler's acceptance of the office, both of which are embodied in the *bay'a*<sup>64</sup>. However, the genuine form and popular characteristic of caliphate was corrupted after the assassination of Ali, the fourth Rashidun caliph. The Umayyad dynasty unscrupulously subjected the institution of caliphate to heredity. They legitimized this innovation with spurious arguments and made Muslims believe that *Wassiyah* (testament) was as valid as *Ahd* (contract). Further corruption occurred, when the sultans of the house of Abbas forced the Muslim jurists of the time to find legal justifications both for the Umayyad interpretation of the *shariah* on political legitimacy, and for seizure by force, through which the Abbasids had come to power<sup>65</sup>.

### 2.3.3 Accountability in Islam.

Most of the writing on political or constitutional aspects focuses extensively on the office of the chief executive, in whom all powers and authority were centered and no power was considered valid unless delegated by him. It is generally agreed that the affairs of people cannot be administered properly without a recognised authority.

In Islam, the basis of political authority is the *Ummah*, the Islamic social order. The ruler is not sovereign but a *primus inter pares*, first among equals. Within the *Ummah*, the governor and the governed are on equal footing. There is no distinction of rank but only of role, and no basis of ranking save that

of *taqwa*. The ruler must administer according to the *shariah*, the violation of which absolves the *Ummah* of its obligation to render obedience to him.

The authority of governors and the responsibility of the governed are conveyed in Qur'an which enjoins believers to "obey Allah and obey the Messenger and those in authority among you"<sup>66</sup>. It is often suggested by political scholars that Islam teaches 'unquestioning obedience to constituted authority.' This is, of course, a mistaken view of the true position<sup>67</sup>. By meaningfully omitting the verb 'obey' from the previous verse only in case of those having 'authority', the verse makes obedience to them conditional and subservient to Allah and His Prophet. This condition or requirement is met by the right belief and assiduous performance of the prescribed rites and rituals<sup>68</sup>. Declaring the government as a trust, the Qur'an enjoins the leaders to govern with justice, to avoid cruelty, to promote public interest, to take care of the needy and not to benefit the rich at the expense of the community<sup>69</sup>.

The above Qur'anic attitude is reinforced by several prophetic traditions which urge the Muslim to obey those in authority, except if they order him to do a sinful act. In such a case, the obligation lapses automatically. In fact, the Prophet has warned of dire consequences if Muslims refuse to resist a wrongdoer.

“ Nay, by Allah, you must enjoin right and forbid wrong, and you must stay the hand of the wrongdoer, bend him to conformity with justice and force him to do justice –or else Allah will set the hearts of you all against one another”<sup>70</sup>.

There is a clear distinction between the authority of the ruler in his capacity as a public official and his role as an individual or religious person. The caliph, for example, is simply a member of the Muslim community who is elected and entrusted with the society's affairs. His office signifies “a trust”, a service in which the functionaries are the servants of the people<sup>71</sup>. His religious authority stems only from his role as symbolic defender or guardian of Islam, so that obedience to him is restricted to political affairs. Islam does not bestow upon

the head of state or its religious leader any special veneration, nor grant him immunity from the law's supremacy.

There is general consensus among most Muslims jurists and thinkers that the four Rashidun caliphs did adhere strictly to the normative standard found in the Qur'an and the *Sunnah*. This era of 'righteous excellence' was characterised by legitimacy and justice. None laid the foundation of hereditary government nor assumed power by force or trickery. They acceded to the caliphal office by lawful means, through elections, and they governed through consultation and in accordance with the *shariah*. Obedience was made conditional upon their observance of the *shariah* provisions, as is evident from the keynote speech of the first caliph, Abu Baker:

“ O people, I have been entrusted with your affairs, although I am not the best among you. Help me if I do well and straighten me if I do wrong.... Obey me as long as I obey Allah and His Prophet. In case I contravene the injunction of Allah and His Prophet, you owe me no obedience”<sup>72</sup>.

This 'inaugural speech' embodies two important principles vital to the continuity of any popularly supported political system. The speech makes it clear that the new political leadership relies on the consent of the 'community of the faithful' on the one hand, and subscribes to the priority of a set of divinely law, governing both the rulers and the ruled on the other. Moreover, obedience to the ruler is binding on the *Ummah* (nation) only as long as the ruler upholds the law; if he violates or ignores the law, the *Ummah* is justified in dismissing him.

The period of the Rashidun caliphs formed the ideal source from which thinkers could draw the blueprint of an Islamic order. Ibn Khaldun attaches great importance to such a supreme body of rulers and believers that the existence of *wazi* (restraint) in the *shariah* is a check on despotism, oppression and injustice<sup>73</sup>. Imam Ibn Taymiyyaah took a more vigorous stand on the issue. He stressed the duty of the citizens to take an active part in public life. Both the Qur'an and the Sunnah, he pointed out, obligate believers to do their best with regard to whatever is entrusted to their care. The government is a trust and it



requires the joint effort of both the governors and the governed to establish the just political order, an order which runs contrary to personal rule and is based on the principle of equality enjoined for by the *shariah*. Obedience to the governor is predicated upon his ordering what is just and lawful. Tyrants and those who forsake the *shariah*, even though they have pronounced the two formulas of the faith (*shaadatan*), must be fought and disobeyed as a religious duty<sup>74</sup>. Ibn- Sina went to the extent of saying that ‘electors become unbelievers if they are guilty of a wrong choice’. He roundly condemns usurpation and actually demands the death of tyrants and the punishment of those who fail to carry out such a tyrannicide if they have the means to do it. In this view, Ibn- Sina goes behind the orthodox theory which demands removal from office, not death, if the people have sufficient power to force the caliph’s abdication. He argues that, next to belief in the Prophet, tyrannicide is most pleasing to Allah and draws man near to him<sup>75</sup>. Moreover, Ibn- Sina sanctioned the removal of incompetent incumbent officers from office, by advising the people to support the ‘worthy rebel’ in challenging the disqualified caliph<sup>76</sup>.

Al-Mawardi argued for an elective process for the selection of the caliph who, according to Sayyid Qutb, derives his authority from ‘one source, the will of the governed’<sup>77</sup>.

The nature of an Islamic political system is, then, elective; its legitimacy requires the consent and approval of the people as well as the sovereignty of the *shariah*.

The best exposition of the people’s right to deal with an evil-doing ruler is provided by Mu’ad bin Jabal, one of the Prophet’s companions, who pronounced the outline of the rule of law in a speech addressed to the governor of Syria. In his speech, Mu’ad clearly states that the rule of law is binding to the ruler and the ruled alike; he further warns the ruler against violating the law and reminds him of the power of the people. Mu’ad says:

“Our leader is one of us; if he implements among us the teaching of our Religious Book ( the Qur’an) and the Sunnah of our Prophet we shall have him

over us. But if he goes against it, we shall depose him. If he commits theft, we shall amputate his hand; if he commits adultery, we shall flog him. If he abuses anyone of us, we will take retaliation from him. He will not hide himself from us, nor will be self-conceited. He will not reserve for himself the booty which God bestowed on us. He is a person as good as we are”<sup>78</sup>.

Although the authority and power of the caliph were limited by these laws, no definite and articulate procedure to check the authority of an evil caliph was specified. It was not clear how he should be removed from office, as no tribunal or method was proposed by means of which such action might be brought about. Islam left a vast field of institutional and constitutional developments to individual reasoning and collective wisdom, to be shaped according to the broad principles laid down in the Qur’an and Sunnah of Prophet.

Drawing upon the basic principles outlined in the two revelatory sources, Muslims thinkers have suggested the judiciary, and the *Ulama* council and the Consultative Assembly (*diwan al-nazr fi al-mazalim*<sup>79</sup>) as possible organs or agencies for initiating and deciding cases of impeachment<sup>80</sup>. A recent example can be drawn from the Iranian constitution, which vests the power of impeachment with *vilayete-faqih*.

## **2.4 The Modern Authority.**

Territorially, demographically and administratively, the states of the GCC are closer in form and political structure to classical city-states than to modern versions of the nation-state. However, in almost every one of these states, the ruling family has displayed a certain flexibility and desire to transform its city-state into a modern entity aspiring to the title of nation-state. The moves which the ruling families in these states have initiated towards popular political participation have focused on the preparations of constitutional documents, first approved by the ruling family and then (especially in the cases of Kuwait and Bahrain) submitted to some type of representative body, generally known as a constitutional assembly.

In their attempt to establish a functionally modern form of government, the ruling families in the GCC states have to rely on theoretical bases for legitimacy; either on Islamic tenets of government or on a somewhat more secular constitutional document. Even in the latter case, Islam has continued to constitute a major source of legitimacy.

#### **2.4.1. Constitutionalism.**

The GCC states have written constitutions based in general upon a common model, the premises of which owe much to principles embraced by the Egyptian constitution, also those of France and the United States of America, and the Universal Declaration of Human Rights of 1948.

An immediate qualification must be made with respect to the United Arab Emirates (UAE). The principles of the constitutions of Oman, Qatar and Saudi Arabia contained in the basic models are much qualified and restricted. The UAE constitution carries the same measure; however, the main reason for differences in form of the UAE constitution derives from the federal structure of the Union.

Having regard to the fact that the GCC constitutions are derived on the basis of the Egyptian constitution, it is instructive to look at an Egyptian authority writing on the predominance of the constitution. According to Badawi, the constitution is considered as the legal document which arranges the rules of the state. The constitution not only represents the supreme legal authority but is also the instrument which defines the rights and duties of the citizens, the limits and the jurisdictions and the relation between the different organs of the government<sup>81</sup>.

Studies show that the range of existing constitutional frameworks in the world's long-standing democracies is narrower than one would think. With one exception (Switzerland), every existing government today is either presidential (as in the United States), parliamentary (as in most of Europe) or a semi-presidential hybrid of the two (as in France and Portugal, where there is a directly elected president and a prime minister who must have the majority in the legislature). In the traditional parliamentary system, balance is maintained



between the executive and legislative through co-operation between the two institutions. The whole cabinet is formed from and is responsible to the legislature. In the traditional presidential system, however, the two institutions are quite separate. Ministers under this system are not members of the legislature and they are responsible to the president<sup>82</sup>.

Applying the above principles to the GCC systems, it might be argued that the constitutional system of the GCC states cannot be classified as either presidential or as parliamentary. Under their constitutions, family rule continues on a hereditary basis, while theoretically, government in these states is divided into the executive, legislative and judicial branches. Rulers, as is shown, are chief executives and remain the source of legitimacy and authority.

In short, comparing the written constitutions of the GCC states, it seems that all constitutions consist of basically the same chapters. However, the UAE constitution has extra chapters concerned with trying to define the relationship between the Union and its component Emirates, and their respective exclusive, parallel and provisional rights to legislate and conclude agreements<sup>83</sup>.

Although the concept of the separation of powers, in varying degrees, is enshrined in the GCC states' constitutions, unfortunately, only Bahrain and Kuwait subscribe fully to the principles of the separation of powers in the substance of their constitutions. However, unlike the separation of power in Western countries, legislative power in Bahrain and Kuwait is vested in the Ruler and the legislator; the Ruler also heads the executive branch and judicial decisions are always rendered in his name. The UAE subscribe in some measure to the principles of the separation of powers while Oman, Qatar and Saudi Arabia subscribe in small measure, in particular paying express regard to the independence of the judiciary.

The first chapter of the Kuwaiti constitution affirms that the system of the government (monarchy) is hereditary, but the Amir is restricted in his choice of heir in that his candidate must gain the allegiance of the National Assembly, and he must present the Assembly with three candidates to choose from, if it does not acknowledge his first choice. Bahrain follows the same line, except that the Amir

has unfettered power to appoint his successor who, is normally be his eldest son. Article 5 of the Saudi constitution made a dramatic change to the traditional succession procedures when it granted the King the power unilaterally to choose and dismiss the Crown Prince. The succession clause also implies that the crown prince will be chosen on the basis of his qualification, rather than seniority<sup>84</sup>. This article deprives the royal family of its traditional role of debating and endorsing candidates. Traditionally, the Crown Prince has been chosen through a lengthy, informal, secretive process of consultation and bargaining among senior family members that produced a consensus candidate before the decision received the stamp of approval from the *Ulma*<sup>85</sup>. Moreover, Article 5 (e) gives the king absolute power over who succeeds him when it states that the Crown Prince may only be an interim king until the new king takes the oath of allegiance<sup>86</sup>. On the other hand, however, the Omani constitution stresses the traditional role of the Ruling Family Council of debating and endorsing candidates in order to choose the new Sultan. It gives the Ruling Family Council three days, from the throne falling vacant, to determine the successor to the throne. If the Ruling Family Council does not agree a successor to the throne, the Defence Council shall confirm the appointment of the person designated by the Sultan in a letter to the Ruling Family Council<sup>87</sup>. In the UAE, the president and vice-president are elected for a five-year term, which may be and has been renewed, by the Supreme Council.

Regarding the structure of society, all constitutions stress the basic importance of families built on religion, morality and patriotism, and the state's duty to take care of its people in incapacity and adversity generally, and especially through adequate social security arrangements. All constitutions see education as a right, a duty and socially necessary, and they support the principle of private property and the right and duty to work.

Kuwait, Bahrain and Oman emphasise that economy and taxation must be guided by the desire to achieve social justice and taxes must be collected unless exemption therefrom is granted by law. The UAE has more or less the same content, while stressing its desire and intention to develop its resources in the interest of the Union.

On the basis of human rights, all states give the accused the right to adequate defence, a legal trial and innocence until guilt is proved legally. On the theme of equality before the law, there is a disparity in wording in the constitutions of Oman, Bahrain, Kuwait, Qatar and UAE. While the constitutions of Bahrain, Kuwait and Qatar state that “people are equal”, the UAE constitution says “all persons are equal”, and the Omani constitution uses the wording “all citizens are equal”. This variation can be attributed to the fact that the antecedents of the wording in the Omani constitution are clause 6 of the Declaration of the Rights of Man which states “all citizens are equal in the eyes of law” and the constitution of the French Fifth Republic, while the wording in other constitutions draws upon the Universal Declaration of Human Rights which refers to “human beings, persons and ‘all’”. In contrast, the Moroccan constitution seems to be at a more advanced stage than the GCC constitutions, when it asserts that men and women shall enjoy equal political rights<sup>88</sup>

The Kuwaiti and Bahraini constitutions have more advanced guarantees to citizens to form associations and unions and give more freedom to hold private gatherings, to express opinions and for press and printing, than those of Oman and UAE. The constitutions of Qatar and Saudi Arabia tend to be more nebulous on these points.

From a juristic point of view, the written constitutions of the GCC states fall within the category of constitutions termed ‘rigid’. They are expressed to be immutable except by the exercise of the provision for changed embodied clearly in the constitutions.

It is important to mention that tribal values are to a certain extent adopted in the GCC constitutions. These values directed the constitution-makers in these states towards establishing national councils which are intended to be the modern resemblance of the traditional *Majlis*.

#### **2.4.2. Authority.**

The GCC constitutions were more or less bound to accept the traditional system of rulership in these states and prove its continuation. In other words, the



GCC constitutions were not designed to rationalise the distribution of power nor to introduce 'representative democracy' as known in the Western democracy. They, instead, accepted the existing constitutional position of the rulers and sought to provide additional legislative and political improvements.

On legitimacy, the first chapter in each of the GCC constitutions establishes a similar source of legitimacy, when it asserts that the country is an independent, sovereign state with allegiance to the Arab and Islamic world and the *shariah* is prescribed as the main source of legislation. It also adds that the Ruler is the head of state and his person is protected and above reproach. The vital point at issue here is, of course, the extent to which in the GCC systems, the *shariah* must, in view of the wording in the constitutions, be regarded as paramount, since there are secular systems of commercial and criminal laws, beside an emancipated banking system on the occidental model, both domestically and offshore, in these states. Moreover, the Bahraini, Kuwaiti and Qatari constitutions explicitly affirm that the system of government in these states is democratic.

On the question of popular participation, in the Bahraini and Kuwaiti constitutions, people are considered the source of authority and members of the legislature are popularly elected by secret ballot according the law and they represent the whole people. Other constitutions refer to popular participation in government, but only obliquely. Unlike the GCC constitutions, the Moroccan constitution has established mechanisms for the citizens to exercise their sovereignty by means of referendum or through constitutional institutions such as political parties, unions, district councils and trade chambers<sup>89</sup>

Although all constitutions call for the division of government into three branches, only Kuwait and Bahrain distinguish clearly between a legislative power (Ruler and Legislature), an executive power (Ruler and Council of Ministers) and a judicial power (the courts in the name of the Ruler). The system of government is based on the division of authority, and all functions are inalienable. In other states, the Head of State and the Council of Ministers combine the first two functions.

In the Bahraini and Kuwaiti constitutions, Rulers take oaths before their National Assembly. The president of the UAE takes his before the Union Supreme Council (this council consists of the seven rulers of the Emirates composing the Union). The Sultan in Oman takes his before a joint session of the Oman Council and the Defence Council. The king in Saudi Arabia and Amir in Qatar are not required to take an oath.

According to the constitutions each Ruler is Head of the Council of Ministers; leader of the armed force; appoints civil and military servants and dismisses them; accepts the letters of credence of foreign missions; has the power of pardon; signs international treaties and agreements and declares defensive war.

However, there are restrictions on the Ruler's power. In both Kuwait and Bahrain, martial law may be declared by the ruler alone, but he must obtain confirmation of the measure within 15 days, from the National Assembly. This confirmation is needed every three months, or the law ends.

On international matters, some treaties requires law, especially those relating to sovereignty, money, peace, shipping, trade or any treaty requiring amendment of existing Laws in the State. According to the Kuwaiti and Bahraini constitutions treaties must not contain secret and conflicting clauses. In Qatar, Saudi Arabia and Oman, it may be noted that apart from the requirement of gazetting of legislation, almost the only restriction placed upon Rulers is that they may not conclude treaties containing secret, conflicting clauses. In the UAE, the Supreme Council retains vast powers in the legislative and executive realm. The Council ratifies all laws, treaties and international agreements and approves certain Decrees. According to Article 115, the Supreme Council may delegate its powers in its absence to the president and the Council of Ministers collectively on all matters except international treaties and agreements, martial law, declaration of a defensive war and the appointment of High Court judges.

In all constitutions the Council of Ministers is the body entrusted with the implementation of the State's general policies and sees to the good running of the government. In Oman, UAE and Qatar, the Council of Ministers also proposes

draft laws, Decrees and Resolutions sees to execution of legislation and of judgments and international agreements and appoints and dismisses lower civil servants. However, in practice, the Council of Ministers in these states plays a trivial role in political matters. That is because ministers have only a small share of executive power and none of its essence, since the Rulers are the Heads of the councils, and all council decisions must be approved by them

Furthermore, according to the constitutions, Rulers have the right to amend the constitutions, and wide powers to dissolve the National Assemblies. In Qatar, the Amir amended the constitution two years after it was promulgated. The principal amendment deals with the composition and membership of the advisory Council. Whereas, under the previous system, Council members were to be elected, the new system specified that the first Council was to be appointed by the Amir. However, since then the council has continued to be appointed. In Bahrain the Amir in 14/12/1975 dissolved the National Assembly and postponed the election of a New National Assembly until the promulgation of new election law. Moreover, the Amir suspended the effectiveness of Article 65 of the Constitution and any other provisions relating to elections and the Amir took over all legislative powers<sup>90</sup>. The Kuwaiti National Assembly was suspended three times (from 1976-1981, and from 1986-1992 and in 1999). During the time of suspension, the authorities delegated to the Assembly by the constitution became vested in the Council of Ministers and laws were issued by Amiri Decrees.

## **2.5. Conclusion**

As has been noted, the traditional roots of GCC societies, which are based on Islamic and tribal structure, are participatory. However, the nature of this participation is unlike that of the West. Instead, it is one with its own indigenous institutions and cultural background. In this environment, participation is based on the institutions of *shura* and *majlis* with its emphasis on consultation and consensus. To these traditional pillars of legitimacy, the GCC states have adapted constitutional framework and institutionalised government structures. The written constitutions of these states place emphasis on Western-inspired principles of sovereignty residing in the people, the separation of powers



between the branches of government and some degree of legislative power-sharing between the ruler and national council.

The attempt to marry traditional and modern bases of legitimacy is not without its ambiguity. With reference to the tribal structure, the success of traditional participation depends primarily on the egalitarianism of tribal order. The shaikh is first among equals and people are free to change ideas and opinions on a wide variety of social, economic and political matters<sup>91</sup>. The concept of *shura* evokes the golden age of the Rashidun caliphs and reflects an ideal of full interchange between ruler and ruled, which is absent from the modern Islamic world.

A textual analysis of these constitutions casts doubt on their efficacy in producing a meaningful participatory government. Extensive rulers' prerogatives contained in the constitutions indicate a desire to give the appearance of change while still concentrating power in the rulers. Despite the shortcomings of the GCC experience with participation by Western democratic standards, the constitutions represent the first attempt to define the rights of their citizens and the organisation of their governmental institutions

In the light of the above discussion, two immediate questions come to mind: to what degree is popular participation is permitted; and how is authority shared among divisions of government? This is what will be discussed in the coming chapters.

## Endnotes

- <sup>1</sup> - The study of political centralisation in various societies where anthropologists have traditionally worked produced models to account for the evolution of these political systems. For more information see: Elman R. Service, *Origins of the state and Civilization*. New York: I.B. Tauris &co 1975, and M. H. Fried *the Evolution of Political Society: An Essay in Political Anthropology*. New York.1967, and Philips S. Khoury & J. Kostiner (eds,) *Tribes and State Formation in the Middle East*. London: I. B. Tauris 1991, and Dale F. Eickelman, *The Middle East: An Anthropological Approach*. New Jersey: Prentice-Hall.1981.
- <sup>2</sup> -Madawi Al-Rasheed and Loulouwa Al-Rasheed, **The Politics of Encapsulation: Saudi Policy towards Tribal and Religious Opposition.** *Middle Eastern Studies*, vol., 32. No 1. January 1996. P 96.
- <sup>3</sup> - Peterson J. E., *The Arab Gulf State*. op. cit., p. 2
- <sup>4</sup> -Fuad I. Khuri, *Tribes and State in Bahrain*. op. cit., pp. 218-219
- <sup>5</sup> -Michael C. Hudson, *Arab Politics: The Search for Legitimacy*. New Haven and London: Yale University Press. 1977. Pp. 7-15.
- <sup>6</sup> -Peterson J. E., **Legitimacy and Political Change in Yemen and Oman.** *Orbis*, VCL 27.NO.4 Winter 1984.p.979.
- <sup>7</sup> - Max Weber, *The Theory of Social and Economic Organization*, trans. A.M. Henderson and ed. Talcott Parsons. New York: The Free Press, 1964. P.341
- <sup>8</sup> -Peterson J. E., **Legitimacy and Political Change.** op. cit., p.979
- <sup>9</sup> - Quran. Sura 42, v.38
- <sup>10</sup> -Quran. Sura 3, v 159
- <sup>11</sup> - Peterson J. E., **Tribes and Politics in Eastern Arabia.** *The Middle East Journal*.vol. 31, No. 3 Summer 1977. P 298.

- <sup>12</sup> -Christine Moss Helms, *The Cohesion of Saudi Arabia: Evolution of Political Identity*. London: Croom Helm 1981. P. 53
- <sup>13</sup>-Ibid., p.54.
- <sup>14</sup> - W. Montgomery Watt, *Muhammad At Mecca*. London: Oxford Press, 1953, p.17
- <sup>15</sup> - Ibn Khaldun, *The Muqaddimah: An Introduction to History*, trans., by Franz Rosenthal. New York: Pantheon Book Inc., 1958, vol. I, p. 262
- <sup>16</sup> - Ibid., p.264
- <sup>17</sup> - Philip K. Hitti, *History of the Arabs: From the Earliest Time to the Present*. (8<sup>th</sup> ed.,) London: MacMillan & Co. Ltd., 1964. P. 289
- <sup>18</sup> - Akram Raslan Deiranieh, *The Classical Concept of State in Islam*. Unpublished Ph D. Thesis, Howard University, Washington D.C. 1975.p.24
- <sup>19</sup> - Philip K. Hitti, op. cit., p. 18
- <sup>20</sup> - Peterson J.E, **Legitimacy and political change.**, op. cit., p. 983
- <sup>21</sup> -George A. Lipsky, *Saudi Arabia: Its People Its Society Its Culture*. New Haven: Hraf Press. 1959.p.76
- <sup>22</sup> - Peterson J.E, *Oman in the Twentieth Century: Political Foundations of an Emerging State*. London: Croom Helm.1978. pp.114-116
- <sup>23</sup> - Gabrieli, *Muhammad and the Conquests of Islam* . quoted from Akram Raslan , *The Classical Concept.*, op. cit., p.43.
- <sup>24</sup> -Dale F. Eicklman, **From Theocracy to Monarchy: Authority and Legitimacy in Inner Oman.** *International Journal of Middle East Studies*. Vol. 17,1985. P. 9
- <sup>25</sup> -John Esposito and John O. Voll, *Islam and Democracy*. New York: Oxford University Press. 1996.p. 23
- <sup>26</sup> - Madudi Sayyid Abu al-Ala, *The Islamic Law and Constitution*. 8<sup>th</sup> ed., translated and edited by Khurshid Ahmed . Lahor: Islamic publications. 1983 pp. 195-197
- <sup>27</sup> -John Esposito and John Voll, op. cit., p.27



- <sup>28</sup>- Abdul Rashid Moten, *Political Science: An Islamic Perspective*. New York: Macmillan Press Ltd, 1995. P. 86
- <sup>29</sup> - Ibid., P.87
- <sup>30</sup> - The Qur'an 6:57
- <sup>31</sup> --Sir Norman Anderson, **Islamic Law Today: The Background to Islamic Fundamentalism**. *Arab Law Quarterly*. Vol.2 no. 4. November 1987. P. 340-42
- <sup>32</sup> - The Quran. 5:8
- <sup>33</sup> -Mahammad Asad, *The Principles of State and Government in Islam*. Berkeley; California. 1961. Pp.56-61
- <sup>34</sup> - The Qur'an 2:256
- <sup>35</sup> - Abdul Rashid Moten, op. cit., p.89
- <sup>36</sup> - The Qur'an 49:13
- <sup>37</sup> -The Qur'an 3:159
- <sup>38</sup>-The Qur'an 42:38
- <sup>39</sup> -Ayatollah Yahya Noori and Sayed Hassan Amin, *Legal and Political Structure of An Islamic State: The Implications for Iran and Pakistan*. Glasgow: Royston limited. 1987. P.34
- <sup>40</sup> -Ibid.,P.128
- <sup>41</sup> - John L. Esposito and James P. Piscatori, **Democratization and Islam**. *Middle East Journal*. Vol.45, No. 3.Summer 1991. Pp.434-35
- <sup>42</sup> - Abdulrahaman Abdulkadir Kurdi, *The Islamic State: A study based on the Islamic Holy Constitution*. London: Mansell Publishing Limited. 1984. P. 77
- <sup>43</sup> -Ibid.,
- <sup>44</sup> -Abdul Rashid Moten, op. cit., p. 101
- <sup>45</sup> -Akram Raslan Deiranieh, op. cit., p. 132
- <sup>46</sup> Madudi Sayyid Abu Al ala, *The Islamic Way of Life*. Edited by Khurshid Ahmed and Khurran Murad. Leicester: Islamic Foundation. 1986. P.40

- <sup>47</sup> - The Qur'an 42:38
- <sup>48</sup> -Abdulrahaman Abdulkadir Kurdi, op. cit., p. 70
- <sup>49</sup> - A. S. Fadlalla, **Constitutional and the Islamic Theory of the Constitution.** Paper submitted to the Islamic conference on constitutionalism in Islamic Law (1977). Centre of Islamic Legal Studies, Ahmadu Bello University, Zaria Nigeria. P. 7
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- <sup>51</sup> -Madudi S.A., *The Islamic Law and Constitution.* op. cit., P 180
- <sup>52</sup> -Malcolm H.Kerr, *Islamic Reform: The Political and Legal Theories of Muhammad Abduh and Rashid Rida.* Los Angeles: University of California Press. 1966.pp 185-190
- <sup>53</sup> -Manouchehr Paydar, *Aspects of the Islamic State: Religious Norms and Political Realities.* Unpublished Ph.D Thesis. University of Utah. 1973. P. 45
- <sup>54</sup> - Sir Thomas W. Arnold, *The Caliphate.* Oxford: Clarendon Press. 1924, p. 10
- <sup>55</sup> - W. Montgomery Watt, *Islamic Political Thought.* Edinburgh: University Press, 1968. Pp. 32-33
- <sup>56</sup> - The Qur'an 38:25.
- <sup>57</sup> - Rosenthal Erwin I. J., *Political Thought in Medieval Islam.* Cambridge: The University Press. 1962. Pp. 21-60
- <sup>58</sup> - Abdulrahman A. Kurdi, op. cit., Pp.23-24
- <sup>59</sup> - The selection of the first caliph created serious problems. The threat of factionalism and the consequent breakdown of the entire *Ummah* seemed imminent. The *Ansar* (those Medinans who gave refuge to the Prophet and were actually credited with the initial success of Islam) and the *Muhajerun* (the Prophet's early followers who left Mecca to

escape the consequences of embracing the new religion) argued in a sense, that each side should select a leader of its own. The *Muhajerun* dismayed by the threat of disunity among Muslims advocated a central authority under the leadership of one of the members of the Quraish (the Prophet's tribe). After consensus was reached between the *Ansar* and the *Muhajerun*, Abu Baker received the oath of allegiance as the first caliph.

<sup>60</sup> - Arnold, op. cit., p.33

<sup>61</sup> - Khawarij's political doctrine and approach towards the office of caliphate were democratic and liberal. Qualifications such as descent from the Quraish introduced by some Sunni orthodox was rejected by Khawarij. Khawarij strongly maintained that any believer, where from the Quraish nobility or a slave, may be elected to the office of caliphate as long as he keeps his piety. The doctrine of hereditary succession was totally rejected by Khawarij and to this group the only acceptable form of government is 'election and *shura* (consultation)'. For further information on Khawarij political doctrine see, Elie Adib Salem, *Political Theory and Institutions of the Khawarij*. Baltimore: John Hopkins Press. 1966. Pp.55-58

<sup>62</sup> - Ann K. S. Lambton. *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory; The Jurists*. London: Oxford University Press. Second edition. 1985. Pp.91-93

<sup>63</sup> -Manouchehr Paydar. op. cit., p. 59

<sup>64</sup> - Alfred Guillaume, *The Traditions of Islam*. Beirut: Khayat Book and Publishing Co., 1966.p.162

<sup>65</sup> - Manouchehr Paydar, op. cit., Pp. 62-63.

<sup>66</sup> - The Qur'an 4:59

<sup>67</sup> -A. S. Fadlalla, op. cit., p.8

<sup>68</sup> - Abdul Rashid Moten, op. cit., p. 109.

<sup>69</sup> - The Qur'an 4:58, 3:159 and 59:7



- <sup>70</sup> -Al-Bukhari M. ibn Ismail, *Al-Jami al-Sahih*. Cited in Abdul Rashid Moten, Op. cit., p. 109
- <sup>71</sup> -Akram R. Deiranieh, op. cit., p.129
- <sup>72</sup> - Abduala Madoodi , *Political Thought in Early Islam : A History of Muslim Philosophy*,ed. by M. M. Sharif. Wiesbaden: Otto Harrassowitz. 1963, vol.I, p.662
- <sup>73</sup> - Ibn Khaldun, op. cit., vol.2.p.235
- <sup>74</sup> -Khan Qamaruddin, *The Political Thought of Ibn Taymiyah*. Islamabad; Pakistan: Islamic Research Institute. 1973. P.37
- <sup>75</sup> -Rosenthal Erwin I. J., op. cit., p.153
- <sup>76</sup> -Ibid.,
- <sup>77</sup> -Al-Mawardi, *Wizara and Imara*. Cited in Ann K. S. Lambton, Op.cit., chapter VI.
- <sup>78</sup> - Ahmad Hasan, **The Political Role of Ijma**. *Islamic Studies*, vol. 8. No 2, 1969,p.138
- <sup>79</sup> - Historically, *diwan al-nazr fi al-mazalim* exercised judicial as well as supervisory functions over the conduct of the administration. Its origin can be traced to the time of Prophet, it was the fourth caliph, Ali, who personally looked into cases of misdeeds and injustice suffered by the general public.
- <sup>80</sup> - Abdul Rashid Moten, op. cit., p.124
- <sup>81</sup> -Badawi M. *al-Khanun al-Dusturi(constitutional Law)*.Cairo: al-Maktaba al-Asriya.1971, cited in W.M. Ballantyne, **The Constitutions of the Gulf States: A comparative Study**. *Arab Law Quarterly*, Vol.1. Part 2. November85-November86. Pp.160-161
- <sup>82</sup> - Alfred Stepan and Cindy Skach, **Constitutional Frameworks and democratic consolidation: Parlimantarianism versus Presidentialism**. *World Politics*, Vol.46 No.5. October1993.Pp.2-4
- <sup>83</sup> - Chapters 5,6,7 of the UAE constitution.
- <sup>84</sup> -Article 5 clause 'c' of the Saudi Basic Law.

- <sup>85</sup> -Michael A. Tarazi, **Saudi Arabia's Basic Law: The struggle for participatory Islamic government.** *Harvard International Law Journal*, Vol.34, No.1 Winter 1993. P. 265
- <sup>86</sup> -It is unclear how the new king is to be chosen if it is not to be the crown prince. Moreover, the Basic Law does not provide any guidance on the conditions needed to remove the king.
- <sup>87</sup> - Article 6 of the Basic Statute of the State( Omani Constitution)
- <sup>88</sup> -Article 8 of the Moroccan constitution of 1996.
- <sup>89</sup> - Articles 3 and 4 of the Moroccan constitution of 1996.
- <sup>90</sup> - W. M. Ballantyne, *op. cit.*, p.174
- <sup>91</sup> -Peterson J. E. *The Arab Gulf States, op. cit.*, p10

## **Chapter Three: The Structure and the Organisation of the GCC Assemblies.**

### **3.1. Introduction.**

Parliaments exist in most countries, although the word is not universally used to describe a representative assembly. The term “parliament” is associated with the British system of parliamentary government, a system which has influenced the development of representative assembly in many parts of the world.

In terms of the structure of parliament, the question of number of chambers that a parliament should comprise is one of the most controversial issues in constitutional law. The answer given to it reflects the result of political choice more than a matter for academic political scientists. In practice, the choice seems simple enough. Countries which are small in size are more likely to have one chamber (unicameral), rather than two (bicameral), as the problem of balance of political power is less difficult to solve<sup>1</sup>. In federal systems, bicameralism is the obvious legislative arrangement because these systems have, by definition, a two-tier structure; one of these structures is the nation as a complete entity, the other is the several states of the federation with their particular characteristics<sup>2</sup>

Historically, the bicameral system was a result of compromise between two schools of thought: the Philadelphia Convention of 1787, which, starting from the hypothesis that there was to be only one chamber, disagreed upon the number of members each state should have; and the Connecticut compromise which accepted the rule of a bicameral system, in which each state achieved equal representation in the upper chamber, and representation in the lower chamber proportional to its population. The systems of the United States, Argentina, Brazil and Switzerland reflect this arrangement in the composition of their bicameral parliaments. However, the principle of equal representation of



several states is no longer regarded as sacrosanct and the Lower House claims a preponderance of authority over the Upper House.<sup>3</sup> The difference in powers of the two Houses is often accompanied by the suppression of direct universal suffrage as the means of designating members of the Upper House. These features may be observed in countries such as Germany, India, Canada, Nigeria and Pakistan.

The earliest example of a bicameral system occurred in England towards the end of the thirteenth century. It began with the institution of a chamber for the highest aristocracy and brought together the feudal management, the Lords spiritual and temporal. However, the bicameral system cannot be explained by the need for a separate aristocratic representation. It justifies itself by two main arguments<sup>4</sup>:

- 1-The bicameral system in a federal state reflects the dualist structure of the state.
- 2-The adoption of a bicameral system in a unitary state reflects the desire, either to have within the parliamentary machine a so-called 'revising' chamber to maintain a careful check on the decision of the first chamber, or to achieve a more stable environment between the legislature and government.

Another reason is that the legislative load is so heavy that an Upper House can cooperate by relieving the pressure on the Lower House.

Although France is not a federal state, the French constitution has adopted the bicameral system in which the French Senate is designed to ensure the representation of the territorial units of the Republic and the representation of French citizens living abroad. A similar regime is found in Morocco. The Moroccan House of Counsellors (Lower House) which according to the constitution, allows the representation of local communities, is elected by an electoral college consisting of members or delegates from Municipal Councils, Trade Chambers and members at the national level of wage earners.

In the GCC states the bicameral system is found in Oman. According to the Omani constitution, the Oman Council consists of the State Council (Upper House) and the Shura Council (Lower House). As regards the other states,

despite the fact that the United Arab Emirates is a federal state, its constitution like those of Bahrain, Qatar, Saudi Arabia and Kuwait, has adopted the unicameral system.

Legislative institutions have carried a variety of names: legislative bodies, congresses, assemblies, parliaments and so on. The variety of names may sometime produce conceptual confusion. Nevertheless, all institutions are similar in the sense that legislative institutions are collegial bodies designed to act concretely to cope with shifting political climates and public demands<sup>5</sup>. Legislative institutions reflect the existing political and social patterns of their societies. The institutions, therefore, are influenced by a variety of factors, such as political institutions, demographic characteristics, environmental characteristics and the socio-economic status of voters. These factors make the recruitment of individuals a complex process and continue to play a major role in determining the composition of the legislative institution and the actions of legislators

In this chapter we will discuss the recruitment process of the assemblies in the GCC States and the function of the legislature through the most important aspects of leadership and assemblies' committees.

### **3.2. Members of legislature.**

At this stage, the concept of universal suffrage is an essential subject to be discussed. The concept of universal suffrage has no common definition. Mackenzie defines it as a concept of limitation, the reason for that being according to Mackenzie, is that there must always be some limitations on franchise.<sup>6</sup> Milbrath states that although universal suffrage is a common phrase, no society grants total universal suffrage to its people because persons who are mentally incapable and those who are criminal are usually excluded.<sup>7</sup>

From the foregoing opinions, universal suffrage means the extension of the right to vote to all adults who live in the state, subject to the usual exceptions and limitations on the one hand, and the political expediency of the state on the other.

Therefore, it should be stated that the adoption of universal suffrage never means that the whole population is qualified to vote.

A citizen who wishes to become a member of a national council in one of the GCC States must consider first the laws determining the principle of disqualification and secondly, the practical difficulties of becoming a candidate.

### **3.2.1. Qualifications for membership.**

By qualification for membership is meant the personal eligibility of a candidate to be chosen to sit in parliament. In theory, every citizen should be eligible to be a member of a parliament, yet if the purpose of election or selection is to select an assembly representing the best elements of the population and capable of looking after the affairs of the nation, it is reasonable to ask for a minimum of qualification.

As is the case in most countries, the GCC constitutions stipulate three conditions for membership. They are citizenship, age and conduct.

#### **a-Citizenship.**

The first restriction upon eligibility is nationality. Prospective members of parliament must show that they belong to the country. For this reason, many states apply restricted conditions of nationality to candidates for parliament. Thus, this qualification in democratic states is not in conflict with universal suffrage.

In the GCC States it might be assumed that being a citizen is sufficient for selection to sit in the legislature assembly. However, that is not the case. Not all citizens are eligible to be members in these states, since citizens fall into two categories: citizen by origin and naturalized citizens.

#### **1- Citizen by origin.**

According to the Nationality Law of the United Arab Emirates, constituent citizens are those who settled in one of the emirates prior to 1925, and must be of an Arab origin<sup>8</sup>. The Kuwaiti law applies a stricter condition of



nationality to constituent citizens. According to the Kuwaiti Nationality law, constituent Kuwaitis are those who settled in Kuwait before 1920 and took Kuwait as their natural domicile before the date of publication of the Nationality Law<sup>9</sup>. Each of the two states has its reason for choosing the above dates. Al-Rokn, in his unpublished doctoral thesis, explains the selection of the year 1925 in the United Arab Emirates, by the fall of the last Islamic Caliphate in Turkey in the same year. The legislature in this provision did its best to solve the problem of those who settled in the country at that time<sup>10</sup>. Al-Moqate, in his unpublished doctoral thesis, affirms that the year 1920 was selected in Kuwait because that year, in which the wall was built around Kuwait city, is regarded as the year Kuwait became a distinct state entity, as the building of the wall allowed the regime to choose those settlers who were considered the most loyal to the state.<sup>11</sup> The residence periods for the constituent citizens in these two states are the longest in the world.

On the other hand, original citizens are those who acquired citizenship according to one of the following two bases: a) *Jussanguinis*. b) *Jussoli*.

In all GCC States, everyone whose father is an original citizen is considered a citizen at the time of birth, regardless of the place of birth. Moreover, if a person's father is unknown or if his father has no citizenship, then he may be regarded as an original citizen if his mother is an original citizen.

From the foregoing statements, it is obvious that there are two types of citizens by origin in the GCC States.

- 1- Citizen by origin through blood relationship to the father.
- 2- Citizen by origin through blood relationship to the mother

With one exception, the GCC States do not accept the place of birth (*Jussoli*) as a warrant for acquiring citizenship. The only exception to this rule was adopted as the only solution in the case of a founding baby (illegitimate child). As long as the baby is found in the state, it shall be deemed to be a citizen unless there is proof to the contrary.

## **2) Naturalized citizens.**

According to the nationality laws of the GCC States naturalized citizens are those who gained nationality after meeting certain conditions drawn up by the law. In these states an applicant for citizenship must have been living in the country for a long period, and he must relinquish his previous nationality. Most of the GCC States require twenty years of residency for a candidate to gain their citizenship.

The GCC Laws prevent naturalized citizens from ever being nominated to the legislative assemblies. Even though, the inequality between the two groups of citizens is only in the field of political rights and does not extend to civil and social right. It should be pointed out that the differentiation among the citizens is unacceptable and can be said to violates human rights.

### **b) Age.**

All countries adopt a minimum age for their M Ps, but the age qualification varies from one country to another. Age is considered to represent experience of life, which is felt to be indispensable. In most bicameral parliaments that experience has to be relatively long for members of the second chamber<sup>12</sup>

In the GCC States, there is a small variation between states. The candidate must be not less than twenty five years old in the United Arab Emirate, while the Kuwaiti, Saudi, Omani and Bahraini constitutions stipulate thirty as the minimum age for their M Ps. The Qatari constitution has a lower age condition (twenty-four) for its consultative council.

### **c) Other qualifications.**

There are two additional qualifications beside nationality and age. It is required that a member of the legislature have an adequate knowledge of reading and writing in the Arabic language. In other words, a member need only have basic writing and reading abilities and does not have to possess any specific degree of education.

Moreover, the constitutions of the GCC States stipulate that a member of the legislature assembly must be of good conduct and reputation. Without the fulfillment of this requirement a member could not be trusted to act in the interest of public welfare.

### **3.2.2. Disqualification**

The degree of encroachment upon what is theoretically universal suffrage can be measured by the types and severity of disqualification, which are imposed on citizens.

Disqualification in the GCC States can be classified into two general categories:

- Permanently restricted groups, which include women and naturalized citizens.
- Temporarily suspended groups, related to insanity, imprisonment and occupation

#### **a) The Permanently restricted groups.**

##### **1- Naturalized Citizens.**

Many states apply restricted conditions of nationality to candidates for parliament. Often citizenship from birth is required; and where naturalization is not an absolute bar, a relatively long period of citizenship has to be shown. For example, in France the naturalized person may only qualify for membership of parliament after he has been naturalized for ten years. However, it is not always enough to hold qualification of nationality; nationality is frequently supplemented by conditions of residence such as that in the United States, where the member must live in the state which has elected him.<sup>13</sup> In Belgium the candidate must have acquired so-called "full naturalisation" which is more difficult to obtain than ordinary naturalisation.<sup>14</sup>

In the GCC States, the question arises as to whether there is a permanent restriction on naturalised citizens standing for membership in the legislature. It must be admitted that looking at the position of naturalised citizens under the



GCC Laws means dealing with a unique phenomenon which does not exist under any other constitutional system. GCC constitutions provide that the naturalised citizen is permanently not qualified to stand for membership in the legislature.<sup>15</sup> This ban is restricted neither to certain period of time nor to a certain generation. It is worth mentioning that the Bahraini and Kuwaiti electoral laws require the elapse of a long period of time before a naturalised citizen can participate in the election,<sup>16</sup> while this restriction is permanent in Oman.

Moreover, while the sons of naturalised citizens have the right to be nominated for the legislature assembly since they are considered as citizens by origin, in practice, they are disqualified not only from standing to be members but also from voting. It is safe therefore, to conclude that this practice is a clear violation of human rights and creates second-class citizens in the GCC societies.

## **2- Women.**

The political rights of women were, and are still a controversial issue. Despite the fact that most democratic states have adopted the concept of universal suffrage and the enfranchisement of women was rapidly introduced, women had to wait until the beginning of this century to gain their political rights.

In the United States, women were granted their right to vote in 1920 through the nineteenth amendment of the constitution<sup>17</sup>. In Europe, Finland and Norway were the first to grant women the voting right in 1913, followed by Denmark in 1915 and England in 1918<sup>18</sup>. In France, even though the concept of universal suffrage was decided by the French Revolution, women were not given the right to vote until 1944. This right, however, did not become law in some European countries such as Switzerland until 1971.

The move towards women's suffrage has been introduced very quickly in the whole world and in the Islamic world in particular. Despite this, some Islamic countries still deny the enfranchisement of women

## **I-Women's suffrage in Islamic thought.**

The debate regarding women's right to vote in Muslim countries is based not only on the ground presented in the west, but also on the Islamic point of view. Both groups, those for and against granting women political rights, refer their argument to the *shariah*.

The important issue is not what other nations have adopted or what Muslims countries should follow, but what Islamic thought says on this matter.

Whether a woman can become a head of state or a head of government in Islamic State is a question which has been debated for a long time. Those who oppose the idea of women's rule rest their case on the following *hadith* (Prophet's saying) when he heard of the succession of Emperor's daughter to the throne of Persia,

“Abu Bakrah reports from the Prophet that he said: A nation does not prosper which entrusts its affairs to woman”.

Those who contend that a woman can contest for the post of the head of state reject the above mentioned *hadith* on the ground that its report is not reliable as its author was convicted in a case of *hudood* and thus his evidence has become worthless and doubtful. Tabari holds that it is permissible to appoint a woman as a ruler and judge and this is also related by Imam Malik. Imam Abu Hanifah holds that a woman can be entrusted with the affairs in those matters in which her testimony is valid.<sup>19</sup> Thus, according to Ibn Hazm, a woman can hold all posts except the post of Caliph. She can be a pleader, an inspector and judge, etc. If the view of Ibn Hazm is accepted, Kausar Niazi stated that then a woman can nowadays function as the head of state, because there is no Caliphate now.<sup>20</sup> The Prophet and Early Caliphs occasionally consulted the wives of the Prophet and other women on the public affairs. When the treaty of *Hudaibiyah* was signed with the *Quraish* and the depressed and disappointed companions were reluctant to sacrifice their animals, the Prophet (Peace Be on Him) consulted his wife, Umme Salamah. On her advice, he offered his own sacrifice which had a salutary effect. Once Ummar (the second Caliph) was delivering a *Khutbah* (speech) in which he wanted to fix the maximum amount of dower. During his

speech a woman stood and came forward and recited the verse of the Qur'an which says "if you have given your wife a heap of gold, do not take it back." Ummar said 'the woman is right and Ummar fell into error'.<sup>21</sup>

Though both parties, those who oppose and those who support the idea of women's rule, try to build up their arguments by quoting verses from the Qur'an and *Hadiths* of Prophet, the fact is that there is no verse in the Qur'an or the Prophet's *Hadiths* which is directly related to this issue. The silence of the Qur'an and *Hadiths* on this important and vital issue is not without wisdom and sagacity. This deliberate silence means that Islam has given the Muslim *Ummah* (nation) the freedom to decide on this matter according to ever changing socio-political circumstances.<sup>22</sup>

From the foregoing discussion we could state that Islamic Law has precedents in granting women the political rights in comparison with other nations who granted women this right at the beginning of this century.

## **II- Women's suffrage in regards to the GCC constitutions.**

Despite the fact that many Arab constitutional lawyers viewed the exclusion of women's political rights as not in conflict with the concept of universal suffrage, many Arab countries have introduced women's suffrage to their electoral laws (e.g. Syria in 1945, Sudan in 1952, Tunisia in 1959, Egypt in 1956, Morocco in 1960 and Jordan in 1972).

In the GCC States, women's right is still a matter of debate whether as a political, social or legal issue. In some countries, women have been granted the right to vote and run for office, while they are deprived of this right in other states,

In Oman, women's suffrage was introduced in 1994 in the Sultan's speech on the National day. However, only women of the capital area were allowed to participate in the 1994 election, in which two women were elected and nominated to the *Shura Majlis*. It was not until 1997 that the voting right was



extended to all Omani women<sup>23</sup>. Women's participation in the Omani Council gives them certain rights that are still denied to women in other GCC States.

The issue of women's participation has been debated more in Kuwait than in any other GCC state. Many petitions have been presented to the National Assembly for the right of women to vote, but Kuwaiti women have not achieved this right because the opposing camp led by *Sunni* Islamist groups, who are very influential in Kuwait, deny women the right to vote and indeed adopt a strong anti-feminist stance.<sup>24</sup>

It is important to note that women in Kuwait, Bahrain and the United Arab Emirates are not constitutionally prevented from being nominated to the legislature. In the United Arab Emirates, Article 70 of the constitution does not specify the sex of citizens eligible to the Union National Assembly. Moreover, Articles 14 and 25 of the constitution affirm that all citizens are equal. Equality before the law means equal treatment to people of equal qualifications. Therefore, the denial of women's right to be members of the UNA is governed by political and social rather than legal considerations. This has been the case in both Kuwait and Bahrain, despite the fact that in them, qualification for the legislature assembly is governed by:

- 1- The concept of universal suffrage<sup>25</sup>
- 2- The main general democratic concept as stated in their constitutions call for wider popular participation in state affairs<sup>26</sup>
- 3- The existence of the concept of equality of all citizens before the law<sup>27</sup>.

Women have been denied their rights to vote and run for office. To clarify the picture regarding the seriousness of this challenge, both constitutions state that a citizen who is willing to be member of parliament must qualify as an elector in accordance with the electoral law<sup>28</sup>. According to electoral law, in both states the eligible voter must be male<sup>29</sup>. This requirement raises the question whether the electoral law is in conflict with the constitution. Some writers are of the opinion of that since the constitution gave the electoral law the power to set

up the qualification of voters, the sex qualification required by the electoral law is not in conflict with the constitution<sup>30</sup>. Others believe that there is a contradiction between the constitution, which asserts the equality of all citizens regardless of their gender, and the electoral law which denies women their rights to vote.<sup>31</sup>

On a theoretical basis, jurists and politicians subscribe to the principle of predominance of the constitution, whether the constitution be customary or written. The constitution is considered the highest law in the state, and takes precedence over anything contravening it, whether laws or acts.

From the foregoing debate one could state that the Kuwaiti and Bahraini electoral laws are not only in conflict with the democratic concept stated by both constitutions but also in conflict with the constitutional principle of universal suffrage.

#### **b- Temporarily suspended groups**

Besides requiring general qualifications, most countries regard particular categories of persons as ineligible for specific reasons. There must be a distinction made between ineligibility and incompatibility. However, the two are often confused because the rules governing them have the same object, which is to ensure that members of legislature are not subject to pressures either from the Executive or from private interest. The main difference between them is that, while ineligibility affects the validity of the selection, incompatibility does not prevent a member from being a candidate, nor can the validity of his election be questioned on its account. It only requires that a member must choose within a predetermined period between his membership and the occupation which is held to be incompatible. Ineligibility applies those sentenced for a felony or a dishonourable crime and all persons remunerated from public funds.

##### **1- The person sentenced for felony or dishonourable crime.**

In addition to other qualifications a candidate for office must be morally beyond reproach or at any rate a high degree of rectitude is required. In the GCC States, a candidate for the legislature must enjoy full civil rights, be of good

conduct and reputation and not have been sentenced for felony or dishonourable crime, unless he has been rehabilitated according to the law. Without the fulfillment of this requirement, a member can not be trusted to act in the interest of public welfare.

It should be pointed out that the laws in the GCC States do not define the meaning of “good conduct and reputation” which prevent a person from being a member of legislature. In this respect, the interpretation of the term can be seen as a political matter and one which interferes with the principle of universality.

Nevertheless, according to comparative studies on this subject, the disqualifying of people sentenced for felony or dishonourable crime is accepted by most democratic states.<sup>32</sup>

## **2- Persons holding particular offices.**

It is important to protect the independence of members of legislature either by drawing up a list of persons who are ineligible or by making rules governing incompatibility. Since incompatibility relates to the holding of public office, the assembly should not consist of members who are at the same time holding public posts, because that would mean that the principle of separation of powers-which guarantees rights and liberties- would be in jeopardy.

In the GCC States, the constitutions of Oman, United Arab Emirates and Saudi Arabia stipulate that legislature members are barred from holding public posts. ‘Public posts’ means any public occupation in which the occupier is remunerated from public funds. In Kuwait and Bahrain members, are banned from any public posts other than ministerial portfolio. The second category of citizens generally declared as ineligible are members of the armed forces, police, judges and security agencies. The reasons are the same as for civil servants.

### **3.3. Means of membership in the GCC States.**

Democracy is defined as “the rule of the people by the people in the interest of the people.”<sup>33</sup> According to this definition, the people exercise their power by means of election, which is a method whereby the people exert their



sovereignty. Therefore, the electoral system is the core of democracy and because of the unique position of the election, it becomes an essential aspect of the people's sovereignty in the democratic state. Moreover some writers consider the election as more than a political event by which people exercise their rights to participate in decision- making. It is also a legal event because there are many different laws and regulations controlling the practice of elections and necessary conditions and requirements that define the qualifications of voters<sup>34</sup>

Hence, election has become a universal rule for selecting members of the legislature, although in some societies, especially under totalitarian regimes, elections may be manipulated to make the system look democratic. It should be pointed out that the practice on nominating members of the legislature has been abandoned in most countries. The exception to this rule is Hong Kong until the 1991 legislative elections. This practice was justified on the grounds that the small business community would lose its privileged position in free election, and the characteristic apathy of the Chinese with regard to political participation<sup>35</sup>.

In the GCC States, parliamentary elections have been held in Kuwait and Bahrain for only a short time. In Oman, even though members of the legislature should in theory be elected, in reality the case is somewhat different. In other states, members of the legislatures are appointed. Each of these systems will be discussed below.

### **3.3.1. The Kuwaiti electoral system.**

The half million Kuwaitis are represented by fifty members elected from the twenty-five districts into which Kuwait is divided, two members to represent each district, elected by a direct secret ballot, and each member represents less than six thousand citizens.<sup>36</sup>

In spite of the small area of Kuwait, the homogeneity of its population and the tightly knit extended family structure,<sup>37</sup> elections are acquiring the characteristics of those in more urbanized societies, such as organised campaigns, mass participation and the use of media especially the press and various types of social, religious and sport clubs to reach the largest audience.<sup>38</sup>

The qualifications for registration, according to the Kuwaiti Electoral Law are that the person must either be Kuwaiti in origin or, if naturalised, have spent twenty years in Kuwait<sup>39</sup>. The voter must be a male not less than twenty-one years old and without any dishonourable or criminal history, unless he has been rehabilitated<sup>40</sup>. Article three provides that the right of suffrage shall be suspended for military and police personnel. Despite the fact that the members of the Kuwaiti ruling family are not excluded from the Franchise by law, traditionally, they do not vote<sup>41</sup>.

It is reasonable from the foregoing discussion on the Kuwaiti Electoral Law to conclude that:

- 1- The Kuwaiti Electoral Law discriminates against naturalised citizens, those aged between eighteen and twenty, women and members of the police and armed forces.
2. The Electoral Law is in conflict with the democratic principles applied by the Kuwait Constitution.
3. The discrimination against the above mentioned groups has a negative impact on elections. For example, the ratio of eligible voters in the 1985 was only 8% of the population.

### **3.3.2. The process of selecting members to legislature in Oman.**

The eighty representatives to the *Majlis al-Shura* (Shura Council) come from 59 *Wilaiyat* (governorates). According to Article 21 of the Omani Council Statute, constituencies with a population less than 30,000 peoples would have one seat while constituencies of 30,000 or more would be allowed two seats. Upon issue of the National Census, twenty-one *wilayats* qualified for two-seats representation and the residual thirty-eight were allotted one seat.

Qualifications for voters were left relatively vague. A person has to be not less than twenty-one years old and of high esteem, with a good reputation and should not have been convicted of any offence of dishonesty unless

otherwise granted judicial pardon<sup>42</sup>. He also must be appropriately educated and of suitable experience.

A great deal of diversity obtains in the manner by each *wailyah* chooses people to nominate its candidate. The process used in each *wailyah* is reflective of the social, civic and political structure regarded as functional within the local context<sup>43</sup>. However, for most *wilayats*, nominating colleges are established from among men and women of social standing. While there are no organised political groups or campaigns, a measure of coalition building and polling takes place during the elections.<sup>44</sup>

On the election day, which is specified by an order, the nominating college will elect candidates by secret ballot. The number of nominators is usually between 500-1000 people, depending on the population of each *wailyah*. In the *wailyah* with under 30,000 people, the two highest vote-getters are declared to be the nominees. The names of the two are then presented to a government committee, which selects one of the two individuals to the *Shura Majlis* and then the committee submits the name to the Sultan on a list with other proposed nominees for final approval. For *wilayats* with over 30,000 people, the procedure is the same except that four nominees are declared and then two are chosen.<sup>45</sup>

From the foregoing discussion we can conclude that :

- 1-The specification of nominees is in the hands of the government, making its representative character questionable.
- 2-Viewing the process of election in Oman from the vantage point of democracy, the system of indirect nomination by province is far removed from the process of direct election and remains a long way from direct popular participation.
- 3-The franchise body is very small it was less than 2% of the eligible voters. in 1997 elections.



### 3.3.3. The formation of Assemblies in other GCC States.

The practice of nominating members of legislature has been abandoned in almost all countries. However, Bahrain, Qatar, United Arab Emirates and Saudi Arabia can be considered exceptions to this rule. In these states' rulers believe that elections are neither necessary nor useful, for the reasons that their citizens lack experience in the elections process and that the people need time to learn to play the game of democracy and practise it. Second, the foundations for an electoral system, such as education and political experience, are far from sound.

In fact, the absence of political awareness among the citizens is an excuse adduced by the ruling families in order to deny the people political participation, especially as it was pointed out earlier that two of the GCC States with similar political and educational experience have achieved the process of elections.

Under the *Shura* Council of Saudi Arabia all members are nominated by the King from amongst scholars and men of knowledge and experience<sup>46</sup>. In the case of the United Arab Emirates, according to the constitution, each emirate determines the procedures for choosing its members. Article 69 stipulates that each emirate shall be free to decide the method of selection of citizens to represent it in the Union National Assembly. The wording of Article 69 was left vague. First it falls short in declaring the method of choosing the assembly members, whether through election or by appointment. Second, it does not specify who will make the decision on behalf of the emirate. Because of the vagueness of the wording, the rulers have taken advantage of this latitude to concentrate their powers to appoint their emirates representatives in the assembly. The consensus among the rulers on the adoption of the method of appointing members is attributed by Al-Rokn to three reasons<sup>47</sup>:

- 1- It might cause embarrassment between rulers if any emirate tried to select its representative by elections.
- 2- Rulers do not want to risk their constitutional prerogative and relinquish it to the people.

- 3- The appointment method guarantees the rulers the sole choice of who will represent the ruler rather than leaving it to a federal entity.

In Qatar, the original Provisional Constitution provides for the election of a council similar to the Kuwaiti council, consisting of twenty elected members and the Ministers as ex officio members<sup>48</sup>. Four candidates were to be elected in each of the ten districts, from which the ruler was to choose two to represent that district in the council. The provisional constitution which was to remain in effect until a permanent constitution was adopted, was amended after two years by the Amir. The principal amendment dealt with the composition and membership of the *Majlis Al-Shura*. Whereas under the previous system, council members were to be elected, the amendment specified that the first Advisory council was to be appointed by the Amir.

However, elections were never held and the Advisory Council was formed in 1972. Initially, the council consisted of twenty appointed members, plus the cabinet as ex officio members but it was expanded to thirty appointed members in 1975. Despite the fact that the council was convened to serve for a single year (1972-73) its life was extended for a further three years by Amiri decree before its term was up. Since then, the council has been extended at regular intervals. As a consequence, the members are those who were appointed in 1972 and 1975. There have been only four new appointments, necessitated by the death of members.

In Bahrain, on the 7<sup>th</sup> of December 1973, about 27,000 Bahraini citizens went to the polls to elect the thirty members of the first National Assembly. The qualification for registration according to Article one of the Electoral Law is that the person must either be Bahraini in origin or, if naturalised, have spent fifteen years in Bahrain. The voter must be a male not less than twenty years old, and must be without any dishonourable or criminal history unless he has been rehabilitated. Although the Bahraini ruling family is not excluded from the franchise by law, traditionally, like those of other GCC States they want to place their authority above local politics. However, an exception to that rule was observed in the Bahraini election when a Shaikh, known as the "red Shaikh",

because of his supposed leftist beliefs, ran for office against the wishes of the ruling family and was elected<sup>49</sup>.

The Bahraini election experience came to an end in 1975 when the Amir dissolved the National Assembly and suspended section two of Article 65 of the Constitution which calls for new elections within two months by an Amiri order No 4 of 1975. Since then, no elections have been held in the State. The recent *Shura* Council which consists of fifty appointed members by the Amir was established in 1993 to replace the National Assembly.

### **3.4. Parliamentary Immunities.**

The object of parliamentary immunities is to protect members from repressive measures or from legal actions by the government or by private persons. Immunities are accorded to members of parliament to provide them with the protection they need to enable them to fulfil their duties without fear of reprisals.

Freedom of speech and voting are fundamental rights of all parliamentarians, and they are constitutionally or legally guaranteed in virtually all jurisdictions.<sup>50</sup> In the parliamentary vocabulary the words 'privilege' and 'immunity' are sometimes used synonymously. Therefore, the public tends to regard them as 'privileges' which benefit unduly the parties most directly interested. As a consequence, some jurisdictions have tried to put a clear distinction between the two terms. For example, in Egypt, privileges are rights which are not related to public order, whereas immunities, which include freedom from arrest and criminal prosecution, are related to public order. In other countries such as France, Belgium and Finland, parliamentary privilege would be considered an inappropriate expression, although the protection offered to members in some jurisdictions is quite extensive<sup>51</sup>.

The purpose of giving immunity to a member of parliament is for the public benefit more than it is for the personal interest of the member. This immunity is to allow the members of the assembly independence from other powers within the state



In the GCC States' constitutions as in almost all constitutions, there are two types of immunity; Immunity from responsibility and immunity from penal proceedings.

### **3.4.1. Immunity from responsibility.**

The independence of members is guaranteed by the provision to be found in the constitutions of the GCC states and their assemblies' regulations which state that members shall not be censured for any opinions or views expressed in the course of carrying out their duties.<sup>52</sup> Immunity applies to anything spoken or written or any act committed by a member of assembly in the ordinary course of his official duties, such as a speech delivered in the assembly or in committee, interruptions in debate, bills, reports and oral or written questions; in other words, any action which is carried out in the course of the person's duties and without which the member would not feel free and at ease while undertaking his duties. The protection offered is absolute and lifelong. A member cannot have any criminal charge or civil action brought against him for these actions even after he has ceased to be a member.

There are two types of immunity. The first type is related to the nature of acts and actions of member of assembly. A member is not liable for his opinions and views. However, there are a few exceptions to the principle of non-accountability. A member is liable in cases where he commits acts of aggression towards colleagues, and the immunity does not release him from obedience to the rules and orders of the assembly. The second type of immunity is related to place. According to this principle, a member ought to express his opinions and views only in the assembly itself or in its committees, but not outside the assembly where he will be liable to censure because he is but an ordinary individual and without immunity. In fact, that is not the case in other countries such as Morocco and Egypt, where immunity extends towards words spoken outside parliament when related to discharge of a member's parliamentary duties.

### **3.4.2. Immunity against penal proceedings.**

In the GCC States, as in most countries, members of the assembly are immune from arrest on criminal charges, though an exception is made in case of *flagrante delicto*. The person of a member is protected beyond as well as within assembly's precincts. Even when the assembly is not sitting, no member may be arrested or prosecuted for a criminal offence without the authorisation of the Bureau of the assembly or the speaker.<sup>53</sup> If however, the accusation against him personally is true, the assembly can waive the immunity. In other words, members of assembly must expect to be held responsible for their actions like anybody else, and the concept of inviolability attaches to the office rather than the individual.

The principle underlying these immunities is that the Assembly's duties of members take priority over all else and they must be available to attend them.

### **3.5. The Formal structure of assembly.**

Legislative functions are achieved through a collegial body. A legislature, whether elected or appointed, is not supposed to be in session permanently. It must have a specific duration, then it must be dissolved and then re-elected or re-appointed. The duration differs from one political system to another.

Leadership and committees are the most important aspects of legislative institution. No institutional body can maintain its existence without some sort of leadership. The leadership and committee system determine the direction of the decision-making process and they are used to effect power sharing and to facilitate the task of the legislature.

In this part we will discuss the constitutional arrangements regarding terms, sessions and leadership and committee system in the GCC States' Assemblies.

#### **3.5.1. Terms and sessions.**

It is important first and foremost to define carefully the terms used. A session is the period during the year when the assembly has the legal right to

meet and to transact its business.<sup>54</sup> In this context, it must be noted that the Assembly is not in session during the whole legislative term, but specific periods are set up, each of which is called a “session period” or “sitting”. A sitting, then, is the effective meeting of members on a given day, taking place within the framework of the session. There may be more than one session in a year and its length may vary from one assembly system to another. Constitutions differ in the way sessions of assembly are organised. However, they can be put into three categories:-

The constitutions which adopt authoritarian principles, tend to curb the action of the Assembly by making the frequency and length of sessions a matter for the government to decide. This system is Monarchical in origin. The underlying principle is that the assembly should meet only when necessary in order to transact legislative business and prove the national budget. The monarch, or in his name the government, summons parliament and brings the session to an end.<sup>55</sup>

Second, constitutions which adopt democratic principles tend to vindicate the sovereignty and independence of assembly and give it a free hand to choose the period of its sitting. This method is also called the permanent assembly system. However, it should be noted that this does not mean that sittings are uninterrupted but rather, that there is power to sit for an unlimited duration.<sup>56</sup>

Third, between the above two extremes, there is room for any number of systems which attempt to strike a balance between the principle of the sovereignty of assembly and the exigencies of practical government. This method first lays down in the constitution periods during which parliament can meet and transact business. These sessions are known as ordinary sessions, which means that these sessions are opened each year as a matter of course on a fixed date. More importantly the closing date of these sessions is also fixed, so that it is impossible for an assembly to sit permanently. Second, this method adopts what are called extraordinary sessions to solve the problem of limited length which affects the business of assembly. However, extraordinary sessions are subject to certain rules. As a general rule, a request has to be made by a given number of members;



this number varies considerably from one constitution to another. Such provision is designed to emphasise the serious nature of an extraordinary session.<sup>57</sup>

While the regulations governing assembly sessions are important indeed, the length of the sessions is more important because they are an indication of the importance of the assembly in any country.

In the GCC States, constitutions vest the power in the executive to define the periods in which the assembly should be in session, with the exception of the Saudi Constitution which leaves this task to the Chairman of the *Shura Council*.

The Kuwaiti, Saudi and Bahraini Constitutions provide that the term of membership shall be four years commencing with the day of its first sitting.<sup>58</sup> In Oman the term of the *Shura* and State Councils is three years.<sup>59</sup> In the United Arab Emirates, the constitution provides that the term of membership in the Union National Assembly shall be two years starting from the first meeting<sup>60</sup>. When this period expires the assembly shall be renewed for the term remaining until the end of the transitional period which is three years, according to Article 144 of the Constitution. In practice, no decision has been made in the past years, either by the Supreme Council or by individual emirates, to renew the UNA term after the prescribed two years. Therefore, the term of the UNA has become a *de facto* five years.

In Bahrain and Kuwait, sessions last for at least eight months or until the State Budget is settled, this also applies to Qatar, except that the consultative council plays no effective part in setting the Budget. In the United Arab Emirates, the UNA sessions last a minimum of six months. Sessions in the Omani *Shura Council* do not exceed four months each year.

Sittings in Kuwait, Bahrain and the United Arab Emirates, are open unless the government, the Head of the Assembly, or 10 (UAE one-third) of the members ask for secrecy. Sittings in the Omani Council are closed except to members and civil servants and experts who are permitted by the chairman to attend, with the exception of those sessions in which a minister is required to

appear before the council when matters concerning his ministry are discussed openly by reporting and televising the formal sessions.

Constitutions differ as to who has the right to summon the legislature whether it is the executive or the assembly itself or both or the head of State. Some constitutions hand this power to the assembly, as is the case in Oman and Saudi Arabia. The Qatari Constitution grants the right to summon the assembly to the government, while the Kuwait, Bahraini and the United Arab Emirates' Constitutions have taken a middle way whereby the Amir/ President has the power to summon the assembly on specific dates but if the Amir/President does not issue the decree on the specific date, the Assembly can summon itself.

As it has already been explained, the assembly does not remain in session for the whole legislative term. If important matters arise, the assembly is called for an extraordinary session. Under the Omani Constitution, the Sultan and the Head of the Council can call for an extraordinary session. In the United Arab Emirates and Qatar the Assembly can be called for an extraordinary session by a decree issued by the Amir/President. The position under the Bahraini and Kuwaiti Constitutions is that the Assembly shall be called to an extraordinary session if the Amir deems it necessary or upon the demand of the majority of the members of the Assembly. When the Assembly is called for an extraordinary session it may not consider any matter other than those for which it has been called into session. Thus, the assembly must not deal with matters which could be dealt within an ordinary session.

Meetings of the Assembly in Bahrain, Kuwait and the United Arab Emirates can be adjourned once each session by a decree.

### **3.5.2. Leadership.**

In spite of the special nature of the recruitment and legal status of its members, parliament is, after all, only an assembly of men which, like any other body, must be directed by some authority. This authority can be traced back to the very origin of parliament. In 1376, members of the British House of Commons had felt the need to designate one of their member to speak in their

name.<sup>61</sup> Over the centuries the duties of this high dignitary have gradually evolved after many vicissitudes until today the office of speaker is one of high prestige. For a long time it was the Crown's nomination that mattered in the selection of a speaker. Nowadays it is the election that matters. The principle of an elected president is recognised in most of the world's parliaments. In many assemblies, an absolute majority of votes cast is required at least for the first ballot, in order to broaden the basis of the presidential authority.

Rosenthal, in his study on the power and tasks of leadership in the House and the Senate of the United States, describes the leadership as responsible for organising legislative work, processing legislation, negotiating agreements, dispensing benefits, handling the press and generally maintaining the institutions.<sup>62</sup> Therefore, leaders are expected to have the ability to weigh adequately both internal and external factors. Jewel and Patterson have evaluated legislative leadership in terms of the relationship between leaders and followers in the context of a given social situation. Therefore, they adopted Gibb's definition of leadership 'A leader is a member of a group on whom the group confers a certain status and leadership describes the role by which the duties of this status are fulfilled'.<sup>63</sup> According to this definition, leadership is a function of interaction and interdependence between leaders and environmental factors. In his study on legislative politics in New York, Hevesi affirms that there is a strong relationship between leadership capability and the general atmosphere of the legislative body<sup>64</sup>

There appears to be some agreement in political science, at least, that 'leadership' consists of a relationship between two or more individuals such that one imposes his will upon another; the other can accept or reject the imposition.<sup>65</sup>

All constitutions and legislative Charters have granted the legislative leaders a considerable amount of power. However, leaders have no tools or means to enforce their powers. They rely on their abilities in persuasion, bargaining and tact, as well as their ability to understand the general conditions of internal and external factors<sup>66</sup>



In fact, the structure of leadership in legislative institutions is different from that described in the theoretical literature on hierarchical organisations. It consists of collegial bodies who, more or less formally, share authority.<sup>67</sup> The structure of legislative leadership might be affected by a variety of political institutions and groups, by social setting and the legislators' personal characteristics and level of their skills and political experience. In most countries, the structure of legislative leadership consists of a presiding officer, majority and minority parties' leaders and committee chairperson.

In the GCC States, the Constitutions and Internal Regulations of the assembly stipulate the formal structure and functions of leadership. The leadership structure of the assembly is composed of the president, the vice-president and the Assembly office.

#### **a) The President.**

In Kuwait, Bahrain and The United Arab Emirates, the Assembly at its first meeting must elect one of its members to serve as a president for the legislative term.<sup>68</sup> The election of the Assembly president is by majority vote of the members present. However, this victory to democracy does not extend to the Omani and Saudi councils where the president of the assembly is appointed by the Sultan/ King for the assembly term.

In all States, the Constitution and Internal Regulation of Assembly grant significant powers and responsibilities to the president. These powers and responsibilities can be categorized in five areas: the speakership, procedural, managerial, financial function and maintenance of order.

As the speaker of the assembly, the president has the authority to give speeches in order to classify certain issues or to defend positions taken on these issues in the legislature. He is also responsible to answer questions raised by the press regarding various points and issues raised in the assembly. The president receives visitors to the assembly chamber, including officials and ordinary persons. He makes official visits to institutions in his own country and abroad, and he signs agreement and contracts between the assembly and national and

international institutions. In his role as a speaker, the president receives correspondence addressed to the assembly and serves as a liaison between that body and other government agencies. For example, if members of the assembly need information from government departments or to question a minister or other government official, members must make their request through the president.

In his procedural role, the president schedules and presides over the meeting of the assembly, summons and adjourns the assembly meetings as the case in Oman and Saudi Arabia, determines the order in which members deliver their addresses, interprets the principles of the constitution and the Assembly Internal Regulation, and supervises the meetings of committees. He also receives questions and requests which members of the assembly may wish to address to the government. He has the authority to dismiss any proposal presented by an assembly member which he deems frivolous or laced with improper language.

In his managerial role, the president supervises the assembly staff. Under his supervision employees, are appointed, their duties are organised and their performance evaluated.

The president has the authority to supervise all financial activities of the assembly, prepare the assembly Budget, and control its expenditure. In states where the legislature participates in the approval of the State Budget, the president with the assistance of the Economic and Financial Committee supervises the Auditing office, whose role is to assist the Assembly in controlling the financial activities of the government by auditing its income and expenditure<sup>69</sup>. By his authority as supervisor of the Assembly Special Guard, he has the power to maintain order in the assembly.

#### **b) The Vice-president.**

As with the president, in countries where the president is elected the vice-president is elected by the assembly at its first meeting for the assembly term. In Oman, despite the fact that the president is appointed, the two vice-presidents are elected for the assembly term.

It is worth noticing that neither the GCC Constitutions nor the Internal Regulations provide the vice- president with any significant powers or responsibilities. The main provision is that the vice- president assumes the duties of the president when the latter is absent.

**c) The Assembly Office.**

The Bureau or its equivalent is often regarded as a consultative body. It is designed solely to assist the president in his difficult task and not to act as a check on his work nor to take decisions in his stead.

In Kuwait and Bahrain, the Assembly Office consists of the president, as chairman, the vice- president, the assembly secretary, the supervisor of the assembly, the chairman of the Economic and Financial Affairs Committee and the chairman of the Legal and administrative Committee.<sup>70</sup> In the United Arab Emirates and Qatar the Assembly Office consists of the Assembly president and two Controllers elected for one session.<sup>71</sup> In Oman, the Assembly Bureau consists of the president, the two vice-president and six members elected by the assembly at its first meeting for the assembly term.<sup>72</sup>

The role of the Bureau is generally confined to administrative and financial matters such as monitoring the voting process and counting the votes, studying the assembly Budget presented by the president before it is passed on to the assembly, assisting the president in supervising the staff of the assembly, choosing delegates to official conferences, conducting the necessary activities of the assembly when it is not in session and assisting the president whenever he requests it.

From the foregoing discussion regarding the Leadership of Assembly in the GCC States one can conclude that the presidential office is:

- 1- Occupied by prominent families. The dominance of the office by members of prominent families reflects the influence of these families in the political life of the GCC States. For example, Muhammad's study on the Kuwaiti national Assembly indicates that in all five



assemblies for the period 1963-1981 the president had been one or another of the prominent family.<sup>73</sup> And that is the case in the United Arab Emirates where the presidents' office was held by prominent families of Dubai and Abu-Dhabi.<sup>74</sup>

2- In the states where the president is appointed, the question of conflict of interest can be raised. The president is a minister both by virtue of his personal rank and by past and future position. He is therefore, more a member of the government than a watchdog.

### 3.5.3. Committees.

All parliaments work to a greater or less extent through committees, and these committees can take many forms and perform a variety of functions. Most parliaments are likely to make use of different kinds of committees and they vary in size as well as purpose. However, in most parliaments committees can be divided into two distinct categories: permanent (sometimes called standing) and *ad hoc* or special committees. In fact, this distinction is not followed in the British system, in which committees are distinguished on the basis of their composition and terms of reference more than the duration of their mandate.

The first type of committees, permanent committees, are as a general rule, specialised. Each is concerned with one particular branch of activity such as finance, foreign affairs, education, national defence. Permanent committees are usually appointed for the duration of the session or of the parliament. The long and guaranteed term of office of a committee gives its members an opportunity to acquire real knowledge and specialisation in their subject, but at the same time there is a danger of increasing its power unduly to the detriment of the parliament<sup>75</sup>.

The second type is *ad hoc* committees which are established to deal with a particular matter and cease to exist as soon as they have made a report to the House. The brief existence of these makes it impossible for them to infringe the powers of the house; and their terms of reference make it impossible for them to

consider subjects not of direct relevance to the matter they were established to deal with<sup>76</sup>.

In bicameral parliaments, provision is frequently made for the appointment of joint committees, both standing and *ad hoc*. However, their value depends on the terms of reference given to them.

There are three methods of appointing members to serve on committees: by the president or the Speaker; by a committee specially set up for the purpose; or by the House itself. In some parliaments, appointments may be made by a combination of these methods. On democratic principles it would seem reasonable that the chairmen of committees, like the president of the chamber, should be elected to office, and that is what usually happens.

The committee system has two essential characteristics: first, it meets a need felt everywhere because of the increase in the amount of parliamentary business. Second, it is governed by flexible rules in keeping with its purpose which is to render service of a technical rather than a political kind.<sup>77</sup> There are few special rules from the general provisions of debates in the House governing the work of committees such as the order of speakers, the submission of amendments, or the quorum required for meetings and especially for voting, which seems less formal than in the sittings of parliament as a whole.

In the GCC States, the Constitutions and Internal Regulation of the Assembly require the Legislature to establish its standing committees, during the first week of each session for the legislative term.<sup>78</sup> It is also required that each member serve on at least one committee but not more than two. Members of these committees are elected by the full assembly on the basis of the majority principle. Each committee in turn elects a chairman and deputy or a secretary from among its members. The number of standing committees in the GCC Assemblies varies from one legislature to another.<sup>79</sup> However, these committees can be categorized in three functional areas: committees dealing with matters pertaining to the national interest; committees dealing with distributive services; and those committees based on overlapping functions.

The committees which deal with matters pertaining to the national interest, are the Economic and Financial Affairs committee which, deals with matters concerning the Budget, annual audits and activities of the ministries of oil, finance and commerce and the activity of the Central Bank; the Legal and Administrative Committee, which deals with legal and administrative matters, pertaining to both the Assembly and government; and the Foreign Affairs Committee, which deals with foreign policy matters, including diplomatic relations and international agreements

The committees dealing with distributive services, are the Complaints and Petitions Committee; Health Committee, and Labour and Social Affairs Committee. These Committees deal with matters such as health, social welfare, utilities policy, labour, and complaints and petitions.

The committees based on overlapping functions deal with : matters of national security, the recruitment and arming of military and police forces; and the educational, cultural and information affairs.

When dealing with the function of committees we must think, in the first instance, of the function performed by the whole legislature or more broadly by the legislative system. Therefore, it should be emphasized at the outset that the committee system in the Kuwaiti national Assembly when a series of important factors relating to committee work is examined are markedly different from all other committee systems in the GC States. The following considerations illustrate this tendency:

- 1- Committees of the Kuwaiti National Assembly have a wider range of responsibilities than those of other GCC Legislatures.
- 2- Only in the Kuwaiti committee system can one talk about a substantial degree of performance of a subcommittee. By comparison, such subcommittees as exist in the other GCC Legislatures are far less important.
- 3- Despite the fact that the committee system in the GCC Legislatures is widely utilized, permanent and specialised,



obviously, in order for committees to be important, more is required than this kind of structure.

### **3.6. Conclusion.**

Most political scientists and legal theorists emphasise the concept of universal suffrage as an essential element of democratic principles. This principle assumes that most people should participate in their state's affairs, especially political affairs.

It is important to mention that most of the GCC Constitutions during their adoption of the Assembly system were aware of the importance of the wide participation of the people in improving the system. For that reason their constitutions adopted the concept of universal suffrage. This concept means that the right to vote shall be extended to all adult citizens who as a result will be qualified to participate in the representative system.

Despite this fact, up to the present, eligibility for participation is restricted in the GCC States. First, parliamentary elections are held only in Kuwait. In Oman despite the fact that the law requires members of the council to be elected, the practice turns out to be somewhat different and in other states, members are appointed by the ruler. Second, as a consequence of the tight controls on citizenship and very restricted qualifications on membership, a very large number of people holding a high educational level, in these societies, are prevented from participating in the selection process. Moreover, the sex qualification required by most of the GCC States not only lowers the participation ratio but is also in conflict with the democratic principles stated by these states' constitutions and contradicts with the Islamic view of human rights.

Finally, it is reasonable to conclude that the membership of the GCC Assemblies secures the dominance of male Arabs from the dominant merchant, tribal and co-operative families in these states. In fact, the practice of selecting assembly members and its leadership process highlights the prevalence of the old social structure and the continuity of the traditional way of consultation. Therefore the GCC Assemblies can be said to be unrepresentative of their societies.

## Endnotes.

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- <sup>6</sup> - W. J. Mackenzi, *Free elections*, London: Allen & Unwin, 1958. P.20-.
- <sup>7</sup> -Lester W. Milbrath, *Political Participation*. Chicago: Rand McNally and co., 1965.p 91.
- <sup>8</sup> - Article of the Nationality Law of the UAE.
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- <sup>10</sup> -M. Al-Rokn Op. Cit., p.203
- <sup>11</sup> - Mohammad A. Al-Moqate, *A study of the Kuwaiti Constitutional Experience (1962-1986)* Unpublished Ph.D. thesis University of Warwick, 1987. Pp 113-114
- <sup>12</sup> -Michel Ameller, Op. Cit., p.41
- <sup>13</sup> Ibid, p 43

- <sup>14</sup> -W. J. Mackenzi,Op. Cit., . Pp. 20-21.
- <sup>15</sup> -Article 43 of the Bahraini constitution, Article 82 of the Kuwaiti constitution, Article 22 of the Internal Regulation of the Omani council no 86/97,and Article 4 of the Saudi Shura Council Regulation.
- <sup>16</sup> -The Kuwaiti Law requires the elapse of thirty years while the Bahraini law requires fifteen years before a naturalised citizen has the right to vote in the election.
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- <sup>18</sup> - Michel Ameller, Op. Cit., p.41
- <sup>19</sup> -Muhammad Sharif, *Human Rights in Islam*, Lahore; Pakistan: All Pakistan Islamic education Congress, 1993.pp. 167-168.
- <sup>20</sup> -Kasuar Niazi, *Modern Challenges to Muslim Families*, Lahore; Pakistan: Ashraf Press 1967. P.41.
- <sup>21</sup> -Muhammad Sharif, Op. Cit., p. 165
- <sup>22</sup> -Abdul Rasihd moten, Op. Cit. P. 103.
- <sup>23</sup> -In the election of 1997, two women were elected and nominated to the *Shura Council*. Also the Sultan nominated four women to members of the State Council.
- <sup>24</sup> - Al- Haj, op. Cit., p. 569
- <sup>25</sup> -Article 80 of the Kuwaiti Constitution, and Article 43 of the Bahraini Constitution.



- <sup>26</sup> - Article 6 of the Kuwaiti Constitution and Paragraph (d) of Article 1 of the Bahraini Constitution.
- <sup>27</sup> - Article 7 of the Kuwaiti Constitution and Article 18 of the Bahraini Constitution.
- <sup>28</sup> - Article 82 of the Kuwaiti Constitution and Article 44 of the Bahraini Constitution
- <sup>29</sup> -Article 1 of the Kuwaiti Electoral Law and Article 1 of the Bahraini Electoral Law.
- <sup>30</sup> - Al-Moqati, op.cit., p164
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- <sup>44</sup> -International Republican Institute *Oman: Political Development and the Majlis Ash'shura.* Washington, D.C.: International Republican Institute. July, 1995. P.23
- <sup>45</sup> - C J. Ripherburg. op. Cit., p 81
- <sup>46</sup> -Article 3 of the Shura Council Statute.
- <sup>47</sup> - Al-Rokn, Op. Cit., p 208
- <sup>48</sup> - Article 44 of the Provision Constitution of Qatar.
- <sup>49</sup> - J. E. Peterson, Op. Cit., p.86
- <sup>50</sup> - Michael Ameller , Op. Cit., p.117
- <sup>51</sup> - Philip Laundry, Op. Cit., p.53
- <sup>52</sup> -Article 81 of the UAE Constitution, paragraph (b) of Article 63 of the Bahraini Constitution, Article 110 of the Kuwaiti Constitution, Article

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<sup>53</sup> -Article 82 of the UAE Constitution, Article 6 of the Internal Regulation of the Omani Shura council, Article 111 of the Kuwaiti Consytitution.

<sup>54</sup> -Malcolm .E Jewell and Samuel C. Patterson, *The Legislative Process in the United States*. New York: Random House. 1973.p.160

<sup>55</sup> -Michael Ameller, Op. Cit., p.126.

<sup>56</sup> -Ibid. p.127

<sup>57</sup> -Ibid. p. 128

<sup>58</sup> - Article 83 of the Kuwaiti Constitution, Article 45 of the Bahraini Constitution and Article 13 of the Saudi Shura Council Statute.

<sup>59</sup> -Article 2 of the Internal Regulation of the Oman Council.

<sup>60</sup> - Article 72 of the UAE Constitution.

<sup>61</sup> -Michael Ameller, Op. Cit., p.77

<sup>62</sup> -Allan Rosenthal, *Legislative life: People, Process and Performance in the States*. New York: Harper and Row Publishers, 1981. P.181

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- <sup>70</sup> -Article 28 of the Internal Regulation of the Kuwaiti National Assembly.
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- <sup>76</sup> -Malcolm Shaw, **Conclusion,** in *Committees in Legislature: A Comparative Analysis,* Ed., John D. Less and Malcolm Shaw, Martin Robertson, P. 381
- <sup>77</sup> -Philip Laundry, Op. Cit., p 115.

<sup>78</sup> Article 43 of the Internal Regulation Of the Kuwaiti National Assembly, Article 41 of Internal Regulation of the United Arab Emirates United National Assembly, Article 15 of the Internal Regulation of the Qatari Shura Council and Article 26 of the Internal Regulation of the Omani Shura Council.

<sup>79</sup> - While the Kuwaiti national Assembly has ten standing committees, and the Emirate UNA has eight standing committees, the Omani Shura has only five standing committees. The same is also in the Qatari and Saudi Councils.

## Chapter Four: Functions of the GCC Assemblies.

### 4.1. Introduction.

Parliamentary institutions are central to most systems of government but their role within the structure of government varies from country to country. There are differences not only with regard to their specific powers, but also in the measure of power and influence which each is able to exert within the overall framework of government. The concept of law, like that of the budget, has been shaped by events which have marked the emergence of parliament in the face of monarchical power which gradually lost its absolute character. Frequent attempts have been made over the centuries to delineate precisely the fields of action of the various institutions of the state. A theory known as 'the separation of powers' has been evolved, according to which the sum total of State's authority is divided into three branches – the legislative, the executive and the judicial. This division of authority serves as a framework for any Constitution. Under the separation of powers model, the Legislature is the most important branch of government; it lays down basic principles which the Executive has to apply in the implementation of laws and which the Judiciary has to use as its frame of reference in adjudicating cases relating to these laws<sup>1</sup>. The Legislature, then, takes precedence over the other two branches of government. According to the classical tradition of representative government, the power to legislate resides in parliament, which alone represents the sovereign people, and which is competent to express the will of the people in the form of law.

Despite this theoretical division of authority, the sphere of law remains imprecise. Those who frame constitutions have seldom taken the trouble to define the legislative function as opposed to, say, the executive function – which is the province of the government- or to delimit parliament's proper field of action. Where such attempts have been made by drafters of Constitutions they



have frequently been rendered inadequate by the changing and, almost inevitably, expanding role of Governments over the years.

According to Wheare, constitutions spring from a belief in a limited government and they tend to impose limitations on the power of legislatures<sup>2</sup>. The extent of these limitations depends on the aims constitution-makers want to safeguard, the kind of political system on which the constitution is modeled, the type of state it creates and the type of relationship that the constitution promotes between the executive and legislature.

The major question in evaluating and classifying a legislature is that of definition. An early definition describes a legislature as “a body elected by people at relatively frequent intervals, which makes laws.<sup>3</sup>” Some scholars introduced a functional description, arguing that a legislature is “a functionally adaptable institution that could do a variety of things in a political system<sup>4</sup>.” Legally speaking a legislature is “the department, assembly, or body of men that makes the laws for a state or nation<sup>5</sup>.” This definition, based upon a specific function, would lead to describing the executive, political parties or military institutions as the actual legislatures, rather than the nominal legislature itself.<sup>6</sup> Mezey has defined legislature as “a predominantly elected body of people that acts collegially and that has at least formal but not necessarily the exclusive power to enact law binding on all members of a specific geopolitical entity.<sup>7</sup> Accordingly, he proposes a five-fold typology of legislatures founded on the importance of a legislature’s role in policy making and the extent of public and elite supports it commands<sup>8</sup>. To Norton assemblies have one core, defining function: “They give assent, on behalf of a political community that extends beyond the executive authority, to binding measures of public policy<sup>9</sup>”

Generally, elected legislatures may be said to have two primary functions: first to represent the people and second to authorise taxation and control government expenditure. That means that originally the reason for establishing legislature was not only to speak for the people but, as was the case in England, to sanction taxes needed by the Monarch. However, the form of

legislature which has come to exist in Western democracies has many other functions, such as educating and informing the public, controlling the executive and framing legislation.

Differences among scholars regarding definitions have led to different classifications. For instance, Blondel classifies legislatures in the contemporary world according to their importance in policy making under four broad headings: “nascent or inchoate” legislatures, “truncated” legislatures, “inhibited” legislatures and “true” legislatures<sup>10</sup>. Mezey, on the other hand, classifies legislatures as : active, vulnerable, reactive, marginal and minimal<sup>11</sup>, while Olson amalgamates the previous two classifications and suggests an eight-fold typology<sup>12</sup>

Although in all countries the power to legislate belongs primarily to parliament, the essential phase in which the legislative process is set in motion under modern constitutional practice appears to concern the Executive as well as the Legislature. In spite of constitutional divisions between the two branches of government, the Legislature appears to be severely disadvantaged in the legislative process vis-à-vis the Government<sup>13</sup>. The role that the Executive plays in the sharing of legislative function is by far the most important. Even though, in theory, the deliberation and adoption of law may rest with parliament, in practice, the Executive makes a number of significant inroads into Parliament’s legislative power. Therefore the kind of government system the constitution adopts affects to a certain extent the role and functions of legislature. In a traditional parliamentary system, such as the Westminster system, there is a great emphasis on the role of the legislature on governmental Bills. Yet, the legislature may play the role of the lesser partner in the decision-making. On the other hand, the separation of powers in the presidential system, such as the U.S. system, grants the two branches of government a role in making and administering laws. However, a strong opposition from the legislature under this system may hinder the implementation of the executive programme<sup>14</sup>.

With regard to the foregoing discussion on definitions, one can assume that GCC states' legislatures, as set up by the constitutional, do not fit into any of the above mentioned definitions. Most of the GCC states legislatures, as we have seen in chapter 3, are not elected and they do not have the power of drafting Bills, as we will see in this chapter. They may be considered as a forum for discussion, deliberation and sanctioning laws presented by the government.

Following the discussion of the formal structure and membership of the GCC States' legislatures in the previous chapter, this chapter will explain and analyse the functions of the GCC States legislatures. The focus will be on the three main broad constitutional functions usually assigned to legislatures: legislative, financial and political.

#### **4.2. Legislation.**

Historically, sovereign power is vested in the parliament. The concept of law has been shaped by the events that marked the emergence of parliaments to face the royal power. By the seventeenth century, the British parliament, after a long constitutional struggle, succeeded in wresting the power from the crown. However, by the nineteenth century, government started to expand its activities, and because of the more complex nature of the problems that had to be solved, government became better acquainted than anyone else with the needs of the country. Western political thought has traditionally stressed the law-making function of assemblies. Today, however, even in liberal democracies, most legislatures have only modest law-making capabilities. As the scope of government has grown, effective control of law-making has moved to the executive and the bureaucracy; assemblies pass laws without really making them<sup>15</sup>. In most countries, therefore, the government is technically better equipped than individual members of parliament to draft bills which became acceptable from the legal standpoint<sup>16</sup>. Moreover, it is obvious that in countries where there is strict separation of powers, as in the presidential system, and where members of the legislative assemblies alone have the right to introduce bills, such absolute right did not exist in reality. Many developments



occurred in the presidential system which enabled the executive to participate in the legislation process.

In the Western parliamentary democracies the separation of powers is not strict, and the relationship between parliament and government with regard to legislation is one of co-operation, with the government taking the initiative in instituting Bills. As a result the government legislative function has become, by and large, a function of government. As Griffith observes:

“When Parliament is called the Legislature what is meant is that nobody or person can issue an order, rule, regulation, scheme or enactment having the force of law without parliamentary authority. But it does not follow that parliament is responsible for the whole of the legislative process or that an enactment which Parliament has not specifically examined is invalid. In other words, ‘to legislate may mean either to authorise the action which turns a legislative proposal into a law or to carry through the whole legislative process. In this latter sense legislation today more a Governmental than a Parliamentary function’.<sup>17</sup>

It seems that the legislative supremacy of Parliament does not mean either that the whole work of legislating is carried on within Parliament, or that the parliamentary stage is always the most formative stage in the process of legislation. In practice many government policies can be achieved within the framework of existing legislation or legislation initiated by the government. The scope of legislative initiated by individual M.P.s is very limited, because of both restricted parliamentary time and the tight hold which the government maintains over departmental responsibilities<sup>18</sup>.

In support of the government’s growing domination of the legislative process it was argued that without the capacity to legislate, government would not be able, in any meaningful sense of the term, to govern. According to Griffith, the government’s control of the legislative process rested not on principle but on factors that made it the government in the first place, most notably, its command of the majority in the parliament upon which it could normally rely to vote in its favour. It was that, which gave it control of the

legislative process and has continued to do so ever since<sup>19</sup>. The Parliamentary system is based on the co-operation between the legislature and executive. This is the meaning of the phrase “parliamentary government”: not government by parliament but government through parliament<sup>20</sup>. The Government may govern, but Parliament is the forum for public debate and criticism of those acts of government. Parliament is essentially a debating body.

A number of general observations may be made about the legislative process from the experience of different political systems<sup>21</sup>:

- Most Bills originate with the government. This is justified on the grounds that the government is more equipped with recruitment potential and has greater access to expertise and information than the legislature.
- Government Bills are adopted by the legislature at a very high rate.
- It is rare for a government to fail to pass its Bills.
- The rate of adoption of non-government Bills is low.

It is worth mentioning that the above observations do not fit with the presidential system which has separate and co-equal branches of government. In this system, despite the fact that most Bills are introduced by administrative agencies, interest groups and individual representatives and citizens, the rate of adoption of executive Bills by the Congress is very low<sup>22</sup>.

The legislation under the GCC States, Constitutions confirms with the above general observations. The Kuwaiti constitution outlines the structure of the Kuwaiti political system, organised around four major institutions. These are the head of state (embodied in the office of the Amir), the legislature (the National Assembly), the executive branch (the cabinet and administrative departments) and the judiciary. Legislative power is vested jointly in the Amir and the National Assembly. As the Constitution states:

“Legislative power shall be vested in the Amir and the National Assembly in accordance with the Constitution”.<sup>23</sup>

Article 50 asserts the principle of separation of powers and forbids unconstitutional delegate of authority among the four major institutions:

“The system of Government is based on the principle of separation of powers functioning in co-operation with each other in accordance with the provision of the Constitution. None of these powers may relinquish all or part of its competence specified in this Constitution”

Under other GCC States’ Constitutions, the initiation stage of the legislative process is wholly under the jurisdiction of government. This situation has some similarity to the French Constitution of 1814 whereby the King was given the right to participate in legislative power and Bills were only to be introduced by the government<sup>24</sup>.

The procedure of examining a Bill by the GCC Legislatures before it is sent to the Head of State for promulgation consists of the following stages.

#### **4.2.1. Initiation of Legislation.**

The first stage of the legislative process is the introduction of a bill. A Bill either proposes a change in the existing law or makes new legislative proposals, and is an initial draft of what may become a statute. It is implicit in the concept of democracy that the initiative in law-making should rest with the elected Parliament. At the same time it is widely recognised, both in practice and in law, that this right is shared with the Executive. Moreover, the right to initiate bills is not only exercised by parliament and by government, but it is granted to other bodies. In some countries institutions have been established specifically to review the legal aspects of projected Bills such as the Conseil d’Etat in France and Law Council in Sweden.

According to traditional parliamentary practice, every member of Parliament in his individual capacity has the right to introduce bills. Similarly



there is a general rule that nothing shall prevent several members from concerting their efforts where they agree upon a particular proposal and wish to make what amounts to a collective presentation of a bill. However, some Parliaments cling firmly to the right of the individual. In the House of Representatives of the United States, for example, if several members wish to put forward a particular proposal, each must present a bill in his own name. In great Britain, the rule on individual presentation of bill is regarded as so important that when a bill has been passed by one House, it will be considered by the other House if it is taken up by one of its members. In other countries, the number of members who may back a bill is limited. The number is five in Luxembourg, six in Belgium and ten in Norway<sup>25</sup>. Other countries disregard traditional parliamentary practice and do not allow an individual member to introduce a bill; members of parliament are obliged to combine for this purpose. The principle underlying this requirement is no doubt the desire for bills to be sifted at the outset so that only those supported by a considerable weight of opinion go forward.

The division of power between legislature and executive established by constitutions evolves constantly in favour of the government. The decline of the contribution of legislature members in initiating bills can be explained, first, by the complexity of modern laws which, as one commentator has put it, require not only the creative imagination of a political brain but the combined knowledge of an economist and a specialist in a whole series of cognate sciences<sup>26</sup>. Second, because of the lack of technical resources, members of the legislature cannot initiate bills which have financial consequences, as this sphere of legislation is reserved for the government. Third, individual members' bills often cannot find an opportunity to be debated, because the time given by parliament to legislation is largely spent considering bills proposed the government to carry out its policy<sup>27</sup>.

In the GCC states, the Constitutions of Bahrain and Kuwait grant the members of the Legislature the right to initiate Bills<sup>28</sup>. However, members of both legislatures are obliged to combine for this purpose, as both constitutions require several members, not more than five, to put forward a particular

proposal<sup>29</sup>. In fact, in both States, it is the government that plays the dominant role in the process of making legislation. This is because the Constitution provides that the Cabinet has the principal responsibility for laying down the direction of public policy<sup>30</sup>. Moreover, the government is endowed with better staff than the Assembly for the process of lawmaking. Bills originating in the Assembly must pass through a complicated process. They must first be sent to the Legal and Administrative Committee for its approval of their legality and language before they are despatched to the appropriate committee for consideration. In contrast, bills submitted to the legislature by the government are sent directly to the president of the Assembly for transmission to the appropriate functional committee<sup>31</sup>. It is worth mentioning that the number of bills originated in the Kuwaiti National Assembly in the five sessions (1963-1983) was 194, of which about 50% failed to win the approval of the Legal and Administrative Committee, which regarded them as unconstitutional or improperly worded<sup>32</sup>. Moreover, members' bills which are rejected by that committee may not be reintroduced in the same session. In contrast, the government may introduce in the same session any of its bills which have been rejected at any stage of the legislative process<sup>33</sup>.

Furthermore, the Constitutions of Bahrain and Kuwait stipulate that no law may be enacted until it has been passed by the Legislature and signed by the Amir<sup>34</sup>.

Regarding the initiation of bills in other GCC States, Constitutions provide that the Council of Minister holds a monopoly over this important stage. Legislatures have no competence in the field of initiating bills. Each ministry submits its bills to the Council of Ministers for approval before passing it to the legislature<sup>35</sup>. It seems that these Constitutions restrict the role of the legislature to debate and discussion of bills introduced by the government.

While the main purpose of committees is to help the legislature to expedite its business – especially by examining bills submitted to them- the

question arises as to whether they should be granted the right to initiate bills themselves. If committees are conceived of as mere working parties of the legislature, without the power to legislate, the answer is in the negative: if, however, they occupy a preponderant position in the legislature, it is in the affirmative. However, in practice, the position is not as simple as this. In some countries, committees may introduce legislation even though they are formally denied this right in constitutional law<sup>36</sup>. In Oman, committees are not as widely empowered to initiate bills as they are to amend them. According to Article 55 of the Internal Regulation of the *Shura Majlis*, permanent Committees have the right to introduce amendments to laws with the approval of the *Majlis Bureau*

#### **4.2.2. Mechanism of law making in the GCC States.**

Whether a bill is introduced by members of the legislature or at the instance of the government, the process of law-making is set in motion. In some countries members of parliament are informed of the bill in a variety of ways while in other countries bills are sent first to a committee whose duty is to sift proposals and decide which should go forward. The stage in the legislative process at which a bill is referred to a committee is of fundamental importance in evaluating the role of committees. In most of the western countries, the legislature president refers the bill directly to a committee. The House does not come into the picture unless there is a dispute between several committees when, according to the French practice, a given number of members may request the appointment of a special committee<sup>37</sup>. Other countries, where bills are first debated in the legislature before being referred to a committee, can be divided into two groups. In the first group, Committal is ordered after the first reading. In the second group, Committal takes place only after the second reading, as is the case in Great Britain<sup>38</sup>. The practice of referring bills to committees reveals two different conceptions of legislative procedure:

- 1- In parliaments where permanent committees exist, those committees consider each bill before it is debated in the parliament.



2- In parliaments where bills are considered by the committee of the whole House or by *ad hoc* committees, the House itself plays the major role in their passage.

In the GCC States, it should be remembered that with the exception of the Kuwaiti and Bahraini Constitutions there is no opportunity for private members' bills. In addition to the legal nature of a bill, many items of legislation have technical consequences, and the advice of scientific and expert witnesses is likely to be sought during the preparation or consideration of the details of the proposed legislation. To ensure the legal technical and political consequences of new bills the relevant governmental department seeks the advice of other governmental agencies, before the bill is sent to the Council of Ministers for approval. When the Council approves the bill it submits it to the legislature. In the legislature, the president refers the bill to the concerned committee<sup>39</sup>. If any amendments are introduced there are series of rules designed to ensure that they are considered in a clear and orderly sequence. These rules require the observation of certain formalities which relate to their acceptability. First, amendments can either propose to leave out or alter a part of a bill, a clause, a paragraph, a sentence, or particular words. If the concerned committee introduces amendments it should consult the Legal Committee seeking its opinion and if approved for redrafting<sup>40</sup>. Second, amendments can usually be submitted in writing in advance of, or presented orally during the course of, a debate. As a rule, they must be distributed before the sitting at which the bill is to be discussed<sup>41</sup>. Notice of the terms and details of amendments is desirable because it facilitates the conduct of debate. The advanced period of notice for written amendments is short in the GCC States, where one day's notice is required<sup>42</sup>. The relevant committee will present a report containing the original draft and its amendments<sup>43</sup>. It is worth mentioning that amendments which represent alternative and different principles to the bill under discussion, are not permitted in the legislative process in the GCC States.

It might be noticed that in the legislative process of the GCC Legislatures committees have relatively little power and it is the legislature itself that is regarded as the essential legislative unit. The task of committees is to consider matters of detail, especially when a bill is complex. Committees have no power to amend bills, but can only propose amendments to the Legislature which retains the ultimate authority to change both the details and the principles of legislation.

Debate in the legislature on bills before they are finally passed is the most spectacular phase of the legislative process because it takes place in public. It is also the most complex because of the rules that govern it and the most animated due to the possibility of incidents and disorder. The outcome is a bill that either satisfies one side or the other or represents a compromise between their views. All GCC States- with the exception of Oman, which has two stages of debate in the *Shura Majlis* and in the State Council- have a single stage of debate in the legislature itself. This single debate usually has several phases in more or less continuous succession. They are the presentation of the committee's report which is preceded or followed by a statement by the government; a general debate which is open to all members; a debate on the clauses of the bill and amendments thereto; explanations of votes; and a vote on the bill as a whole. As a general rule members cannot go back on any one of these phases once it has been completed, though an exception is often made if members of the government or the committee or the legislature can give a useful explanation<sup>44</sup>. After an interruption of this kind, the legislature resumes at the point at which it left off.

The list of phases set out above covers a series of procedures which need great details and it would be out of place to study them all here. The most that can be done is to point out some of them.

The first procedure is what is called 'second deliberation'<sup>45</sup>. This procedure means the re-opening of the debate on the bill as a whole, or some parts of it, before the vote is taken. The main object of the second deliberation is to alter a part of the bill which appears to be badly drafted or not in keeping

with the rest of it, although another objective may be to go back on a decision already taken. Second, the legislative process consists of separate stages, each of which fulfils a special and unique purpose; however, GCC legislatures have a special procedure to pass bills which are urgent. The emergency measure is taken in the committee stage of consideration of the bill, through accelerating the debate in committee.

Once the legislature has reached its decision on all the clauses in numerical order and on all the amendments relating to them, it has to vote on the bill as a whole. This vote is the last step in the process of enacting the law. In the course of its proceedings, and particularly when debate comes to an end, the legislature has to take various decisions. This is done by voting. From the vote a majority view emerges on the matter under dispute, and the opinion of this majority according to the democratic rule, overrides the opinion of the minority and becomes binding on all citizens<sup>46</sup>. GCC Legislatures have three methods of voting. First, there is voting by show of hands. If this method fails to give a result, the second and more precise form of vote, the vote by roll calls, is used. As the member's name is called out, each member replies 'Aye', 'No' or 'I abstain'. The replies are ticked off as they are made and the numbers in favour and against give the result. The third method is secret ballot. This method is used if required by the government or the president of the Legislature or ten members of the legislature<sup>47</sup>.

Whatever voting system is used, decisions are taken as a general rule by majority of votes cast; the size of majority is dependent on the number of persons present. As a safeguard, the vote is not valid unless a quorum is present. The quorum is half the members of the legislature plus one. The question arises here, what happens when there is a tie in the voting? The answer given by the Internal Regulation of the GCC Legislature is that the legislature president has the casting vote.

#### **4.2.3. The Promulgation of Laws.**

The passing of a bill by the Legislature is generally the final stage of the legislative process. The work done by the legislature must be promulgated.



Promulgation authenticates a bill as a law and gives it binding force; it is a formality designed to make a law enforceable by giving official notice to it. This notice is essential both for the authorities which have to apply the law and for the public at large, who will be subject to it<sup>48</sup>. The task of promulgation in most countries lies with the Head of State. This form gives the Executive a final opportunity to challenge the decision of Parliament by using the procedures of the veto or the request for a new consideration. However, the Government has no means of preventing a law passed duly by Parliament from coming into force. In fact, there are a number of exceptions and variations to the above method. In some countries (e.g. Sri Lanka) promulgation of law is the duty of Parliament which assigns it to its directing authority. In others, where there is no formal act of promulgation, a law enters into effect when the Legislature passes it, as is the case in Switzerland<sup>49</sup>.

In the GCC States the act of promulgation takes the form of 'Royal Assent', the procedure by which the Sovereign consents to bills passed by Legislature. The implication behind this is that the Head of State shares the legislative function with the Legislature. This is similar to the theoretical practice in most of the monarchies in Western Europe. However, the period in which a law comes into effect in the GCC States varies from country to country. In the United Arab Emirates, if the government disagrees with the Union National Assembly rejection or any amendment introduced to the original draft, the bill will be referred back to the Assembly so that it may be reconsidered. If the Union National Assembly insists on its viewpoint then the President of the Union has the power to override this decision and promulgate the law. There is no time limit within which the President of the Union has to exercise this power. For example, the Union National Assembly passed the Social Security Law, after being amended, in late 1976, but it was not promulgated until July 1981<sup>50</sup>. In Kuwait, three courses of action are open to the Amir when a bill is presented to him. First, he may sign it promptly, whereupon it becomes law. Secondly, he can hold on it without taking any action. In this event the bill may become a law without the Amir's signature because of the constitutional provision that if the Amir does not return a bill

with his objection within thirty days after it has been presented to him, it becomes law in the same manner as if he had signed it<sup>51</sup>. The third course of action available to the Amir is to veto<sup>52</sup> the bill and return it to the National Assembly with a statement of his objections. If the Assembly confirms the bill by a two-thirds majority of its members, the veto is overridden and the bill becomes law. If the bill does not receive the said majority, it shall not be considered during the same session. However, if the National Assembly, in another session, confirms the same bill by a majority vote of its members, the Amir shall sanction and promulgate the bill as law within thirty days from its submission to him<sup>53</sup>. In practice, the two-thirds majority necessary to overturn the amir's veto has never happened. First, the cabinet provides an automatic bloc of progovernment votes amounting to around 25 percent of the Assembly members. For example, in the sixth Assembly, the 17 cabinet votes out of the total of 65 votes meant the government needed to secure only an additional five votes to block any veto override. Second, the government could count on receiving a majority relying on the tribalist and progovernment members<sup>54</sup>. In Saudi Arabia, the *Shura Majlis* has the duty to study the laws submitted to it, and suggest alterations, amendments, additions or deletion; equally, and it will interpret laws already passed. The decisions of the *Majlis* will be submitted to the King, who will pass them to the Cabinet. If the Cabinet and the *Majlis* are in agreement, then the King will endorse any law passed by both bodies; if the two councils disagree, then it will be up to the King to decide between the two<sup>55</sup>. In Oman, the *Shura* Council and State Council, are not the only nor the most notable legislative powers in the country. Their role is exclusively consultative. They can only discuss specific bills submitted to them by the government, but cannot initiate new legislation. The Council of Ministers initiates bills and sends them directly to the sultan, who approves, rejects or decides to refer them to the *Shura Majlis*<sup>56</sup>. After the bill is debated in the *Shura Majlis*, the *Majlis* refers the bill to the State Council, in which the bill takes the same procedures of debate as in the *Shura Majlis*<sup>57</sup>. Since both chambers play the same role, agreement between the two Chambers on a bill puts the final seal on the legislative process. It is therefore important to provide machinery for reaching

agreement and to set some limit to exchange of views if disagreement persists. However, neither the Basic Statute of the State (Constitution) nor the Internal Regulation of either Councils provides such a mechanism. The researcher assumes that since the legislature's role is to put recommendations, then the Sultan has the power to promulgate the law as its first draft, or he might refer it to the joint committee between the Council of Ministers and the Bureau of the *Majlis* and the Bureau of the State Council which are required to meet twice a year<sup>58</sup>.

It is worth mentioning that in the GCC states a law to be considered officially in force should be gazetted in the official gazette.

In contrast to the strict theory of the Constitutions, in practice the GCC Legislatures have attempted to play a much more positive role in the legislative functions. The example of law bills show that legislatures in practice are far more powerful than the constitutional text implies. One example of law-making in practice is the United Arab Emirates Penal Law Bill. This bill was known as the most debated legal document in the history of the United Arab Emirates Assembly. It took the government thirteen months to reach a compromise with the Assembly. The Union National Assembly has introduced two major amendments to the original bill. First, dealing with crimes against the State, members were of the opinion that to tighten up state security would lead to the violation of the citizens' human rights. They therefore, succeeded in omitting articles which were not clearly defined and those which carried very harsh penalties. The second amendment was the omission of clauses dealing with alcohol-related crime. The Assembly recommended that these crimes should be addressed in a separate law. After a long struggle, the government agreed to all the concessions demanded by the assembly, and the Penal Law was finally promulgated<sup>59</sup>. Despite the fact that the Qatari *Shura* Council is an advisory assembly and its legislative powers are severely restricted, it has recorded its refusal to accept the government's legislation on more than one occasion. The most recent was during the 1985 term, when decree laws were issued regarding civil service and military pensions. The laws were automatically referred to the council when it came back into session and vigorously opposed on the ground



that the plans were not generous enough for Qatari retirees and too generous for non-Qataris. The decree laws were rejected and sent back to the cabinet for redrafting<sup>60</sup>.

#### **4.3.The Financial Function of the GCC Legislatures.**

Historically, financial scrutiny is an important element in the scrutiny of government. This is one of the most ancient functions and the fundamental role of the legislature. In the history of parliaments, the powers to be won from the Executive were powers over finance and it was around these that modern constitutional systems gradually took shape. The legislative powers of parliament were acquired after parliament had gained its power over finance: the people demanded and won the right to consent to the levy of taxes before they began to demand a role in the law-making process. However, in the contemporary time the position is very different and instead of keeping tight control of the purse-strings, Parliaments are often apt to be much freer with money. Their original function of keeping expenditure within proper limits has now been taken over by Governments which are responsible for producing compact and complex Budgets<sup>61</sup>.

The budget may be defined as “ a sort of tabular conspectus of estimated public expenditure and income over a given period, generally a year<sup>62</sup>”. As a collection of financial data, the Budget has several purposes<sup>63</sup>:

1. It enables total income to be compared with total expenditure.
2. It allows expenditure to be classified and its relative importance and urgency to be assessed.
3. It enables its effects on the economic situation and on any national plan to be determined.
4. It facilitates parliamentary control.

Constitutions vary as to the arrangements they provide for a national budget. In some countries the government submits a budget in the form of a bill

and the legislature sanctions it according to ordinary bill procedures. In others, the government submits a budget in the form of a financial programme or draft proposal for which there is a different procedure. The role of parliament in approving the budget gives the Executive the authority to raise revenue through authorising the government to impose taxes for one year, and secondly by authorising the government to spend money. Parliament exercises an important check on the actions taken by the Executive. It is worth mentioning that parliament formally approves the substance of the budget in the form of a bill which makes due provision for revenue and expenditure and goes through the same or similar stages as any other bill, including promulgation, and is then regarded as carrying the same authority as any other statute.

In the GCC States, there is a variation between states. In Kuwait, Bahrain and the United Arab Emirates, all taxes and public charges are imposed by law, and exemptions must similarly be granted by law; the payment of taxes is a public duty. The government drafts the Budget, which is then put before the Legislature for detailed debate. In Oman, Qatar and Saudi Arabia, the budget does not partake of the nature of legislation; it is regarded as a purely administrative measure. Therefore, the budget is not embodied in a bill but in a government decree which sets out an approximate estimate of the revenue and expenditure for the year ahead.

#### **4.3.1. Budgetary Mechanism in the GCC States.**

The primacy of the Executive in the budgetary process is nowhere more apparent than in its preparation. In all countries there is an unusual measure of agreement that the Government alone has the right to draw up and present the Budget. This stems from two aspects: first, the budget is the instrument of the government policy, which spells out the detailed facts and figures of its programme of action and priorities. Second, the Government is the only authority which has an accurate picture of the needs of various services and of the amount of revenue likely to be available.

In Kuwait and the United Arab Emirates, the preparation of the Budget is an administrative matter. The budget is a summary of probable financial

outlays and incomes over a specified period- usually one year. A budget comprises all details related to expected incomes, such as taxes, fees and oil revenues and it includes as well the State's expected spending. The budget of the GCC States encompasses one year; the budget year starts on 1<sup>st</sup> January and ends at the end of December each year. The Budget for particular heads of expenditure may cover more than one year, if the nature of expenditure so requires. The government should submit the budget to the Legislature, for examination and approval, at least two months before the end of each current financial year<sup>64</sup>. In fact, the time of submission required by the Constitution has never been fulfilled in practice in both states.

The Ministry of Finance plays the most important role in the preparation of the budget. In fact, the Minister of Finance can on his own initiative, invite the Ministers concerned to make changes in their estimates. If agreement between Ministers cannot be reached, the matter in dispute is referred to the Council of Ministers. It is worth mentioning that the Legislature's powers are to debate and approve the Budget which the Government has prepared. The annual financial bill is given the same treatment as any other governmental bill. The usual method is for the budget to be referred by the legislature president to the Finance and Economic Committee, which has six weeks to put forward its written report, including its recommendations<sup>65</sup>. The Assembly can amend the time given to the committee for another two weeks; however, if the committee is not able to submit its report, then the budget will be considered by the whole Assembly.

If the committee introduces amendments to the budget such amendments must be approved by the government. The Legislature and its committee look at the budget expeditiously and debate its contents part by part<sup>66</sup>. When proposing an increase in an item of expenditure, a corresponding decrease in another item must be moved, or an alternative source for meeting the cost of this increase must be proposed<sup>67</sup>. Any spending not included in the budget or exceeding its estimations or any reallocation of funds from one part to another in the budget must derive from a law. When the Legislature fails to approve the Budget by the end of the financial year, various methods are



adopted to bridge the budgetary gap which would otherwise exist between the end of one financial year and the passing of the Budget for the following year. In the United Arab Emirates, if the budget law has not been promulgated before the beginning of the financial year, temporary monthly funds are made by decree on the basis of one twelfth of the funds of the previous financial year, and revenues shall be collected and expenditure disbursed in accordance with the laws in force at the end of the preceding financial year<sup>68</sup>. Although the United Arab Emirates Constitution ordains that the budget shall be issued in the same way as a law, it nevertheless makes some special reservations. As it has been noted, the Assembly has the power to reject or amend ordinary bills. However the powers of the Assembly in the case of the budget draft are restricted in discussion and comment. Therefore, the Assembly role *vis a vis* the budget is not to sanction it or to give it legal validity but rather to act in a consultative capacity. Moreover, the Government has the right to transfer sums or spend money not provided in the budget. Despite the fact that the government must cover the last process by law, it can, in the case of urgency, arrange the foregoing by a decree and notify the Assembly afterwards<sup>69</sup>. In Kuwait the preceding budget shall be applied until the new one is issued and revenues shall be collected and disbursements made in accordance with laws in force at the end of the preceding year<sup>70</sup>.

In the other GCC States, the legislature does not play any role in budgetary process<sup>71</sup>. The Budget is prepared by the Ministry of Finance and discussed by the Council of Ministers and approved and promulgated by a decree law issued by the Head of State.

#### **4.3.2. Legislature's Role in Taxation, Loans and Public Expenditure.**

The GCC Constitutions cover such areas as taxation, duties and loans by providing that they shall not be imposed, levied or contracted except by virtue of law<sup>72</sup>. It is not permissible to exempt anyone from these taxes; nor is anyone is obliged to pay taxes or other excises outside the provision of law. Since citizens have an equal responsibility towards the burden of taxes, no one shall be exempt from these taxes unless indicated by law. However, there are

differences among the GCC Assemblies in relation to the process of taxation. While the Omani, Qatari and Saudi Assemblies do not play any role in the process of taxation, the above financial matters are not excluded from the Assembly's jurisdiction in the United Arab Emirates and Kuwait. Their bills are treated as ordinary bill; therefore, the Assembly has the power to accept, reject or amend these financial Bills. In Kuwait and Bahrain, the state and public bodies may take and guarantee loans as provided by law, and the law is to regulate handling of public assets. The Budget Law may not impose or increase taxes, nor amend an existing Law, or impede the issue of a Law required by the Constitution.

The Legislature's rights and obligations do not end when the Budget and related estimates are agreed. It still has to make sure that effect is given to the measure which it has authorised: only then can it be satisfied that the Executive has duly carried out its injunctions. Control over the way in which effect is given to the financial provision made by legislature is an important and distinctive aspect of the general powers of control exercised by legislature over the government. It is important because of the wide impact of the national budget will be examined. The control is finalised by the legislature formally approving the accounts for each final year.

Regarding the annual final accounts, which comprise the actual revenue and expenditure of the state in a year, the Kuwaiti and United Arab Emirates Constitutions provide that the final accounts of the financial administration of the State for the preceding year shall be submitted within four months following the end of the said year, to the Assembly for comments or consideration and approval<sup>73</sup>. The significance of the final accounts is that they show how the state income has been spent over the financial year. It is noteworthy, that while the Assembly of the United Arab Emirates is restricted to comments on the final account, the final approval of the final account in Kuwait is in the hands of the National Assembly. In fact, the reality has not lived up the constitutional provision; the final accounts of the in the United Arab Emirates have never been submitted to the legislature within the four months required by the Constitution. They have invariably been presented to

the legislature three or four years late. For example, the final accounts for the years 79,84 and 85 were introduced in the years 84 and 88 respectively<sup>74</sup>. In both states, the Constitutions provide for the establishment of an independent department to audit the accounts of the government. While the initial audit in the United Arab Emirates is carried out by a body known as an Auditor-General who is appointed by presidential decree, in Kuwait the form of control is taken by a financial control and audit commission attached to the National Assembly<sup>75</sup>.

Regarding financial matters, all GCC Assemblies, except that of Kuwait, have been unable to consider the budget or large parts of budget expenditure, because estimates were not presented or the legislature was not permitted to vote.

#### **4.4.The Political Functions of the GCC Legislatures.**

Foreign policy has traditionally not been considered to be the concern of parliament. There are a number of reasons; first, the essence of foreign policy is negotiation rather than legislation: negotiation may result in treaties or other international agreements, the parliamentary scrutiny of which is less detailed than of legislation. Second, foreign issues have an element of remoteness and members of parliament may be less informed about them and their constituents are more concerned with immediate social and economic issues. Third, foreign affairs need secrecy. Therefore, foreign affairs are generally considered a matter for the executive branch of government<sup>76</sup>. However, contemporary history demonstrates the danger of this view. Although the world-wide problems of war and peace have become recognisable to all, parliaments have not been able to insist on methods of scrutiny and control commensurate with the importance of these problems. This deficiency reflects the thinking of early thinkers on constitutional law, who ruled out any participation by the representatives of the people in the conduct of international affairs<sup>77</sup>.

Despite the fact that international policy is a specialised subject and too complex to be debated publicly, it is difficult to find any problem, whether it is



economic, social or political, which does not have its technicalities and need to be clarified. Moreover no problems are more bound to the needs of the community than the problems of international peace and security. Therefore, the conduct of foreign affairs should be entrusted to the representatives of the people, particularly if they have divergent or even antagonistic views. Yet constitutional practice suggests that the Executive enjoys independence in the field of foreign affairs which greatly limits the scope of parliament. Even when some role for parliament is provided it may be required only that the general principles should be outlined to Parliament, a concession which leaves the Government free to interpret them as it thinks. Methods of control can be applied to the Government's foreign policy through particular aspects of this policy, and they vary from one Constitution to another.

In the GCC States there is a variation among its constitutions. There are restrictions on Assembly in the case of Oman, Qatar and Bahrain. The Saudi Arabia and the United Arab Emirates Assemblies have limited power; both constitutions require the government to inform the legislature of international treaties and agreements concluded with other states and the various international organisation, together with appropriate explanations<sup>78</sup>. Despite the fact that the Qatari, Saudi and United Arab Emirates Assemblies have permanent committees on foreign affairs, however, these committees do not play any role in curbing government control over international issues. In Kuwait, according to Article 70 of the Constitution, the kind of treaties requiring the approval of parliament before they are ratified are; peace and alliance treaties, trade agreements, treaties or agreements relating to navigation and residence, treaties involving public funds, treaties modifying the law or touching the status of persons and treaties for the cession, exchange or acquisition of territory. It is worth mentioning that the Kuwaiti National Assembly has taken a stand against the Security Agreement between the GCC States and refused to approve it. Members viewed the agreement as conflicting with the citizens' rights which are secured according to Article 70 of the Constitution. The scope of the Legislature's influence in Kuwait in the field of foreign affairs is widened through the procedure of questions to the Foreign Minister. This procedure is valuable in providing the legislature with

information to keep pace with the governmental movement of international events. At the end of the Iraqi invasion of Kuwait, the National Assembly blocked a governmental movement towards restoring relation with those Arab countries called “the against”<sup>79</sup>. Moreover, the Budget debate can be seen as an indirect means of control. Despite the fact that this procedure is seen theoretically as confined to the financial implications of the government’s foreign policy, it can be used to challenge the basic assumptions of that policy<sup>80</sup>. Motions to reduce a grant are as effective as general debates in obliging the Foreign Minister to give explanations on specific points. This method was used by the Kuwaiti National Assembly during the deliberation on foreign aid appropriation to the Arab countries. The government’s pledges to provide a certain amount of aid to certain countries were subject to severe scrutiny and criticisms by assemblymen who were against any aids to these countries because of their support for Iraq during its invasion of Kuwait and who blamed the government for making pledges before it consulted the Assembly.

However, it would be mistaken to assume that such provisions place any real curb on the independence of the government, since the apparently full list leaves major political treaties to the Amir, who concludes treaties by decree, then they are transmitted to the National Assembly with the appropriate statement. A treaty shall have the force of law after it is signed, ratified and published in the Official Gazette. Moreover, it is not the text of the treaty that is the subject of debate, but simply the authorisation to ratify the treaty. Even where this authorisation is required in the form of legislation, the Assembly does not have the power to amend the treaty. Furthermore, the role of the Assembly is to approve and confirm, rather than to direct the action of the Government.

#### **4.5 Conclusion.**

From the foregoing explanations of the constitutional arrangements for legislatures in the GCC States, one can reach the conclusion that there are similarities in the functions among the legislatures of Oman, United Arab

Emirates, Qatar and Saudi Arabia. First, these legislatures may not be involved in the first step in the life of law (initiation). Second, they may discuss, debate and amend or reject a bill but what they lack is mandatory power. Third, as will be shown in the coming chapter, the government may take advantage of the period that the legislature is out of session to promulgate unchallenged laws under its power to promulgate laws in cases of urgency. In short, it seems that according to the constitutions, the role of the legislatures as far as legislation is concerned is to a large extent consultative. In fact, these constitutions grant the legislatures unrestricted rights to express recommendations as to their wishes and demands relating to any public issues. These recommendations emerge following discussion of a draft-law. The term 'recommendation' refers to an action which is advisory in nature, rather than one having any binding effect. It can be described loosely as a non-binding suggestion. This is the least efficient device for controlling the executive but may be seen as a means of assessing the elite's opinion with regard to a specific policy. Recommendations are addressed to the executive but they are not mandatory. The Head of State or Council of Ministers may reject them. Recommendations in the GCC States are used on a variety of subjects such as education, social affairs and economy and commerce. On the other hand, the Kuwaiti Assembly has demonstrated a capacity to resist executive initiatives, to force modifications upon the executive and even on occasion to defeat executive proposals.

It is clear that most of the GCC Constitutions intended to create legislatures with no formal constitutional powers in the field of legislation except in debating and proposing amendments to draft-laws. In contrast to the strict theory of constitutions in practice legislatures have attempted to play a much more positive role in the legislative function.

As regards the legislature's political function, the constitutions of the GCC States deprive legislatures of many significant and efficient controls. Despite the shortcomings in the political function, GCC Assemblies have endeavoured to present themselves as an independent and critical body. In all GCC Constitutions, the legislatures do not have the power to establish



investigating committees, yet the governments of Kuwait and United Arab Emirate have agreed to the formation of such committees in several cases.

In the fiscal field -with the exception of the Kuwaiti Constitution- constitutions not only prevent assemblies' members from initiating financial bills, but even deprive them of the right to accept or amend the most important element of the financial function, which is the budget.

Regarding the committee system, it is worth mentioning that GCC States are unique in having a full and direct commitment in their constitutions to a system of committees in their legislatures. In other words the constitutions do not allow the legislatures to work without committees in law-making. Despite the fact that the committee system is permanent and specialised, they are facing certain difficulties such as:

- 1- Committee work is done by a small core of members; committees in the GCC legislature have from 5 to 9 members in each committee.
- 2- Lack of specialised staffing. Committees depend on the legislature staffing for their work.
- 3- Committee function is not utilized.

Obviously, in order for committees to be important, more is required than this kind of structure. It should be kept in mind that the absence of strong committees suggests a very weak legislature. Internally, that means that it is capable of playing only the most minimal policy making role.

## Endnote.

- <sup>1</sup> - John Locke, *Two Treatises of Government*. The second treatise on civil Government, chapter XI. and Baron De Montesquieu, *The Spirit of Law's*. Book XI, Chapter 6.
- <sup>2</sup> -K. C. Wheare, *Modern Constitutions*, London: Oxford University Press. 1964. P.9
- <sup>3</sup> -Michael Mezey, *Comparative Legislatures*, Durham; N.C.,: Duke University Press.1979. p.3
- <sup>4</sup> -Ibid., p.4.
- <sup>5</sup> -*Black's Law Dictionary*. Fifth Edition. St. Paul; Minn., : West Publishing Co., 1979
- <sup>6</sup> -Nelson Polsby, *Legislatures*, in Fred Greenstein and Nelson Polsby, (eds) *Governmental Institutions and Processes*. Vol. 5, Massachusetts: Addison-Wesley publishing Co., 1975.pp. 258-59
- <sup>7</sup> -Michael Mezey, op. cit., p.6
- <sup>8</sup> -Ibid., p.227
- <sup>9</sup> - Norton P. (ed.). *Legislatures* Oxford: Oxford University Press, 1990. P. 1
- <sup>10</sup> - Jean Blondel, *Comparative Legislatures*. Englewood Cliffs, N.J: Prentice-Hall, Inc., 1973. Pp. 137-140
- <sup>11</sup> - Michael Mezey, op. cit., pp.277-228.
- <sup>12</sup> -David Olson, *The Legislative Process*, New York: Harper & Row publishers. 1980. PP. 449-53

- <sup>13</sup> - Valentine Herman & Francoise Mendel, *Parliaments of the World: A Reference Compendium*, East Kilbride; Scotland: Thomas Litho Ltd., 1976. P 595.
- <sup>14</sup> -David Olson, op. cit., p.170
- <sup>15</sup> - Rod Hague, Martin Harrop and Shaun Breslin *Comparative Government and Politics: An Introduction* (Third edition) London: Macmillan Press Ltd. 1992. P. 287.
- <sup>16</sup> -Michel Ameller, *Parliaments: A Comparative Study on the Structure and Functioning of Representative Institutions in fifty-five Countries*. London: Unwin Brothers Ltd., 1966. P.141
- <sup>17</sup> -J. A.G. Griffith, **The place of Parliament in the Legislative Process**, in David R Miers and Alan C. Page (eds.) *Legislation*. Second Edition. London: Sweet & Maxwell, 1990.p. 5.
- <sup>18</sup> -E.C.S. Wade and A.W. Bradley, *Constitutional and Administrative Law*,(Tenth Edition) London: Longman 1985. Pp. 178-9.
- <sup>19</sup> J.A.G. Griffith, **Legislation**, in Hanson and Crick (eds.) *The Commons in Transition*. 1970. Pp. 22-23
- <sup>20</sup> -J.A.G. Griffith and Michael Ryle, *Parliament: Function, Practice and Procedures*, London: Sweet & Maxwell, 1989. P.10.
- <sup>21</sup> -David Olson, op. cit., pp. 171-175.
- <sup>22</sup> -William Keefe, **The Legislative Task**, in William Keefe and Morriss Ogul, *The American Legislative Process: Congress and States*, (Second Edition) New York: Prentice-Hall Inc., 1968. p.12.
- <sup>23</sup> - Article 51 of the Kuwaiti Constitution.



- <sup>24</sup> -D.W.S. Lidderdale, *The Parliament of France*. London: The Hansard Society,1951.pp. 177-178
- <sup>25</sup> -Michel Ameller, op. cit., p.145
- <sup>26</sup> Ibid., p150
- <sup>27</sup> -Valentine Herman and Francoise Mendel, op. Cit., pp. 597-599
- <sup>28</sup> - Article 109 of the Kuwaiti Constitution and Article 71 of the Bahraini Constitution
- <sup>29</sup> - Article 112 of the Kuwaiti Constitution and Article 72 of the Bahraini Constitution.
- <sup>30</sup> - Article 123 Of the Kuwaiti Constitution and Paragraph (a) of Article 85 of the Bahraini Constitution.
- <sup>31</sup> - Article 97 of the Internal Regulation of the Kuwaiti National Assembly.
- <sup>32</sup> -Khalaf Jassim Muhammad, *The Kuwaiti National Assembly: A Study of its Structure and Function*. Unpublished Ph D dissertation. State University of New York at Albany. 1984. P198
- <sup>33</sup> Article 109 of the Kuwaiti Constitution.
- <sup>34</sup> - Article 78 of the Kuwaiti Constitution and Article 42 of the Bahraini Constitution.
- <sup>35</sup> - Article 60 and Paragraph 2 of Article 110 of the United Arab Emirates Constitution.
- <sup>36</sup> - Valentine Herman and Francoise Mendel, op. cit., pp. 597.
- <sup>37</sup> - Michel Ameller, op. cit., p.162

<sup>38</sup> -Ibid.,

<sup>39</sup> - Article 98 of the Internal Regulation of the Kuwaiti National Assembly, Article 51 of the Internal Regulation of the Omani *Shura Majlis* and Article 84 of the Internal Regulation of the UNA of the United Arab Emirates.

<sup>40</sup> - Article 101 of the Internal Regulation of the Kuwaiti National Assembly, Article 86 of the Internal Regulation of the UNA of the United Arab Emirates, Article 65 of the Qatari *Shura Majlis* and Article 52 of the Omani *Shura Majlis*

<sup>41</sup> - Article 103 of the Internal regulation Of the Kuwaiti National Assembly, Article 88 of the Internal Regulation of the UNA of the United Arab Emirates and Article 67 of the Qatari *Shura Majlis*.

<sup>42</sup> - Ibid.,

<sup>43</sup> - Article 102 of the Internal Regulation of the Kuwaiti National Assembly, Article 52 of the Internal Regulation of the Omani *Shura Majlis*.

<sup>44</sup> - Article 107 of the Internal Regulation of the Kuwaiti National Assembly, Article 92 of the Internal Regulation of the UNA of the United Arab Emirates and Article 70 of the Internal Regulation of the Qatari *Shura Majlis*

<sup>45</sup> - Article 104 of the Internal regulation of the Kuwaiti National Assembly and Article 73 of the Internal Regulation of the Qatari *Shura Majlis*.

<sup>46</sup> - Michel Ameller, op. cit., p.196

- <sup>47</sup> - Article 110 of the Internal Regulation of the Kuwaiti National Assembly and Article 94 of the Internal Regulation of the UNA of the United Arab Emirates.
- <sup>48</sup> - Valentine Herman and Francoise Mendel, op. Cit., p.640
- <sup>49</sup> -Michel Ameller, op. Cit., p.214
- <sup>50</sup> - Mohammed A.M Al-Rokn, *A Study of the United Arab Emirates Legislature Under the 1971 Constitution with special reference to the Federal National Council*, Unpublished Ph.D Thesis, University of Warwick, 1991. P.260
- <sup>51</sup> - Article 65 of the Kuwaiti Constitution.
- <sup>52</sup> - The veto is a characteristic feature of the presidential system, and especially of the Constitution of the United States, where it is a corollary of the principle of separate and equal powers.
- <sup>53</sup> - Article 66 of the Kuwaiti Constitution.
- <sup>54</sup> - John E. Peterson *The Arab Gulf States: steps toward political Participation*. London: Praeger 1988. P. 53.
- <sup>55</sup> - Article 17 of the Saudi *Shura* Council Statute.
- <sup>56</sup> - Under the previous Internal Regulation of the Omani *Shura Majlis* government has to submit the economic and social draft laws to the *Shura* Majils. The assembly might amend them, votes on amendments were taken first by the relevant committee, then by the *Majlis* as a whole. The *Majlis* was to initiate its own proposal (recommendations rather than binding legislation, but most of which have been considered) to the government on social economic or development matters. Individual members of the *Majlis* might make



proposals to the government regarding their constituencies without referring them to committee.

- <sup>57</sup> - Articles 49,50 and 51 of Internal Regulation of the State Council.
- <sup>58</sup> - Article 7 of the joint Principles of the *Shura Majlis* and State Council.
- <sup>59</sup> Mohammed Al-Rokn, op. cit., p. 262.
- <sup>60</sup> - John E. Peterson. op. cit., p.89.
- <sup>61</sup> - Valentine Herman and Francoise Mendel, op. cit., p.731.
- <sup>62</sup> - Michel Ameller, op. cit. P. 291.
- <sup>63</sup> - Valentine Herman and Francoise Mendel, op. cit., p.731.
- <sup>64</sup> Article 129 of the United Arab Emirates Constitution, Article 140 of the Kuwaiti Constitution and Article 90 of the Bahraini Constitution
- <sup>65</sup> - Article 99 of the Internal Regulation of the Union National Assembly of the United Arab Emirates and Article 161 of the Internal Regulation of the Kuwaiti National Assembly.
- <sup>66</sup> - Article 100 of the Internal Regulation of the Union National Assembly of the UAE and Article 163 of the Internal Regulation of the Kuwaiti National Assembly.
- <sup>67</sup> - Article 164 of the Internal Regulation of the Kuwaiti National Assembly and Article 101 of the Internal Regulation of the Union National Assembly of the UAE.
- <sup>68</sup> - Article 130 of the United Arab Emirates Constitution.
- <sup>69</sup> Article 113 of the United Arab Emirate Constitution.
- <sup>70</sup> - Article 145 of the Kuwaiti Constitution.

- <sup>71</sup> - Before the establishment of the Basic Statute of the State, the Omani *Shura Majlis* had the right to debate five-year development plans that were introduced by the government. These plans were the major outline for the country's domestic priority. The *Majlis* could thus modify a policy; but it could not completely overturn a decision made by a ministry
- <sup>72</sup> - Article 11 of the Omani Constitution, Article 133 of the United Arab Emirate Constitution and Article 134 of the Kuwaiti Constitution.
- <sup>73</sup> - Article 135 of the United Arab Emirates Constitution and Article 149 of the Kuwaiti Constitution.
- <sup>74</sup> -M. Al-Rokn, op. cit., p. 281.
- <sup>75</sup> - Article 151 of the Kuwaiti Constitution and Article 136 of the United Arab Emirates Constitution.
- <sup>76</sup> - Peter G. Richards, *Parliament and Foreign Affairs*. London: George Allen & Unwin Ltd., 1967. P 13.
- <sup>77</sup> - John Locke, *The Second Treatise on Government*, chapter XIII. and Alexis de Tocqueville, *Democracy in America*, (The World Classics, O.U.P) p.161 Cited in Peter G Richard, op. cit., p 16,18
- <sup>78</sup> - Article 91 of the United Arab Emirates Constitution and Article 15 of the Saudi *Shura* Council Statute.
- <sup>79</sup> - The slogan “ the against” in Kuwait is used to refer to Arab countries who supported Iraq during the Second Gulf War such as Jordan, Yemen, Sudan and Tunisia.
- <sup>80</sup> -- Valentine Herman and Francoise Mendel, op. cit., p. 879

## **Chapter Five: Check and Balance Mechanism In**

### **The GCC Constitutions.**

#### **5.1. Introduction.**

The doctrine of the separation of powers is one of the most important theories in constitutional law. The roots of this doctrine are found in the ancient world, where according to Vile, the concept of governmental functions and the theories of so called mixed and balanced government were evolved<sup>1</sup>. Madison insisted that the aim of the mixed theory, through its assertion of the importance of the separation of powers, is a means of preventing tyranny and the Supreme Court of the United States has described such separation as “one of the chief merits of the American system”<sup>2</sup>. The doctrine, with other constitutional theories, aimed to rebuild the institutional structure of government in order to prevent despotism, absolutism or arbitrary government<sup>3</sup>.

A study of the literature on the doctrine shows that there is no clear-cut definition of the doctrine by scholars. On this ground Vile stated that ‘thus, the discussions about its origins are often confused because the exact nature of the claims being made for one thinker or another are not measured against any clear definition’<sup>4</sup>.

However, four scholars have given the best descriptions of the separation of power theory. Vile<sup>5</sup>, Wade<sup>6</sup>, Gwyn<sup>7</sup> and de Smith<sup>8</sup> assume that there are four essential elements of the doctrine, which give the specific meaning to the theory as presented by Montesquieu. Vile, for instance, summarises these elements as follows: first, there is the assertion of a division of government into three branches: the legislature, the executive and the judiciary. Second, each of these branches has its specific function and one organ of government should not exercise the function of another. Third, is the separation of persons, which means that the same persons should not form part of more than one of the three branches of the government. Fourth, each branch of government should act as a check on the exercise of arbitrary



power by other branches<sup>9</sup>. Summarising the foregoing, it may be said that within a system of government based on law, there are legislative, executive and judicial functions to be performed and that the primary branches for discharging these functions are the legislature, the executive and the courts<sup>10</sup>. However, there is no clear-cut demarcation between some aspects of these functions, nor is there always a neat correspondence between the functions and the institutions of government. In fact, according to de Smith, separation does not mean that the three branches should have no points of contact, though it does follow that one branch of government should not be in position to dominate the others. Therefore, matters are designed on the principle that each branch operates as a check on the others<sup>11</sup>.

Three distinguished theorists have developed the doctrine of the separation of powers and its three-fold division. Lawson in his work on the separation of powers stated that ‘there is a three-fold power civil, or rather three degrees of power. They are the legislative, the judicial and the executive<sup>12</sup>’. Lawson’s work is regarded as a bridge between the seventeenth century idea of the separation of powers, which emerged from the English civil war to alter the theory of mixed government, and the balanced constitution theory of the eighteenth century<sup>13</sup>. On the other hand, Locke developed a complex doctrine when he attempted to divide the executive power in a different way. He distinguished a third power called “the federative power”. According to Locke, the powers can be considered as legislative, executive and federative<sup>14</sup>. Moreover, he included in his opinion the essential elements of the doctrine of the balanced government when he stated, as mentioned by Vile, that “within the umbrella of the legislative power the three branches exercise separate powers that enable each of them to check the others. Each of these branches must be limited and bounded by one another, in such a manner that one may not be allowed to encroach on the other<sup>15</sup>”. The doctrine of the separation of powers was developed further with Montesquieu, who based his exposition on the British constitution of the early 18<sup>th</sup> century, as he understood it<sup>16</sup>. The division of powers he brought up did not closely correspond, except in name, with the classification which has become traditional. Although he followed the usual meaning of legislative and judicial, by executive power he meant only ‘the power of executing matters falling within the

law of nations' ,i.e. making war and peace, sending and receiving ambassadors, establishing order, preventing invasion<sup>17</sup>. Furthermore, he asserted that the three powers should be kept separated, as the essence of the doctrine; otherwise “ when the legislative power is united with the executive power in the same person or body there is no liberty, if the judicial power be not separated from legislative and executive, the life and liberty of the subject would be exposed to arbitrary control because the judge would then be the legislator and the executive. At this point there would be an end to everything where the same person would exercise those three powers<sup>18</sup>”. In addition, Montesquieu emphasises the importance of the distinction of agency function and people in exercising the governmental powers<sup>19</sup>. Montesquieu did not mean that the legislature and executive ought to have no influence or control over the acts of each other, but only that neither should exercise the whole power of the other<sup>20</sup>.

However, Montesquieu's observation of the English constitution of the 18<sup>th</sup> century, where the parliament had achieved legislative dominance over the Crown, and the judiciary had declared its independence and where the King had been left to exercise the executive power, in a major respect ran contrary to Montesquieu's doctrine when Britain had established the Cabinet system. Under the new system the king governed only through ministers who were members of parliament and responsible to it. Indeed, it is the United States constitutional system where the influence of Montesquieu can best be seen<sup>21</sup>.

In the United States Constitution, the separation of powers is clearly maintained. The executive is clearly separated from the legislature and the Supreme Court has the power to revoke unconstitutional acts of the executive and the legislature. It is worth mentioning that even in the American system there is not a complete separation of powers between the three branches of government if, by separation, is meant that each power can be exercised in complete isolation from the others. Instead, the constitution proceeds to construct an elaborate system of checks and balances designed to enable control and influence to be exercised by each branch upon the others. The Watergate affair showed not only the strong position of a president elected into office by popular vote but also how a combination of constitutional powers exercised by the Congress and the Supreme Court could



combine to remove the president from office<sup>22</sup>. In France, the doctrine maintains the supremacy of the legislature, but does not enable the civil courts to control the legal side either of legislative or of administrative acts<sup>23</sup>. In the United Kingdom, in the absence of a written constitution, there is no formal separation of powers. No act of parliament may be held unconstitutional on the ground that it seeks to confer powers in breach of the doctrine. While the functions of legislature and executive are closely inter-related, and ministers are members of both, the two institutions are distinct from each other. The independence of the judiciary is maintained, but many disputes, which arise out of the process of government, are entrusted not to the courts but to administrative tribunals: these tribunals are expected to observe the essentials of fair judicial procedure<sup>24</sup>.

In the GCC States, only the Kuwaiti and Bahraini Constitutions distinguish clearly between a legislative power (the Amir and the National Assembly), an executive power (the Amir and the Council of Ministers) and judicial power (the courts in the name of the Amir), the system of government being based on this division of authority, and all functions being inalienable. In Oman, Qatar, United Arab Emirates and Saudi Arabia, the Head of State and the Council of Ministers combine the first two functions. In those States, despite the fact that Assemblies have rights of participation in legislative process, legislation, as it has been seen in the previous chapter, passes with or without their consent. In other words, legislatures do no more than act as a panel of experts.

From the foregoing discussion it is important to state that the extreme form of the doctrine of the separation of powers has never been adopted or applied by any country in recent times. On the contrary, the partial separation between powers was adopted instead.

In this chapter we will consider the relationship between powers in the GCC States governmental systems with regard to the authority given to each governmental branch over the others, to maintain the balance and check between them. Therefore we will discuss in details the three principles which are related to the theory of the separation of powers in its final form. They are: accountability of government to Parliament, control of Parliament by executive and the power of the constitutional court.



## 5.2. Accountability of Government to Parliament.

The doctrine of ministerial responsibility is the most general principle, which reflects an essential part of the checks and balances in the theory of the separation of powers. It is not a single doctrine or rule but a rather complicated bundle of distinct though related principles. The idea of responsibility has a number of senses and aspects. There is constitutional, legal, political and moral responsibility. There is responsibility attributed to governments collectively and to ministers individually<sup>25</sup>.

According to Dicey, the responsibility of ministers means “where used in its strict sense the legal responsibility of every minister for every act of Crown in which he takes part<sup>26</sup>.” Marshall noted that “Constitutionally the relationship between Monarch and Ministers is regulated by the conventional doctrine of ministerial responsibility. That means ministers are responsible for the general conduct of government, including the exercise of powers legally vested in the Monarch and that they are responsible to parliament<sup>27</sup>”. It is worth mentioning that the word ‘responsibility’ has many different meanings. Birch stated one of the meanings as follows: “It is used to signify the accountability of ministers or of the government as a whole to an elected assembly<sup>28</sup>”. Mill emphasised that people want one person to be responsible for undertaking the execution of their will and to judge that person if he fails to do so<sup>29</sup>.

As important aspects of the principle of ministerial responsibility, two branches of the principle have been developed to ensure the effectiveness of the principle in practice. They are the collective ministerial responsibility and individual ministerial responsibility.

The principle of collective responsibility, as applied to Cabinet Ministers, means that each Minister accepts responsibility for the decision of the whole cabinet. Inside the Cabinet, a Minister may argue for a different course of action, but he is expected not to express public disagreement with a Cabinet decision<sup>30</sup>. Jennings has adopted a definition which emphasises three points. First, there is a need for full and frank discussion in government; secondly, not only should a minister resist seeking to disavow his own involvement in a past decision, but he must go further by giving

his loyal support thereto; thirdly, all decisions should be considered as being made by the government as a whole<sup>31</sup>. Stacey emphasises that meaning when he defines ministerial responsibility as follows: " All Ministers must at all times support Cabinet decisions. A minister may, of course, oppose a decision during discussion in cabinet, but he must not, after the decision has been made, reveal that he disagreed with the majority or that he has any reservation about the government policy. If he disagrees with the Government's policy to the point of wishing to criticize it in public, then he must resign"<sup>32</sup>.

In theory, at least, it is not necessary for the preservation of collective responsibility that each Minister should be given the opportunity to discuss governmental policy. The critical fact is that once a decision has been made, there should be no sign of dissension. Collective decision-making is still regarded as the accepted practice of Cabinet government<sup>33</sup>. However, there are important issues raised regarding the nature of collective responsibility. The question that must be answered is: to what extent have changes in decision-making eroded Cabinet power, and what is consequent effect upon collective responsibility? The first factor is the lack of true 'responsibility' for the decisions taken. Ministers in this situation feel frustrated when a decision which is judged expedient by certain ministers is taken without reporting the matter to the Cabinet. The second threat to the doctrine arises from the publication of political memoirs of ex-ministers, especially when it includes a disclosure of a disagreement with a cabinet decision. Third, is the free vote which was permitted among M.P.s, including ministers, over some issues<sup>34</sup>. David Butler, having considered the operation of the doctrine in England and Australia, concluded that " cabinet in both countries seems to have a remarkable vitality"<sup>35</sup>. "It looks as if the boundary between the doctrine of collective ministerial responsibility and openness in government is going to be a continuously disputed area.

On the other hand, Individual Responsibility of Ministers means that a minister is responsible to parliament for every decision made in his department. Ministers and nobody other than ministers, must explain, justify and defend to parliament the actions carried out on their behalf<sup>36</sup>. According to Jennings, individual

responsibility of ministers means that “each Minister is responsible to parliament for the conduct of his Department. The act of every Civil Servant is by convention regarded as the act of his Minister<sup>37</sup>.”

Maxwell suggests four sets of circumstances in which the question of ministerial responsibility might arise. First, a Minister might explicitly order a civil servant to take certain action or, secondly, a civil servant act properly in accordance with the policy laid down by Minister. In both cases, the Minister must protect and defend the civil servant. Third, an official makes a mistake, not on an important issue of policy and not where a claim to individual right is seriously involved. In such cases, the Minister acknowledges the mistake and accepts the responsibility, although he is not personally involved. In this case the corrective action is taken in the department. Fourth, when a civil servant takes an action of which the Minister disapproves and has no prior knowledge, here there is no obligation on the part of the Minister to endorse what he believes wrong, although he remains constitutionally responsible to Parliament.<sup>38</sup>

Ministers' individual responsibility has different levels. It springs from the willingness to answer to the House for departmental failure, but not to accept blame personally, to enforce the resignation of Minister. It is important to state that many writers have asserted the importance of ministerial accountability as an effective weapon to force ministers' resignation, according to the theory of individual Ministerial Responsibility.

Parliament has many different ways and methods of preserving an effective control over the executive. It might make use of parliamentary questions or assert the technique of selected committee, or uses the procedure for the legislative decision taking and legitimating process, namely, public debates followed by votes on motions, and amendments and this includes, without any doubt, the calling of ministers to accountability and the vote of confidence (interpellation).

With some variations, GCC Assemblies use the above techniques to apply ministerial responsibility theory.



### 5.2.1. Parliamentary Questions.

Like so many other Parliamentary practices, the procedure of questions originated in the United Kingdom. As control of the time of the House passed to Government, questions to Ministers took the place of many of the older methods by which grievances had been ventilated or Government policy examined. Questions became a distinct procedure in 1849 when a special part of sitting known as 'question time' was and still is, given over to answering them. In 1902 the practice of asking questions for written answers was introduced, and written answers to oral questions which could not be given oral answers for lack of time were also permitted.

It has been asserted that questions and question time are essential elements of individual ministerial responsibility. According to Walkland and Ryle, they enable the ordinary Member of Parliament to hold a particular minister accountable<sup>39</sup>. Birch describe questions as one of the most significant techniques for the doctrine of the ministerial responsibility, because questions give members of parliament the right to demand information about any administrative decision from the minister in charge of the department<sup>40</sup>. According to Irwin, Kennon, Natzler and Rogers, there are three basic rules governing the scope and content of questions, which have operated unchanged since the end of the nineteenth century. They are<sup>41</sup>:

1. A question must seek, rather than give, information or press for action.
2. A question must relate to a matter for which a minister is responsible.
3. A question must not be fully covered by an answer or a refusal to answer given in the same session.

Parliamentary questions have a variety of functions. They may be considered as inquiry instrument through which information is exchanged between legislature and government, or control instruments used to reveal the government's mistakes<sup>42</sup>. The use of questioning as a technique in controlling the executive differs from one constitutional system to another. It may be related to an internal matter in a particular constituency, it may be related to national affairs and governmental services in the

state as a whole, or its range may be extended to include all government polices at home and abroad. The question may require a formal or informal answer. Where some matters are concerned advance notice must be given<sup>43</sup>.

It is a right of every member of parliament to address any question to the prime minister or any other minister to clarify matters falling within their competence<sup>44</sup>. The Question, then, is an individual technique to be used only by one member against a particular minister. No one other than the questioner can intervene, even to ask for more clarification<sup>45</sup>. Some constitutions (e.g. Britain), have adopted this principle and do not consider supplementary questions but some others include (e.g. India), other members and in so doing to accept supplementary questions.

Therefore, a question is a request by a Member of the Parliament to a Minister for explanation of, or for action on, a specific matter. It has no immediate political sanction and so is clearly distinguishable from other procedures of Parliamentary control such as motion of censure or interpellations. The latter gives other members the right to contribute to the debate through their comments and series of questions to the minister concerned, who might be subject to a vote of no confidence if he fails to answer the member's question. On the contrary, the minister in question cannot be subject to a vote of no confidence, even he fails to answer the member's question.

In the GCC States, Constitutions have granted the members of Assemblies this device. As it has been prescribed in these Constitutions, the Prime Minister or Minister shall answer questions put to them by any member of the Assembly requesting explanation of any matters falling within their jurisdiction<sup>46</sup>.

The internal regulations of assemblies set up the whole process for the practice of parliamentary questions these procedures are:

1. Questions must be addressed by only one member<sup>47</sup>.
2. Questions must be written, brief and specific<sup>48</sup>.
3. Questions must comply with the rules of Order<sup>49</sup>.

The Council Bureau is empowered to select the questions which it believes fall within the assembly's purview and to rule out any question that does not fulfil the above measurement. The member can protest against this decision.

While Question time is limited to thirty minutes at the beginning of the Assembly's normal sitting in Kuwait and Qatar, there is no fixed time for Questions in other GCC Assemblies.

In practice, the Kuwaiti Assembly holds its meeting once a week, every Tuesday and questions must take place in the first 30 minutes. No question may be asked orally except during the discussion of the budget or when the Assembly is holding a general debate on a specific matter<sup>50</sup>. In fact, even in these cases, it cannot lead to the question of no-confidence in the minister. In other GCC Assemblies, members have tabled a few questions which have concern with local social matters,<sup>51</sup> but questions have not been common practice in these legislatures because of their ineffectiveness. In short, the question method has not been a control device but rather an inquiry instrument. The limitation of Question time in the GCC Assemblies may be succinctly stated. It offers an opportunity to ask relatively few questions.

### **5.2.2. General Debate.**

General debate is regarded as a more effective method of raising the minister's responsibility. It could be defined as a right, which can be used by legislature members whenever they feel it is necessary to discuss any Government's policy in order to secure a clarification or justification with regard to the debate issue. It is the responsibility of the Prime Minister or the concerned Minister to answer and justify the subject of the debate. This method differs from that of the question in that it deals with the government policy as whole rather than a specific incident. Public debate opens the door for all members to contribute in the discussion and therefore, that may raise many questions which may lead to interpellation or a vote of no confidence in a Minister. It is clear that public debate is one of the most important and efficient instruments in the hands of the legislature, because of the importance of this technique in raising the minister's responsibility and, as a result, it has been surrounded by more complicated procedures than that of



the parliamentary question device. According to Griffith and Ryle, the British Parliamentary system cannot be considered either as a governing institution or as a law-making body; its basic role is as a debating forum. Although the government has the majority in Parliament, it does not seek a total control of public debate because this device is important for the legitimization of the government's policies and actions<sup>52</sup>. However, being a debate forum does not mean that parliament lacks influence because parliament does not operate in a vacuum and its influence depends on voters, whom the government cannot ignore<sup>53</sup>.

All GCC Constitutions have adopted debate as a method of controlling the executive<sup>54</sup>. Both the Constitution and Internal Regulation lay down many conditions for the practice of this instrument by legislature members. The conditions required are:

1. The request for a general Debate must be signed by five members. This requirement reflects the importance of this method<sup>55</sup>.
2. Debate on the request will not take place until the Council gives its consent on it. It worth mentioning that this regulation is not applied in Kuwait, where debate is held after the request of five members of the National Assembly.
3. All other members shall have the right to participate in the debate.
4. The Council of Ministers must be informed about the request immediately.
5. The debate will take place according to the priority of names registered.
6. It is the responsibility of the Prime Minister or the concerned Minister to answer and justify the subject of the debate. The Minister concerned has the right to delay the discussion for two weeks to prepare himself for the subject of the debate.
7. The Council of Ministers has the power to object to the debate of any

subject which it considers contrary to the highest interest of the State.

8. The request will be deemed as abandoned if the members concerned are not present on the fixed date for its discussion unless other members have adopted it.

Constitutional lawyers have argued that the stipulation of the subject of higher interest of State is a loose concept, and that the executive has the power to define it in its interest. Therefore, the Ministers Council can easily extend its interpretation of the higher interest to include most subjects and so deprive the legislature of its power to call for public debate<sup>56</sup>. However, the practice in the GCC States does not confirm the above argument. In only a few cases have governments invoked the higher interest of the State to prevent the legislature from calling for public debate<sup>57</sup>. There are two reasons for governments to take that stand; first, governments needed to legitimate their economic and social policy, especially after the sharp drop of the oil prices. Second, it seems that only the heads of the social services ministries are accountable, and neither they nor the government can be put to a vote of confidence. Public debate in the GCC Legislatures may result in a recommendation on how to proceed, an expression of satisfaction with the response given by the concerned minister, or the formation of a committee to investigate or follow up the subject as is the case in United Arab Emirates and Kuwait. Recommendations are addressed to the executive but they are not mandatory. The Council of Ministers may reject them. However, the executive should notify the legislature of its reasons, if it does.

In practice there is variation among the GCC governments in accepting legislature recommendations. In the United Arab Emirates, Assembly members have complained that their recommendations or even proposed solutions to matters have not been discussed by the government<sup>58</sup>. In Oman, formal sessions in which ministers are required to appear before the *Majlis* when a matter concerning their ministry is discussed are reported and televised. They must reply on the spot to any valid question put by any member of the *Majlis* and on occasion a minister has been put on the defensive during televised proceedings by a difficult question. Such practice appears to have laid some groundwork for the *Majlis*' role as government

watchdog. The Sultan has approved most recommendations of the Omani Shura *Majlis* on various social and economic issues that had been discussed with members of the cabinet at the *Majlis* meetings. Moreover, the Omani government has accepted recommendations in which the *Majlis* opposed the government policy<sup>59</sup>. The Sultan wants to present his government to his people and to the international community as a progressive political system where the people participate in the decision making process,

It is worth mentioning that both the legislature and the executive can use the debating method under the United Arab Emirates governmental system<sup>60</sup>. The former may use it to broaden the frame of discussion, while the latter may manipulate this method to explain its policies. By adopting the dual usage of this device, the United Arab Emirates has taken a different route from that taken by other GCC Systems, which have restricted public debate to their Legislatures<sup>61</sup>.

### **5.2.3. Formation of Inquiry Committee.**

The Inquiry Committee is one of the most important instruments in the hand of the legislature to gather necessary information to be used for the purpose of raising Ministerial Responsibility. The inquiry committee is a special type of *ad hoc* committee; and like other *ad hoc* committees it deals with one matter only. Its peculiar feature is the power of investigation given to it in the resolution of the legislature, which sets it up. Exceptional powers of this kind, which sometimes make the committee a quasi-judicial body, especially in its capacity to summon witnesses to give evidence, explain why these committees are temporary and why in practice they are seldom used. Sometimes the constitution and powers of committee of inquiry contain restrictive provisions whose object is to safeguard the separation of the legislature and the judicial.

In the GCC States, it is only the Kuwaiti Constitution which gives the National Assembly the right to set up a committee or delegate one or more of its members to investigate any matters within the Assembly's competence<sup>62</sup>. Further, the constitution states that it is the duty of Ministers and all Government officials to produce testimonials, documents and statements requested from them<sup>63</sup>. Despite the



fact that a new article was added to the Internal Regulation of the National Assembly which confers on the inquiry committees some of the powers of the judicial function like the power to send for people or records and to ask experts for advice before making its final report to the Assembly, these committees do not have any judicial function<sup>64</sup>. The Assembly can only upon a recommendation from the inquiry committee to write to the Attorney General to ask for the public prosecution of any person who refuses to appear before it or gives false information<sup>65</sup>. Because of the importance of this instrument in raising the minister's responsibility, the Internal Regulation lays down the same complicated conditions as apply to general debate.

In practice it should be pointed out that the National Assembly's right to form inquiry committees has not been accepted without any doubt by the Kuwaiti government. There have been challenges as to what power the Assembly should have to form such a committee and what power the committee should have and what type of information these committees should be given or denied<sup>66</sup>. The governmental challenge arose as a reaction to the National Assembly resolution to delegate one of its members to investigate the role taken by the Board of the Kuwaiti Central Bank to solve the crisis of the unofficial stock market, which occurred in the summer of 1982.

The Kuwaiti government took the dispute to the Constitutional Court, which gave its decision on 14-6-1986. The court adjudicated that it was the right of the National Assembly to set up inquiry committees and delegate members to monitor the work of the government bodies. However, the Assembly investigation should be focused on specific and clear subject. There is no restriction on the length of the period which may be subject to such investigation, as long as it is a reasonable period<sup>67</sup>. There is no doubt that the Assembly's right to form inquiry committees was strengthened by the Court's decision.

In the United Arab Emirates, despite the fact that neither the Constitution nor the Internal Regulation has given the right to form inquiry committees to the Union National Assembly, in practice the Assembly has formed such a committee in several cases. The Assembly has formed committees to investigate government

policy with regard to electricity, health, the civil service and administrative system<sup>68</sup>. It is worth mentioning that these committees do not have any powers to control the government.

#### **5.2.4. Interpellation.**

Interpellation is another instrument by which the Legislature may control the Government. It is the standard procedure for obtaining information and exercising control in the classical parliamentary system. An interpellation is addressed by a Member of Parliament either to a Minister to explain some action of his department or to the Prime Minister on a matter of general policy. Interpellation has two essential features: first, it gives rise to a general debate. Second, it usually carries a political sanction when the debate culminates in a vote on a motion expressing either satisfaction or dissatisfaction<sup>69</sup>. Depending upon any information coming to his attention through the public, or obtained by him through another technique (question, selected committee) a member of parliament, while seeking the truth regarding any departmental misconduct or decision, has the right to gather the information required by using the technique of interpellation. This instrument opens the door for wide participation by other members who are interested in the subject of the debate. However, it should be noted that interpellation does not necessarily lead to a question of no confidence in the minister concerned. On the contrary, the minister might be praised by parliament if members find nothing wrong in his department's conduct and decision. Interpellation is a very effective procedure because it is not simply a device for obtaining information, but a direct form of control when Ministers are called directly to account, especially in countries where their constitutions provide that a vote of no confidence may not be raised, except after an interpellation.

In the GCC States, only the Kuwaiti and Bahraini Constitutions have adopted this technique. Depending upon information found on the procedure and the subject matter, the Kuwaiti experience will be discussed.

The Constitution and the Internal Regulation of the National Assembly set up the rules and the conditions that regulate interpellation in Kuwait. According to the Kuwaiti Constitution it is the right of each member of the National Assembly to

address an Interpellation to the Prime Minister and Ministers<sup>70</sup>. The President of the Assembly must be informed in writing of the matter that a member wishes to raise or the facts about which he desires an explanation. The terminology of the interpellation must avoid the use of any immoral words and violation of the National Interest<sup>71</sup>. The Interpellation is then included in the order of business of the Agenda of the following sitting. A period of not less than eight days must elapse between tabling of an interpellation and its debate, though this time may be shortened if the matter is urgent and the minister agrees. The minister concerned has the right to ask for fourteen days respite-notice instead of the eight days; however, it is the Assembly's right to extend the period to whatever it wishes<sup>72</sup>. The debate begins with the speech of the member who addressed the interpellation, then a reply furnished by the concerned minister before the debate is opened to any member interested in the subject. The debate on the interpellation could be concluded by raising the motion to a vote of no confidence in the minister. This motion must be submitted by ten members of the Assembly or requested by the minister concerned<sup>73</sup> with the exception of the Prime Minister, who cannot be subject to a vote of no confidence. According to Article 101 of the Constitution, the Assembly cannot make its decision regarding the request of no confidence until seven days has elapsed from the date of submission. This period will give each member the opportunity to decide, without the influence of the debate and its disconcerting climate. The members who submit a motion for a vote of no confidence must attend the meeting and it is the duty of the Assembly President to ensure that this is complied with, to emphasise the seriousness of the member's request. Taking into consideration the principles of collective ministerial responsibility as examined before, the vote of no confidence according to the above Article shall be passed by a majority vote of the members constituting the Assembly, excluding ministers. As far as democratic principles are concerned it is acceptable to prevent ministers from voting on the issue of no confidence, since the majority of ministers in Kuwait are usually not elected and their membership in the Assembly is *exofficio*.

If the Assembly passes a vote of no confidence against a minister, he shall be considered to have resigned his office as from the date of the vote of no confidence and shall immediately submit his formal resignation. This means that any act taken



by the minister after losing the confidence of the Assembly will be considered null and void<sup>74</sup>. Indeed, this rule can be considered as an exception to the general rule adopted by the Kuwaiti Constitution in which it is stated that if, for any reason, the Prime Minister or a Minister vacates his office, he shall continue to discharge the urgent business thereof until his successor is appointed<sup>75</sup>.

In practice, despite the fact that they are laid down in the Constitution and the Internal Regulation of the Assembly, the rules with regard to the technique of interpellation have been violated on several occasions. The technique of interpellation has been used fourteen times against various Ministers in the Kuwaiti Parliamentary experience. The conclusions of each interpellation vary from relinquishing the member concerned to the resignation of the whole cabinet. The effectiveness of this technique has, in Kuwait, been manifested on only two occasions: in 1974, when the Minister of Trade, in the light of the Assembly's criticism submitted his resignation and in 1985 when the Minister of Justice resigned over an unofficial stock market crisis with regard to the fund of small investors<sup>76</sup>. It is worth mentioning that the essential difficulty upon the minister's individual responsibility and the collective responsibility in the Kuwaiti governmental system is due to two factors: first, the appointment of the Crown Prince as Prime Minister and second, the Amir's power to dissolve the Assembly. The practice shows, as we will see later, that the Amir at the request of the Prime Minister dissolved the Assembly, before it could take the vote of no confidence against a minister, on three occasions.

In the United Arab Emirates and Oman, the Constitution stipulates that the Prime Minister and the Ministers shall be politically responsible collectively before the Head of State for the execution of the general policy of the State, both domestic and foreign. Moreover, a Minister shall be personally responsible to the Head of the State for the activities of his Ministry<sup>77</sup>.

### **5.3. Machinery of Governmental Control.**

Parliament and the Government are linked as partners in the conduct of public affairs by an intricate network of relationships: this partnership is seldom an equal one, even when the drafters of constitution intended that it should be so. An

analysis of the relationships that exist between the government and Parliament makes it possible to assess the influence each exerts on the other. We have already shown that in most countries the executive dominates the legislative and budgetary process at the expense of Parliament's authority. We have also noted a greater tendency for the legislature to exercise its powers by influencing and controlling the actions of government. The theory of Parliamentary Government enables Parliament to hold ministers responsible for the affairs of their Ministers, as discussed above. It is therefore important to provide the executive with some similar power to preserve the equality and the balanced relationship of the separation of power theory. Within the machinery given to Government, the most effective weapon given to the executive is the dissolution of Parliament.

GCC Constitutions have empowered the Executive with various machinery to expand its authority over the legislature.

### **5.3.1. Limitation on the Legislative power of Legislatures.**

We have already seen in the previous chapter that in the GCC States the executive dominates the legislative and budgetary process at the expense of the Legislature's authority. Moreover, GCC Constitutions granted the government the power to initiate and promulgate laws between two sessions and when the Legislature is dissolved. In the United Arab Emirates, according to Article 110 of the constitution, the Council of Ministers may promulgate decrees on matters of extreme urgency when the Union National Assembly is not in session. However, the constitution has built a series of precautions to avoid the abuse of this power. First, the Council of Ministers' decision must be approved by the Supreme Council and the President of the Union. Second, the Union National Assembly should be notified at its next meeting. The Kuwaiti constitution makes provision for a similar procedure. In Kuwait the rights of the National Assembly are more effectively secured. If urgent action is necessary, the Amir may promulgate decrees having the provisional force of law, but these decrees must be submitted within the fifteen days following their issue for ratification; and if the Assembly is dissolved or its legislative term has expired, such decrees shall be submitted to the next Assembly at its first sitting. The decrees lose their force as from their date of origin if they have not been referred to the Assembly or the Assembly does not confirm them, unless



the Assembly approves their validity for the preceding period or settles in some other way the effects arising therefrom<sup>78</sup>.

From the forgoing decision it is important to state that the use of exceptional powers is only authorised when the Legislature is not in sitting and when it is necessary for the machinery of government to work. However, the practice shows that the need for urgent action can sometimes be used as a kind of rebuff to the legislative power of the Assembly. In the United Arab Emirates for example, the executive, in the summer of 1980, used its power to promulgate four laws when the Assembly was out of session. These laws were: the Central Bank Law, the Press and Publication law, the law establishing the General Emirates Petroleum Corporation and the law amending the Legal Profession Law. In accordance with procedures required by the Constitution, the Council of Minister informed the Assembly in its first meeting of the context of the laws. Although the Assembly had no power to contest these laws, it nevertheless expressed its objection against their promulgation in the summer<sup>79</sup>. The Assembly's protest was based on paragraph 4 of Article 110 of the constitution, which grants the executive the power to enact legislation between sessions only under urgent circumstances, the Assembly believed that none of the four promulgated laws could be said to be of an urgent nature. A similar position is found in Kuwait. The Amir has issued 461 Amiri decrees, laws and bylaws during the suspension of the National Assembly since 1976. On the first session of the Assembly in 1981, the President of the Assembly informed the members that the Crown Prince and the Prime Minister had referred all the Amiri laws and decrees since the suspension. From the outset, the Assembly performed submissively, as expected endorsing practically all the Amiri laws and decrees, except for a handful, to show its resilience and opposition<sup>80</sup>. Ironically enough, the Assembly endorsed the new election law and the redrawing of the districts, thus legitimizing what many candidates had denounced in their campaigns<sup>81</sup>. However, the Assembly's other task, to endorse the proposed constitutional amendments, was more difficult, because those amendments were going to undermine the Assembly and curb its legislative and constitutional powers. Moreover, a special committee formed to study those proposed amendments had rejected these amendments. The foregoing examples show that the government in



both states has abused its explicit constitutional power which grants the executive the power to enact legislation only under urgent circumstances. Both governments promulgated laws which were not necessary for the machinery of government to work, and therefore, could not be said to be of urgent matters.

In addition, GCC Constitutions provide that in exceptional circumstances the Head of State shall proclaim Martial law<sup>82</sup>. The Head of State shall take the place of the government, the National Assembly and all other public authorities. He may take any step that he thinks necessary. He acts alone in the name of the nation and to safeguard its interest. These constitutions specify that the proclamation of Martial Law shall be by decree. In Kuwait, such a decree shall be referred to the National Assembly within fifteen days following its issue for a decision on the future of Martial Law. Moreover, the Assembly should be informed with procedures taken every three months. Despite the fact that the National Assembly can under no circumstances be dissolved in the case of Martial Law, in fact, the National Assembly is not empowered to take any part in decisions of a legislative character taken under the exceptional powers. In the United Arab Emirates, the constitution stipulates that the Union National Assembly should be informed of the procedure. In the other States, Assemblies are left behind.

The question arises how the above procedures can be put in practice when the constitution provides the Head of State with special powers to suspend not only the existing laws but also the constitution itself when Martial Law is in force<sup>83</sup>. Second, the constitution does not require the National Assembly to meet automatically or to resume its power if it has been dissolved.

### **5.3.2. The Mechanism of Dissolution of Assembly in the GCC States.**

The theory of parliamentary Government enables Parliament to hold Ministers responsible for the affairs of their Ministries. Therefore, it is important to provide the executive with a similar power to preserve the equality and the balanced relationship of the separation of power theory. The most effective weapon given to the executive is that the Dissolution of Parliament. The most important statement that emphasises the importance of the dissolution as a part of the new form of the separation of powers is found in the following words of Markesinis:

“The ideal form of government could be found in a balanced constitution – a notion which bore an interesting resemblance to the ancient theory of mixed Government. With the veto to all intents and purposes absolute, the only effective check against parliament was dissolution<sup>84</sup>”.

In the context of the relationship between Parliament and the executive, there are many facets to a dissolution because it has meaning only in relation to the politics of the country where the question arises. Like many other constitutional weapons, the power of dissolution has no value in itself. Yet the dissolution is a more effective weapon given to the executive as a creature of political thought, than ministerial accountability, of which it is a corollary.

#### **a-Dissolution: Definition and Forms.**

Various definitions have been given to the term dissolution. At its early stage of usage, which occurred in the English Parliamentary Government, Ameller reported that the term had been used pragmatically by the Monarch to get rid of a House after the King had got from it what he wanted<sup>85</sup>. According to Markesinis, dissolution is “an act of the Executive which dismisses the legislative body, and refers a disputed case to the electorate, the supreme arbitrator of the state”<sup>86</sup>. Butler stated that ‘the dissolution of parliament always offers an escape route from crisis. It means that the problem is referred to the electors and there is a good chance that their votes will produce a decisive answer, at least in terms of parliamentary seats<sup>87</sup>. Evatt emphasised that to dissolve Parliament means to appeal to the political sovereign. However, he warned that repeated dissolution might lead to the contrary.

Of course, in one sense, every appeal to the people, whatever the circumstances when it takes place, represents an attempt to get a decision from the political sovereign. In this sense a series of repeated dissolutions of the Parliament may be said to represent the ‘triumph’ of the people as political sovereign. In actual fact, however, by means of defamation and intimidation and the deliberate inculcation of dissolution and disgust, a series of repeated dissolutions would probably be the very means of first delaying and ultimately defeating the true popular

will, and so represent a triumph over, and not triumph of, the electorate<sup>88</sup>.

Dissolution of Parliament is a means to establish the balance between the Executive and Parliament : if the government was dismissed by the legislature, the government could reply by dismissing parliament. This enabled the Cabinet to avoid total subjugation to Parliament and as other equal forces were opposed to each other it made collaboration between them both possible and necessary.

Following the British model, the power to dissolve Parliament was built into most constitutional monarchies during the nineteenth century, being regarded first and foremost as a royal prerogative. According to Dicey, “the prerogative appears to be both historically and as a matter of actual fact, nothing else than the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown<sup>89</sup>. In fact, the King needed to rely on his Minister’s advice to exercise the power of dissolution. To many constitutional authorities, the King’s right to dissolve, or at least to refuse advice, is a discretionary decision, which remains with the crown. Keith underlined the importance of Minister’s advice to the King with regard to the use of the power of dissolution where he stated, “the King may refuse to dissolve when advised, and if he deems a dissolution necessary in the public interest he may urge such a course on ministers, and, if they will not accept his suggestion, he may compel their resignation or dismiss them from office and appoint ministers who will arrange a dissolution<sup>90</sup>. However, the value of the Royal Prerogative in recent days is not as absolute as it once was Royal prerogative is limited and rather depends upon the Prime Minister’s majority, and the lack of alternative Government, even if it is a minority Government, as long as it could secure the confidence of the parliament through any technique available.

Most of the authority of the Crown in today’s parliamentary system has shifted to the Cabinet and quite often to the Prime Minister, who should consult his Cabinet on the matter of dissolution<sup>91</sup>. It seems that it is safe to conclude that, despite the fact that dissolution is a right of the Prime Minister, but if he wishes to avoid any undesirable end to his party leadership, he must consult his colleagues as far as consultation is practicable.



## **b- Dissolution of Assembly in the GCC States.**

Dissolution of Parliament has been adopted by most of the GCC States' Constitutions. The Head of State exercises his royal prerogative by putting an abrupt end to the life of the Assembly. Constitutions put restrictions and conditions on the Head of States' rights. These conditions and restrictions are:

- 1- The dissolution must be based on reasonable grounds. In Kuwait, according to Article 102 of the constitution, the Assembly may decide that it cannot cooperate with the Prime Minister. This decision would lead to the submission of the matter to the Amir. The Amir may either relieve the Prime Minister from office and appoint a new Cabinet or dissolve the National Assembly. The submission of the Cabinet's resignation to the Amir because of lack of cooperation with the Assembly is a sufficient reason for the dissolution, as was the case in 1976, 1986 and 1999. In the United Arab Emirates and Bahrain, the belief that the Assembly has ceased to represent the people's will be accepted as a reason for imposing a forced dissolution. In the three states, there is no doubt that the reason for dissolution must be included in the dissolution decree to inform the people and enable them to judge such a reason in accordance with the constitution<sup>92</sup>.
- 2- Dissolution of the Assembly may not be repeated for the same reason. It is worth mentioning that this condition does not put any restriction on the right of the Head of State to apply another dissolution because of similar grounds. The above condition puts a restriction on other dissolutions within certain defined times and circumstances. The same grounds cannot justify another dissolution, especially if the political conditions have not changed.
- 3- In Bahrain and Kuwait, a new election must be held within a period not exceeding two months from the date of dissolution. If the elections are not held within the said period, the dissolved Assembly shall be restored to its full constitutional authority and shall meet immediately as if the dissolution had not taken place, and the Assembly shall then continue functioning until a new Assembly is elected. In the United Arab Emirates, the constitution provides that the decree of dissolution must include a summons to the new Assembly to come into session within sixty days of the date of the decree of dissolution. This

condition is considered an essential safeguard against abuse of the power of dissolution.

- 4- When Martial Law is in force, the Assembly may not be dissolved regardless of the circumstances, which might require it, nor may its member's immunities be interfered with, during such a period.
- 5- The dissolution must take place by a decree issued by the Head of State.

From the foregoing discussion, one can argue that the Kuwaiti Constitution has adopted the main principles of the dissolution of Parliament theory. This theory, which occurred first in England, assumes that the King is, even in practising a forced or royal dissolution, bound to find a minister who will be responsible for his act. In clarifying this point, Markesinis suggested that "from the constitutional and political angle it also appears to be universally accepted that the monarch may never use the prerogative power relating to a dissolution of parliament in an arbitrary way entirely on his own responsibility"<sup>93</sup>. According to Article 102 of the Kuwaiti Constitution if the Amir decides to dissolve the National Assembly he would be doing that according to his Minister's advice. Therefore, there must be a minister willing and prepared to assume responsibility for the Amir's acts. The Amir, then, cannot dissolve the Assembly without his minister's consent, a fact reflected in the Amiri decree which is always countersigned by the Amir, the Prime Minister and the competent Minister<sup>94</sup>. At this point an interesting question arises, where the Amir is able to refuse his ministers' advice. It is important to note that in the Kuwaiti parliamentary experience, no minister has ever advised a dissolution explicitly, although as it has been experienced, such advice has been given implicitly on the three occasions 1976, 1986 and 1999. In fact, according to an established custom, the Crown Prince is usually appointed as Prime Minister. This custom prevents any disagreement becoming publicly known<sup>95</sup>. This form of dissolution is known as ministerial dissolution because it is practised by the Amir as a consequence of conflict between the Assembly and the Cabinet. In the other two states, the Head of State is empowered to dissolve the Assembly without requiring the cooperation of another state organ.

There is no question that respecting the existing constitution means respecting the source from which government enjoys its power. Therefore, any action taken by the government that contradicts with the limitation set up by that source will lead to a challenge to the legitimacy of the government. The practice of dissolution of Assembly in the GCC States has occurred in Kuwait and in Bahrain. In Kuwait, three dissolutions have taken place, in 1976, 1986 and 1999. In Bahrain the only and foregoing dissolution began in 1975. An analysis of the precedents for dissolution in both states shows that there were violations of the constitutional restrictions and conditions with regard to the use of dissolution. The dissolution was to some extent similar in many respects in both states, with a few important differences.

- 1- As regards violation of constitutional requirements, the Head of State in both countries dissolved the Assembly by an Amiri Order, not a decree. The Amir's action also violated a clear provision of the constitution, as the Amir was acting personally, where both constitutions state that the Amir cannot hold responsibility and so should exercise his power through his ministers.<sup>96</sup>. Dissolution practice in both States violated three constitutional Articles with regards to the form in which it existed.
- 2- Dissolution in both States was practically based on the same grounds. The Cabinet offered its resignation to the Amir because it could not work with an unco-operative Assembly. The Amir subsequently dissolved the Assembly.
- 3- The three dissolutions of Assembly in Kuwait were based on the same ground and took place within a short time. Therefore, the two later dissolutions were in violation of the constitution which stipulates that dissolution of the Assembly may not be repeated for the same reason.
- 4- In both States, elections were not called for within the sixty days period. The main differences between the two States is that, in Kuwait in the first dissolution (1976) the election was held after four years and in the second dissolution election was held after five years from the date of dissolution. The last dissolution (1999) was the first time that the dissolution was issued by a decree and it carried a date -within the sixty days- as required by the constitution for election. In contrast in Bahrain, no elections have been held since the dissolution



of the Assembly. The violation of the constitution on this matter is sufficient to describe the action as unconstitutional and therefore made the dissolution is legally invalid. Since it is illegal and the election which represents an important safeguard against the abuse of the right has passed without a revival of the dissolved Assembly, the system becomes illegitimate as far as the constitution is concerned.

- 5- The Amiri order, in the first and second dissolutions in Kuwait and the dissolution in Bahrain, carried out the suspension of some Articles of the constitution concerning the election and the legislative power of the Assembly. This action was contrary to the legal system. According to both constitutions, there are no recognised reasons for suspension of the constitution, except under exceptional circumstances, such as Martial Law. As set up by the constitution, under no circumstances may the Assembly be dissolved or the immunity of its members can be questioned during the time of Martial Law.
- 6- During the dissolution period of the Assembly, the concept of separation of power laid down by the constitution ceased to exist. According to the dissolution Order the Assembly's jurisdiction was shifted to the Amir and the Cabinet. Indeed the governmental system reverted to a mixed government system, in which the executive and legislative powers were vested in one body, the Executive.

From the foregoing discussions, there is evidence to support the view that dissolution was a revolutionary action which suffered from the lack of legitimacy within the constitutional system introduced by the constitution. The constitution affirms the methods and condition in which the Assembly can be dissolved and the constitution suspended. All these conditions were violated, if not ignored by the dissolution order.

It is worth mentioning that, despite the fact that GCC Constitutions are considered rigid ones, the existence of such conventional rules cannot be considered within the GCC States' legal systems. The precedents in the GCC States show that the practice is in conflict with the provisions of the constitution, which stipulates certain conditions for amending the constitution. Moreover,

amending the constitution is used as another instrument in the government's hand to control the legislature. A clear example occurred in Oman. The government in 1987 introduced amendments to the Law concerning the legislative power of the Consultative Council, in which draft legislation in economic and social matters and the five year plan should be referred to the Council for consideration. After the establishment of the Shura Council in 1992, a conflict occurred between the new Council and Government in regard to the interpretation of economic and social law. The Government gave a tight interpretation to the term, while the *Majlis* gave a wide meaning which included any law that could affect citizens economically and socially. To put an end to the conflict, the Government amended Article 29 of the Internal Regulations. The amended Article put a serious restriction on the *Majlis'* powers when it stipulated that the government may issue laws without passing them to the *Majlis* when the Sultan deems that the higher interest of the State requires promulgation of the law without referring it to the *Majlis*.

In a variety of important ways, the idea of the separation of powers has shaped constitutional arrangements and influenced the constitutional thinking in the GCC States. The separation, although not absolute, ought not to be lightly dismissed. Thus, where the doctrine is apparently breached, it is an important effect in limiting the extent of the breach. The force of the separation of powers doctrine seems to lie in the principle that decisions should be taken free of political influence and require the implementation of rules of law. Therefore, some of the GCC States' Constitutions have adopted an independent institution to exercise a particular kind of balance in the discretion left to judges when they are called upon to interpret and apply the provisions of the constitution.

#### **5-4. The Role of the Judicial System in the GCC States in Interpreting the Constitution.**

The participation of constitutional scholars, judges, lawyers and other concerned parties will no doubt benefit the development of constitutional law. The fact is that there are several provisions in the constitution which are open-ended. In applying the open-ended constitutional provision the court has to inject meanings and choices of substantive values. The argument, which does take

place, is about the proper source of choices of the values to apply the constitution. Certainly, the legislature applies the constitution and its provisions to practical situations and in doing this it gives certain meanings to some open-ended constitutional provisions. The executive also gives meanings to some open-ended constitutional provisions. The legislature and the executive sometimes give meanings and interpret the constitution without expressly announcing that they are doing so and they might reach conflicting interpretations. There is no doubt that in those countries with written constitutions, the supremacy of the constitution is protected by a higher court, whether it is a supreme court as is the case in the United States or a constitutional court, as is the case in Germany. The court was especially created and given certain powers by the constitution to deal with the entire range of subjects covered by the constitution and these interpretations will substantively affect the different subjects. The most important subject with which a constitution may deal is the protection of fundamental rights, but courts also review the acts of the legislature and the executive. With its independence and autonomy, the court acts as check on the other branches of government and it deals with matters which sometimes appear, on the face of it, to be procedural and sometimes with more obviously substantive provision.

In order to exercise its function properly, the court is given several different techniques by which to express its authority. First, the court has the authority to decide upon disputes that exist between the governmental branches. Second, it may declare the unconstitutionality of any act, regardless of the course of its enactment. Third, it may create new principles beside the constitutional document with regard to matters not promulgated by the constitution. Finally, it may establish an undisputed understanding of some constitutional principles, which might be considered ambiguous in their wording, by means of interpretation.

The interpretation of the constitutional court is usually final and binding on all other governmental branches. In some countries, the power of the constitutional court to constitutional interpret is based on explicit delegation by the constitution, as is the case in Germany<sup>97</sup>. In other constitutions<sup>98</sup> this power is



claimed by the court as a necessary requirement of their function of applying the law<sup>99</sup>.

The roots of the judicial review lie with the ancient notion that people have a right to disobey unjust laws<sup>100</sup>. Judicial review in the United States is based on the theory of the separation of powers. This is coupled with the American system of checks and balances. It is arguable that those who framed the United States constitution did not in fact intend to give the judiciary the power to review the constitutionality of acts passed by the Congress. In 1803 Justice Marshall, in his opinion in *Marbury v Madison* did not hesitate to announce the right of the courts to disregard those legislative acts which it considered to be contrary to the constitution<sup>101</sup>. The Supreme Court, through its power of judicial review, asserted its power to have the final say about interpretation of constitutional provisions<sup>102</sup>.

Judicial review became popular in different parts of the world after World War II. In Western Europe the legislature was seen as the supreme source of law and there was resistance against any attempt by the courts to impose higher or constitutional standards on legislative acts. In fact, after the collapse of the Nazi and Fascist regimes, scholars started to consider the judiciary as a means of checking the legislature. The most comprehensive statement of judicial review of the constitutionality of laws in Europe is that contained in the Basic Law of Germany<sup>103</sup>. The absence of a constitutional court in the United Kingdom constitutional system raises the question of its relation with an unwritten constitution. Some scholars ascribe the absence of the court's role in matters involving constitutional and administrative Law issues to the lack of a written constitution. They added that this absence has affected the British constitutional arrangement and led, in some ways, to the result that many matters which might have been regarded as law-related in some countries have to be solved in other ways in the United Kingdom<sup>104</sup>.

In the GCC States, it is only the Constitutions of Kuwait and United Arab Emirates which have adopted a special judicial body to take the responsibility of preserving and protecting the supremacy of the constitution by means of reviewing the constitutionality of acts of all other authorities and laying down

binding final decisions in legal disputes taking place between powers, through many different techniques.

#### **5-4-1. The Role of the United Arab Emirates Supreme Court in Interpreting the Constitution.**

The judicial system of the United Arab Emirates, as a federal state, is divided into two levels: federal courts and local courts. Federal courts are composed of three types: the Supreme Court, courts of Appeal and courts of First Instance.<sup>105</sup> Judicial Review was adopted in Article 99 of the United Arab Emirates Constitution. However, the court only became effective in 1973. The Supreme Court was given, *inter alia*, exclusive powers to interpret the provisions of the Constitution at the request of any federal authority or the local government of any emirate. It was responsible for the examination of the constitutionality of federal law. Moreover it has the power to declare unconstitutional acts and laws passed by the executive and the Union National Assembly<sup>106</sup>. In other words, the Supreme Court acts as a check upon the governmental branches. The court's decisions are final and shall be binding upon all other authorities<sup>107</sup>.

In order to secure the independence of the Supreme Court judges, the Constitution stipulated that the president and judges of the Supreme Court should not be removed while they administer justice. Their tenure of office shall not be terminated except in the following occasions: death, resignation, reaching the age of retirement, end of contracts for those who are appointed by fixed term contract, appointment to other offices and permanent incapacity and disciplinary discharge<sup>108</sup>.

The introduction of a new judicial institution beside the traditional legal framework was needed for several reasons; first, to settle disputes between the Union National Assembly and the Government. Second, the traditional power monopolists were against any challenge to the *status quo* and not willing to renounce any part of their authority. Third, there was a power struggle among different authorities within the new federal system. Each authority was keen to consolidate its constitutional power and to extend it to cover more issues on

which the constitution was silent<sup>109</sup>.

During the early years of the Federation, the Supreme Court was faced with several issues regarding its own jurisdiction and the limits of the structure of the Federal Judiciary which are possible under the Constitution. These cases were the results of several factors. One of the main factors was the generalisation contained in the Constitution. The framers of the Constitution chose to deal with a wide range of subjects in general terms, leaving details to the legislature. In the early stages of the Federation, when the legislative vacuum was extensive, the executive authorities were faced with situations for which there was no legislative guidance, only general Constitutional provisions. In response, they resorted to the Supreme Court for more detailed guidance on the application of the constitution. The legislative authority faced some difficulties in its effort to provide legislation for the application of the Constitution; the Court's help and authority was needed in this situation<sup>110</sup>.

There were unclear limits to the jurisdiction and function of the Court in its power of interpretation, whether it included the Constitution only or covered statutes and other legislation as well, which prompted the Court to clarify its power and provide guidance<sup>111</sup>. The increased number of cases brought to the Court reflects the respected position of the Supreme Court in the governmental system of the State. Two major cases will be discussed as example of the Court's jurisdiction in regard to the relationship between legislature and executive in the relevant provision of the Constitution.

#### **a- The Case of the Social Security Bill.**

This case was brought to the court by the Council of Ministers because of a dispute it had with the Union National Assembly about the powers of the Assembly with regard to the legislative process. The question of the powers of the Council of ministers and the Union National Assembly arose in the process of enactment of the Social Security Law. When the bill of the law was presented by the Council of Ministers to the Assembly, the latter introduced amendments to the bill. The Council of Ministers referred the bill for enactment to the Supreme Council which approved the original contents of the bill without the amendments suggested by the



Assembly, and the president signed it to become law.

The Assembly objected to the enactment of this law as being in violation of the procedure established by the Constitution<sup>112</sup>. The Assembly insisted that the bill was supposed to be re-submitted to it, in the event of its amendments not being accepted by the Supreme Council, as the enactment procedure stated in the Constitution.

The Council of Ministers argued that the question of referring the bill back to the legislature was optional. The President or the Supreme Council may or may not choose to refer it back. It was not a compulsory duty on either of them and the failure to do so did not affect the validity of the promulgated law. Therefore, the Council of Ministers argued that there was no breach of the Constitution by the action of the Supreme Council and the President<sup>113</sup>.

The Council of Ministers, acting as the representative of the Government, after a period of dispute with the Assembly, moved to put an end to the argument by submitting the matter to the Supreme Court to obtain its decision, which would be binding on all and remove tension between the executive and the legislature. Indeed, the Council wanted the Court to announce in its favour, limiting the authority given to the Assembly.

The Supreme Court decided in favour of the Union National Assembly by its insistence that, in the event of disapproval of the National Assembly's interventions, re-submission of bills to the Assembly is part of the legislative process. The Court, furthermore, set forth that the consultative nature of the Assembly does not obstruct its right of re-submission. The President must wait for the Assembly's final opinion before sanctioning the bill.

This case has introduced certain principles into the legal and political framework of the United Arab Emirates. First, the Supreme Court became the arbiter between the federal institutions. Second, the message of the Court's decision was that the Constitution would be applied even against the wishes of the Supreme Council and that federal institutions had constitutional powers which they were entitled to exercise. Third, the role of the legislative process of the Union National

Assembly was strengthened and promoted.

**b- The Case of the National Bank of Investment and Development .**

In this case the Union National Assembly and the Council of Ministers were involved in a dispute about the extent of the rights of the Assembly, from simply amending bills to actually introducing new bills. The cause of this dispute was that the Council of Ministers submitted to the Assembly a bill containing amendments to the Law of the Investment and Development Bank. In fact, the bill included only one amendment which related to the title of the bank. The Assembly took the opportunity of introducing a number of amendments to the original bill. The Council of Ministers objected to the position taken by the Assembly on the grounds that the Assembly, according to Article 89 of the Constitution, must limit its amendments to the content of the bill submitted by the Council of Ministers. Therefore, its action in this case was a new bill and new amendments which was beyond the powers delegated to it by the Constitution<sup>114</sup>. The Assembly submitted an application to the Supreme Court for interpretation of Article 89 of the Constitution.

The Assembly argued that they could add, remove parts, or change parts of bills submitted, whether they were new bills or merely bills proposing amendments to existing laws. Moreover, they believed that the constitution did not contain any roles which restrict the power of the Assembly in the manner it chose to amend or change these bills. They argued that, even if bills carry amendments to existing laws then these bills are in essence new laws on their own<sup>115</sup>.

The Supreme Court's decision was that, according to Article 89 of the Constitution bills seeking to amend existing laws should be limited to the subject of the amending bill and should not touch the other contents of the original law unless this is necessary to the operation of the amendments supplied by the Assembly and that those changes in the original law should be kept to the least possible extent. In this case the Court had proved that it was prepared to stand with the Council of Ministers and to satisfy its desires if the Constitution so demanded<sup>116</sup>.

From the foregoing discussion it can be concluded that the Supreme Court's opinion in both cases was compatible with the constitutional provisions and did not

extend them beyond reasonable limits nor restrict them unjustifiably. If the Constitution denied the Assembly the power to introduce new bills, then the Court was not willing to allow that institution to achieve that power under the disguise of making amendments to bills submitted by the Council of Ministers.

The Court, in its decisions, managed to establish its independence from the Government, and to prove its intention to defend and promote the principles of the Constitution. Through its role, the court played a useful part in removing tensions and solving disputes about the distribution of powers between the legislature and the executive.

#### **5-4-2. The Role of the Kuwaiti Constitutional Court in Interpreting the Constitution.**

According to Article 173 of the Constitution, a special judicial body had to exist to undertake the responsibility of preserving and protecting the Supremacy of the constitution by means of reviewing the constitutionality of acts of all other authorities. However, despite the fact that the constitution called in clear wording for the establishment of a constitutional court, the court did not come into existence until 1973, eleven years after the constitution was promulgated<sup>117</sup>. In the said period and as a consequence of the absence of a special judicial body charged by the constitution with preserving the constitutionality of acts and dealing with legal disputes regarding the wording of the constitution, several sources were introduced and took part in interpreting the constitution, such as the explanatory note of the constitution, the Constitutional Advisor of the National Assembly, Parliamentary special committees and the governmental Department of Legislation and legal advisor. The common feature of all these institutions is the limited binding effect they have had upon other state organs.

According to Act No. 14 of 1973 the Constitutional Court shall be composed of seven members, five elected by the Judiciary Council, with one of them the Chief Justice of the Court, one member to be appointed by the National Assembly and another to be appointed by the Cabinet. The rules on formation of the Court provide that its members are politicians in addition to judges and that formation reflects the legal and political circumstances in which the Court was formed.



The Court has been given the following powers to maintain its authority. First, the court's main power is in protecting the written constitution by declaring the unconstitutionality of any legislation that violates the constitution or one of its principles, whether such legislation an act of parliament, act of executive or delegated legislation. Second, it has the authority to declare the unconstitutionality of an act, decree or statutory instrument or the illegality of statutory instrument enacted by the administration contrary to an existing law<sup>118</sup>. Third, it has the power to interpret the constitution. Fourth, the court has the power to decide upon the validity of the National Assembly elections.

The Court since its establishment has dealt with several cases, not only with the interpretation of the constitution, but also what have been seen as interventions in political disputes as a means of settling political and legal arguments that took place between the two branches, the Assembly and the executive. Two cases in which political disputes that took place between the Assembly and the executive were brought to the Court will be discussed here as an example.

#### **a- The Parliamentary Question Case.**

In this case, the Government went to the Constitutional Court asking for an independent interpretation of Article 99 of the Constitution, which regulates Parliamentary questions. The cause of this dispute was that, in 1981 a Parliamentary Question was sent to the Public Health Minister asking the names, numbers and the diseases of those patients who had been sent out of Kuwait for medical treatment at the Ministry's expense<sup>119</sup>. The Concerned Minister replied by giving figures regarding the number of patients and their escorts. The Assembly member was not satisfied with the Minister's answer and insisted on knowing the patients' names and cases.

The Minister's objection to answering such a question was that giving such information would be a breach to Article 6 of Law No. 5 of 1972 which provided that "it is unlawful for doctors to disclose any secret information that comes to their knowledge as part of their job".

The Assembly member transformed his question into cross-examination of

the Minister, indicating his fear that such a pretext would be used by other Ministers to prevent the Assembly members from exercising their political check upon the executive power.

The Court's decision was that, despite the fact that Parliamentary question is a right of the Assembly members, because it is one of the parliamentary techniques to control the executive power as laid down by the constitution, however, according to Article 172 of the Internal Regulation of the Assembly this right is not unlimited. It added that, according to Article 99 of the constitution, Parliamentary questions and cross-examinations are for the same reasons, a limited right. These rights are restricted by other constitutional rights, one of which is the individual's right to protect its privacy. Therefore, the information requested by the member of the Assembly when he asked for the names of the patients violated the said right.

#### **b- The Right of Parliament to Form Select Committees.**

The National Assembly formed two committees to investigate the affairs of the Central Bank of Kuwait after the stock market crisis. One of them conducted its inquiries for a short period of time until it reached deadlock as a result of the Government's lack of co-operation, a matter which forced it to undertake tougher measures against the Government. The other could not start its work because the concerned Minister rejected attempts to investigate the departments within his responsibility. In both cases, the Government sent an application to the court asking for an independent interpretation of Article 114 of the Constitution concerning the select committee's power and restriction thereon. In the above cases, the Government argued that the Assembly has the right to form a selected committee for a specific matter, and that such a case had occurred during the previous Cabinet.

The Assembly challenged the court's right to decide upon an independent interpretation of a provision of the constitution, and argued that the court could only decide upon a dependent interpretation whenever it seemed necessary.

The court first ruled that it is the constitution in Article 173 which entrusted it with the authority to decide upon independent interpretation. On the matter concerned, the court decided that the legislative right to establish select committees is an original right based upon the nature of the parliamentary system, even though

not explicitly mentioned in the constitution, because through these committees, the legislature can understand the truth regarding any matter delivered to it incomplete by the competent Minister. It added that the Assembly's authority can be extended to include any matter related to its legislation or control function and the committee's task is not limited to specific fact. Furthermore, the investigation of the committee can include any acts of the executive authority, regardless of the length of the period, as long as it is reasonable, even if such investigation requires going back to previous Cabinets or a previous Assembly. The court stated that there is no challenge here to the scope of the minister's responsibility at the time when he came to power, because that matter is not connected with ministerial responsibility. Instead, it is related to investigating the matter determined by the legislative power when forming a select committee. Therefore, its power should reach the root of the matter under investigation if a proper solution is to be achieved. Moreover, the committee's right to investigate and review all department papers, which are subject to such an inquiry, does not violate the concept of the separation of powers. Rather, it safeguards the principle and makes it more effective<sup>120</sup>.

Both of the cases studied previously can be regarded as products of political disputes between the two arms of the government present on the floor of the Assembly. The court made it clear that the interpretation of the constitution is a substantial part of its function and, therefore, it has the authority, for the purpose of carrying out its function, to use legal and political methods in settling disputes of a political nature. The opinion of the court in the second case is, obviously, against the desire of the government and it can be seen a remarkable decision. The importance of this decision is that, first it was brought by the Council of Ministers desiring a favourable declaration from the court in an issue which was in dispute between it and the Assembly; the decision of the Court was against the wishes of the Council of Ministers. Second, it is a lesson to the Council that the court was not a subsidiary of the Council and should not be expected to submit to its desire.

After the above discussion, it becomes clear how the court, in both states, managed to establish its independence from the Government, and to prove its intentions to defend and promote principled interpretations of the constitution. One of the most remarkable achievements of the court was its refusal to submit to the



demands of the executive authority for concentration of power and for domination of the executive rule in the governmental system.

### **5-5- Conclusion.**

In this chapter we have examined the means available to the GCC Assemblies for exerting influence upon the executive (and vice versa). It was found that issue of warnings by the Assembly was used most frequently and with the greatest effect, but on balance, that the government continued to have the upper hand vis-à-vis the Assembly in the matter of exerting influence upon the policy process.

It is evident that there is no division of legislative and executive powers in most of the GCC States, and that the separate headings for these powers in the constitution do not have sufficient content, either theoretically or practically. The Head of State is the supreme executive as well as legislative body of the Government.

Unlike other Assemblies in the GCC States, the Kuwaiti National Assembly is empowered with the supervision responsibilities, such as the right to interpellate Cabinet members, questioning them thoroughly and demand full explanation on any subject. The Assembly is also empowered to supervise the government's actions, and form a committee for inquiry and investigative purposes in relation to any matter that falls under the Assembly's jurisdiction. However, due to many customary rules, the legislature, as has been shown, was unable to make the theory of Ministerial Responsibility effective, and on very rare occasions the Assembly was successful in holding ministers' responsibility to enforce their resignation. The custom of the Crown Prince being a Prime Minister has created an essential problem for the doctrine of the separation of powers. First, it creates an unbalanced relationship between the two powers, because it undermines the role of the Assembly in using the individual Ministerial Responsibility techniques since the Cabinet protects its members by announcing ministerial solidarity. Second, the concept of Collective Ministerial Responsibility as a distinctive effect on Minister's resignation has not been used by the Assembly because of its fear that the Cabinet will use the customary technique which is called the no cooperation between the

Prime Minister and the Assembly. This technique has been used three times in Kuwait to dissolve the Assembly.

Dissolution of Parliament is an acceptable weapon existing within parliamentary government. While its adoption and regulation by the Kuwaiti and Bahraini constitutional arrangement is logical, in fact, the dissolution as practiced destroyed the legitimacy of the legal system. By this revolutionary step, first, the constitution, the superior source of legitimacy of the state was suspended. Second, all acts that took place during the said period were unconstitutional because they were formulated according to methods not permitted in the constitution. Third, the practice of forced dissolution was mainly to support the executive against the legislature. The dissolution of the Assembly gave credence to the argument that the Kuwaiti and Bahraini experiment had succeeded to a degree which the government perceived to be undermining and dangerous to its authority. Moreover, it signifies that both Assemblies were strong and defiant institutions that wanted to exercise their functions to the fullest, unlike the legislatures of other GCC States, which are merely a rubber-stamp survivalists.

The GCC States, like many other underdeveloped countries, need to preserve the objectives of their constitutional arrangements. The judicial system was and remains the best body to protect such arrangements. The government tendency towards violating the constitution is the reason for the establishment of such an institution. The Kuwaiti and the United Arab Emirates constitutional courts' increasing willingness to review and decide upon cases involving political questions must be recognised and encouraged for other GCC States. The court's authority in this respect must be enlarged to play a more effective role.

GCC regimes are aware that their oil- and investment- fuelled revenues can only buy time and cannot respond and channel the latent and active demands and frustration forever. The ruling elites know that popular participation and political reforms are crucial for lasting political stability and legitimacy for these States.

## Endnotes.

- <sup>1</sup> - M.J. Vile, *Constitutionalism and the Separation of Power*. Oxford: Clarendon Press, 1967, p.2.
- <sup>2</sup> - Cit.,ed in Harold J Laski, *Authority in the Modern State*. New Haven: Yale University Press. 1927.p. 71
- <sup>3</sup> - J D B Mitchell, *Constitutional Law*. (Second Edition) Edinburgh: W Green and Sons Lit., p.40.
- <sup>4</sup> - M J Vile. op. cit., p 12
- <sup>5</sup> - M J Vile, op. cit., pp.14-18.
- <sup>6</sup> - E. C. S. Wade and A. W. Bradley, *Constitutional and Administrative Law*. ( Tenth Edition) London: Longman 1985. P. 53.
- <sup>7</sup> - W,B. Gwyn, *The Meaning of the Separation of Powers*. New Orleans: Tulane University Press, 1965, pp. 32-34
- <sup>8</sup> - S. A. de Smith, *Constitutional and Administrative Law*. (Fourth Edition) England; Middlesex: Penguin Books, 1981 p. 36.
- <sup>9</sup> - M. J. Vile, op. cit., pp. 14 - 18
- <sup>10</sup> - E. C. S. Wade and A. W. Bradley. op. cit., p. 50
- <sup>11</sup> - S. A. de Smith, op. cit., pp. 36-37.
- <sup>12</sup> -George Lawson, *An Examination*, pp.31-32 cit.,ed in W.B. Gwyn, op. Cit., pp. 37-39.
- <sup>13</sup> - - M. J. Vile, op. cit., p. 57.
- <sup>14</sup> - Quoted in Vile, op. cit., 58-62.



- <sup>15</sup> - - M. J. Vile, op. cit., p.69.
- <sup>16</sup> -- E. C. S. Wade and A. W. Bradley. op. cit., p. 50
- <sup>17</sup> - M. J. Vile, op. cit., p.87.
- <sup>18</sup> - Quoted in E. C. S. Wade and A. W. Bradley. op. cit., p. 51.
- <sup>19</sup> - Ibid.
- <sup>20</sup> - Sir Ivor Jennings, *The Law and the Constitution*. London: University of London Press, 1960.app., 1.
- <sup>21</sup> - E. C. S. Wade and A. W. Bradley. op. cit., p. 51.
- <sup>22</sup> - E. C. S. Wade and A. W. Bradley. op. cit., p. 52
- <sup>23</sup> - Ibid.
- <sup>24</sup> -E. C. S. Wade and A. W. Bradley. op. cit., p.59.
- <sup>25</sup> - Geoffrey Marshall, **Introduction**. p.1. In Geoffrey Marshall(ed.) , *Ministerial Responsibility*. Oxford: Oxford University Press, 1989.
- <sup>26</sup> - G. Marshall, op. cit., p.2.
- <sup>27</sup> - Geoffrey Marshall and Graeme C Moodie, *Some Problems of the Constitution* (revised edition) London: Hutchinson University Library, 1971. P. 42.
- <sup>28</sup> - A. H. Birch, *Representative and Responsible Government: An Essay on the British Constitution*, London: George Allen and Unwin Ltd., 1964. Pp. 18-20.
- <sup>29</sup> -Cit.,ed in A. H. Birch, op. cit., p.20
- <sup>30</sup> - J. A. G. Griffith and Michael Ryle, *Parliament: Function, Practice and*

*Procedures* London: Sweet and Maxwell, 1989. P. 23.

- <sup>31</sup> - Ivor Jennings, *Cabinet Government* ( 3<sup>rd</sup> ed.,) P 277. Cit.,ed in David L. Ellis, **Collective Ministerial Responsibility and Collective Solidarity.** In Geoffrey Marshall, op. cit., p 48.
- <sup>32</sup> - Frank Stacey, *The Government of Modern Britain*, Oxford: Clarendon Press, 1968 p. 256.
- <sup>33</sup> -David L. Ellis, op. cit., p.49
- <sup>34</sup> -A major exception to the principle of collective responsibility was made in April 1975. The Labour Party was divided on the question whether the United Kingdom should remain in the Common Market. It was agreed that Ministers should have limited right, outside Parliament, to express views at variance with the official view of the Government that the United kingdom should remain in. Seven Cabinet Ministers openly campaigned, in the period leading to the referendum on the question, against the majority view. For more details, see J. A. G. Griffith and Michael Fyle, op. cit., pp. 23-24.
- <sup>35</sup> - David Butler, **Ministerial Responsibility in Australia and Britain.** *Parliamentary Affairs, Vol.; XXVI No.4, Autumn 1973.* P. 410.
- <sup>36</sup> - J. A. G. Griffith and Michael Ryle, op. cit., pp.27-28.
- <sup>37</sup> -Cit.,ed in S. E. Finer, **The Individual Responsibility of Ministers.** In Geoffrey Marshall, op. cit.,p.115.
- <sup>38</sup> - Quoted in - J. A. G. Griffith and Michael Ryle, op. cit., p.35.
- <sup>39</sup> - S. A. Walkland and M Ryle, **Question in the House** , in S. A. Walkland and M Ryle,(eds.) *The Commons in the Seventies* London: Fontana, 1977. P. 152

- <sup>40</sup> A. H. Birch, *op. cit.*, p. 25
- <sup>41</sup> - Helen Irwin, Andrew Kennon, David Natzler and Robert Rogers, **Evolving Rules**, in Mark Franklin and Philip Norton (eds.) *Parliamentary Questions*, Oxford: Clarendon Press, 1993. P. 32
- <sup>42</sup> - Adel Al-Tabtabai, **Legislatures in the Arab Gulf States** (Arabic) *cit.*, ed in Mohammad Abdulla M Al-Rokn, *A Study Of the United Arab Emirates Legislature.*, *op. cit.*, p. 265.
- <sup>43</sup> -Mukherjea A. R. , *Parliamentary Procedure in India*, (second edition) Oxford: Oxford University Press, 1967. p. 92.
- <sup>44</sup> - D. N. Chester and Nona Bowring, *Questions in Parliament*, Oxford: Clarendon Press, 1962. P. 13.
- <sup>45</sup> - *Ibid.*,
- <sup>46</sup> - Article 99 of the Kuwaiti Constitution, Article 93 of the United Arab Emirates Constitution and Article 66 of the Bahraini Constitution..
- <sup>47</sup> -Article 70 of the Internal Regulation of the Omani *Shura Majlis*, Article 106 of the Internal Regulation of Union National Assembly of the United Arab Emirates, Article 121 of the Internal Regulation of the Kuwaiti National Assembly and Article 89 of the Internal Regulation of the Qatari *Shura Majlis*.
- <sup>48</sup> - Article 71 of the Internal Regulation of the Omani *Shura Majlis*, Article 107 of the Internal regulation of Union National Assembly of the United Arab Emirates, Article 122 of the Internal Regulation of the Kuwaiti National Assembly and Article 90 of the Internal Regulation of the Qatari *Shura Majlis*
- <sup>49</sup> - *Ibid.*



- <sup>50</sup> - Mohammad A. A. Al Moqatei , *A Study of the Kuwaiti Constitutional Experience (1962-1986)* Unpublished Ph.D Thesis University of Warwick, 1987.. p. 255.
- <sup>51</sup> - Al-Rokn in his study on the UAE Assembly found that members of the Assembly have tabled only sixty-three question during the period of 1972-1989. For further details see Mohammed A. Al-Rokn, *A Study of the United Arab Emirates Legislature Under the 1971 Constitution with special reference to the Federal National Council.* op. cit., pp. 265-268.
- <sup>52</sup> - J. A. G. Griffith and Michael Ryle, op. cit., pp. 15-17.
- <sup>53</sup> -Ibid.,
- <sup>54</sup> - Article 92 of the United Arab Emirates Constitution and Article 112 of the Kuwaiti Constitution.
- <sup>55</sup> - Article 77 of the Internal Regulation of the Omani *Shura Majlis*, Article 146 of the Internal Regulation of the Kuwaiti National Assembly, Article 103 of the Internal Regulation of the Union National Assembly of the UAE and Article 98 of the Internal Regulation of the Qatari *Shura Majlis*.
- <sup>56</sup> - Adel Al-Tabtabai, **Legislatures in the Arab Gulf States** (Arabic) cit.,ed in Mohammad Abdulla M. Al- Rokn, op. cit., p.
- <sup>57</sup> - In the United Arab Emirates the government has used the technique of higher interest only five times since 1972. In Oman it has been used only twice in subjects related to oil prices.
- <sup>58</sup> -- Mohammed A. Al-Rokn, op. cit., p.276.
- <sup>59</sup> -In March 1994, at a meeting of the *Majlis*, the government presented a proposal about a comprehensive strategy it intends to follow until the year 2025, to exploit the available water resources and utilize them according to scientific methods. At the session,the Minister of Water Resources was

questioned vigorously by *Majlis* members who were critical of some aspects of the proposal. Due to the discussion, the government developed a number of new plans to explore water resources and find new ways to utilize those resources efficiently.

<sup>60</sup> - Article 111 of the Internal Regulation of the Union National Assembly of the UAE

<sup>61</sup> - Mohammed A Al-Rokn, op. cit., p.270.

<sup>62</sup> - Article 114 of the Kuwaiti Constitution.

<sup>63</sup> -Ibid.

<sup>64</sup> - Article 147 of the Internal Regulation of the Kuwaiti National Assembly was added by the law No 1/64 in 1964.

<sup>65</sup> - Article 147 of the Internal Regulation of the Kuwaiti National Assembly stated that procedures of investigation shall be the same as those set out in Articles 8 and 9 of the Internal Regulation of the Assembly.

<sup>66</sup> - Mohammad A. A. Al Moqatei, op. cit., p.257.

<sup>67</sup> -Ibid.

<sup>68</sup> - Mohammed A Al-Rokn, op. cit., p. 283.

<sup>69</sup> - Valentine Herman and Francoise Mendel, *Parliaments of the World*. Scotland: Thomson Litho Ltd, 1976.p. 857.

<sup>70</sup> - Article 100 of the Kuwaiti Constitution.

<sup>71</sup> - Article 134 of the Internal Regulation of the Kuwaiti National Assembly.

<sup>72</sup> - Article 135 of the Internal Regulation of the Kuwaiti National Assembly.

- <sup>73</sup> -Article 143 of the Internal Regulation of the Kuwaiti National Assembly
- <sup>74</sup> - Article 101 of the Kuwaiti Constitution.
- <sup>75</sup> - Article 103 of the Kuwaiti Constitution.
- <sup>76</sup> - Mohammad A. A. Al Moqatei, op. cit., pp. 290-298.
- <sup>77</sup> - Article 64 of the United Arab Emirates Constitution and Article 52 of the Omani Basic Statute of the State (Constitution).
- <sup>78</sup> - Article 71 of the Kuwaiti Constitution.
- <sup>79</sup> - Mohammed A Al-Rokn, op. cit., p.263.
- <sup>80</sup> -Abdullah Khalifah Al-Shayeji, *Democratization in Kuwait: The National Assembly As A Strategy for Political Survival*, Unpublished Ph D Dissertation, University of Texas at Austin, 1988. p. 295.
- <sup>81</sup> - Ibid.
- <sup>82</sup> - Article 69 of the Kuwaiti Constitution, Article 54 of the United Arab Constitution and Article 42 of the Omani Constitution
- <sup>83</sup> - Article 181 of the Kuwaiti Constitution.
- <sup>84</sup> - B. S. Markesinis, *The Theory and Practice of Dissolution of Parliament: A comparative study with especial reference to the United Kingdom and Greek experience*. Cambridge: Cambridge University Press, 1972. Pp. 26-27.
- <sup>85</sup> -Micel Ameller, *Parliaments: A Comparative Study on the Structure and Functioning of Representative Institutions in Fifty-Five Countries*. London: Unwin Brothers Lit.1966. p. 286.



- <sup>86</sup> - B. S. Markesinis, op. cit., p. 7.
- <sup>87</sup> - David Butler, *Governing without Majority: Dilemmas for Hung Parliaments in Britain*. (second Edition) London: Macmillan Press Ltd., 1986. P. 122.
- <sup>88</sup> - H. V. Evatt *The King and His Dominion Governors* (second Edition) London: 1967. P. 254.
- <sup>89</sup> -A. V. Dicey, *Introduction to the Law of Constitution* (8<sup>th</sup> Edition) London: Macmillan and Co., 1920. P.420.
- <sup>90</sup> - A. Berrie Dale Keith, *The King and the Imperial Crown*, London: Longmans, 1946.p.140.
- <sup>91</sup> - Geoffrey Marshall, *Constitutional Conventions*, Oxford: Clarendon Press, 1984 p. 52.
- <sup>92</sup> - Article 65 of the Bahraini Constitution and Article 102 of the Kuwaiti Constitution.
- <sup>93</sup> - B. S. Markesinis, op. cit., p.56.
- <sup>94</sup> - Article 55 of the Kuwaiti Constitution.
- <sup>95</sup> -- Mohammad A. A. Al Moqatei, op. cit., p. 335.
- <sup>96</sup> Paragraph (a) of Article 33 of the Bahraini Constitution and Articles 54 and 55 of the Kuwaiti Constitution.
- <sup>97</sup> - The Article 93 of the German Basic Law (Constitution) gave the constitutional court the power to determine the constitutionality of Federal and Laender (State) legislation in clear and explicit., provision.
- <sup>98</sup> In the Constitution of the United States there is no explicit., provision empowering the judiciary with the final interpretation of the constitution.

Chief Justice Marshall announced this right of the court in *Marbury v Madison* in 1803.

- <sup>99</sup> - J.E. Ely, *Democracy and Distrust: A Theory of Judicial Review*. Cambridge; Massachusetts: Harvard University Press 1980. p.102.
- <sup>100</sup> - Cappelletti, M., *Judicial Review in the Modern World*. Indianapolis; Indiana: The Bobbs-Merrill Co., 1971. p viii.
- <sup>101</sup> - Lawrence Baum, *The Supreme Court*. Second Edition, Washington D.C: C. Q Press 1985 pp. 12-15.
- <sup>102</sup> - Ibid.,
- <sup>103</sup> - E. McWhinney, **Supreme Courts and Judicial Law Making, Constitutional Tribunals and Constitutional Review**. Dordrecht: Martinus Nijhoff Publisher, 1986, p.71
- <sup>104</sup> -Geoffrey Wilson **Updating old constitutions** Cit.,ed in *Anglo-Japanese Law Symposium Volume*. Published by the Legal Research Institute of the school of law, University of Warwick, 18-20 December 1986. pp. 9-12. Partick McAuslan, **Recent Trends in Administrative Law in England**, the above source, pp.70-71.
- <sup>105</sup> - Ballantyne, W. M, *Commercial Law in the Arab Middle East: The Gulf States*, London: Lloyd's of London Press, 1986. 58.
- <sup>106</sup> - Article 99 of the United Arab Emirates Constitution.
- <sup>107</sup> - Article 101 of the United Arab Emirates Constitution.
- <sup>108</sup> - Article 97 of the United Arab Emirates Constitution.
- <sup>109</sup> -Mohammed A. Al-Rokn, op. cit., pp. 309-310.
- <sup>110</sup> -Hadif Rashid Al-Owais, *The Role of the Supreme Court in the Constitutional*

*System of the United Arab Emirates: A Comparative Study*, Unpublished Ph D Thesis, University of Durham, 1989, p. 300.

<sup>111</sup> - Ibid.,

<sup>112</sup> - Paragraph a of Article 110 stipulates that “ If the Union National Assembly inserts any amendment to the bill and this amendment is not acceptable to the President of the Union or the Supreme Council, or if the Union National Assembly rejects the bill, the President or the Supreme Council may refer it back to the National Assembly. If the Union National Assembly introduces any amendments on that occasion which is not acceptable to the President of the Union or the Supreme Council, or if the Union National Assembly decides to reject the bill, the President of the Union may promulgate the law after ratification by the Supreme Council”.

<sup>113</sup> --Hadif Rashid Al-Owais, op. cit., pp. 291-293.

<sup>114</sup> - Adel Al- Tabtabai, *The Legislative Authority in the Arab Gulf States*.(in Arabic) Cit.,ed in Hadif Rashid Al-Owais, op. cit.,p. 296.

<sup>115</sup> - Hadif Rashid Al-Owais, op. cit., p.297.

<sup>116</sup> - Ibid.,

<sup>117</sup> - Mohammad A. A. Al Moqatei, op. cit., p. 397.

<sup>118</sup> - Article 6 of Act no. 14 of 1973 concerning The Constitutional Court.

<sup>119</sup> - Mohammad A. A. Al Moqatei, op. cit., p 429

<sup>120</sup> - Mohammad A. A. Al Moqatei, op. cit., pp. 432-33.



## **Chapter Six: Reform: Rationalisation and Redemocratisation.**

### **6-1- Introduction.**

Constitutional systems in the GCC States are the product of internal and external factors that together forced the adoption of what might be called a participant system. Participation in the GCC States in the contemporary liberal sense was not the result of deep-seated convictions and beliefs among the ruling elites about its virtues and principles. It was more the product of pressing circumstances that moved the ruling families to adopt representatives systems with limited powers, because the alternative would have been chaos and instability. The introduction of a parliamentary system gave GCC States a sense of purpose and feeling of nationhood.

The fundamental problem which faces the GCC States' political system is the paradoxical marriage between the executive branch, with its tribal, patrimonial spirit and practice, and the democratic ideals and principles set by their constitutions.

Al-Nafasi, writing on the Kuwaiti political system, noted what could be applicable to other GCC States' regimes. He wrote, "Kuwait is not a full democracy. It is still in the transitional stage between tribalism and modern statehood. Kuwait has not accomplished a complete transition from tribe to state<sup>1</sup>". According to Al-Nafasi, in order for Kuwait to achieve transition, it must introduce basic changes, which he labels as "the three dilemmas; the social, the economic and the political". The stagnation and decay in the transitional status of Kuwaiti democracy are the product of many factors. External forces and pressures played a crucial role in paralysing democracy in Kuwait, coupled with an ambivalent public and tribal, paternalistic attitudes that permeate Kuwaiti politics<sup>2</sup>.

Huntington draws a model of modernising monarchy. Although he does not discuss GCC systems, he discusses how traditional monarchies deal with the problem of democracy in the second half of the twentieth century. The political

systems, which Huntington has discussed, faced a profound dilemma, or in Huntington's words "the King dilemma"<sup>3</sup>. Huntington stipulates three possible strategies for monarchies<sup>4</sup>:

1. They can attempt to reduce or end the role of monarchical authority and promote movement towards a modern, constitutional monarchy in which authority is vested in the people, parties and parliaments.
2. They can try to combine monarchical and popular authority in the same political system.
3. They can remain as the principal source of authority in the political system while seeking to minimize the disruptive effects of a broadening of political consciousness.

Applying Huntington's model to the GCC regimes, it is clear that though their assemblies' representation is limited and their power is restricted, these regimes can be put in the second category.

The GCC States' model of participatory, representative democracy is influenced by Arab culture and heritage. Islam and its emphasis on consultation, consensus and the co-operation of the community affect views of democracy. The forming of the GCC Constitutions –as it has been shown- was influenced by Islamic principles and by the Arab cultural heritage. However, when Islam is used in a general sense it allows an extremely vague and wide discretion. Islam and especially its constitutional law requires much refinement before it can be precisely and verifiably employed as a foundation and explanatory for a constitution. The attempt to marry traditional and rationalist bases of legitimacy is not without its danger. On the surface, naming the national council, *majlis al-shura*, is a logical choice. *Majlis* represents the form of the institution and *shura* its constitutional essence. However, the traditional informal *majlis* with its atmosphere of a relatively free exchange of ideas and opinions on a wide variety of social, economic and political matters is not reflected in the GCC Assemblies. *Shura* is another ambiguous concept for regimes to employ because it evokes the golden age of the Rashidun caliphs, the first successors to the Prophet Muhammad (Peace Be on Him). *Shura* reflects an ideal of

full interchange between ruler and the ruled. It is this institution, when properly instituted, which symbolises the embodiment of the community will and determines the extent of possible suffrage. The Islamic tradition is very tolerant with liberty; so in a sense the introduction of the form of election is a necessary method to fulfil the basic principles and precepts of Islam. As has been seen, these principles are absent from the GCC States' systems.

On the other hand, the findings of this study in regard to the new format of legitimacy adopted by the GCC constitutions revealed a number of crucial issues. First, the first step to restricting and limiting the power of the ruler is to adopt a constitution expressly delineating the power and responsibilities of the executive. It would be naïve and erroneous to believe that the written constitutions of the GCC States fulfil that principle. Second, although most of the GCC political systems insist that the people are the source of sovereignty, this conception is adhered to more in constitutional rhetoric than in practice. Third, GCC assemblies suffer structural weaknesses such as governmental control over all experts and data of public policy, restrictive mechanisms, acquiescent and uninformed deputies and unqualified staff to serve the deputies. Fourth, the Executives have a powerful position vis- a- vis the assemblies, through organising the selection of members of the assemblies, participating and dictating the tempo of the assembly session, dominating the flow of information, adjourning and commencing the assembly meetings, holding secret closed door sessions, and suspending the assembly.

The weakness of the GCC assemblies is embodied in the paradoxically entrenched view held by the ruling families: a quest for a democratic system, which implies freedoms and political participation, and at the same time, an inherent fear of the essence of that concept. Nakhleh underscores this paradoxical relation by noting that the regimes of the GCC States perceive democracy and participation as the prerogative of the rulers, to be granted or withheld from above, and not as the basic right of the people<sup>5</sup>.

There are several internal and external factors that are conducive to reform to establish democratic regimes in the GCC States. The internal factors are:

- 1- A reasonable level of education and literacy.



2- A reasonably large middle class.

3- A fairly self-reliant indigenous population.

4- A wealthy economic system.

On the other hand, external threats and expectations challenge GCC regimes:

1-A tide of democratic change has swept the world since 1989. The Soviet Union, East Europe and China experienced political upheavals that sent them all down the road, if only partially, towards a democratic political system. These changes began to find an echo in the GCC States.

2-The Iraqi invasion of Kuwait had a great impact on the social and political system of the GCC States. These states experienced and developed a new political approach, especially in terms of relations between the governments and their people. This experience led the political elites to rethink their approach to politics and seek more extensive domestic support and stronger foreign alliances. The Gulf war provided the incentive and the will to get the people more involved in the decision-making process. Therefore, the GCC States are being forced not only by their citizens but also by Western countries to deal with the issue of political participation more seriously than have in the past.

3-The high population growth rate, as well as the decline of the oil prices in the international market, have resulted in slow economic growth, low domestic expenditure, and fewer development projects and have cut into government's employment. The measures taken by the governments of the GCC States to rationalise governmental spending to reflect the reality of the economies have caused tensions in the GCC societies.

A successful democratic process requires more than instant wealth to translate the people's goodwill and traditional loyalty and support into a functional system of participatory government. For democracy to function effectively, at least three basic conditions must be fulfilled. First, the relationship between the government and the governed must be clearly defined. Second, democracy must be recognised as a right that belongs to the people, rather than being a gift from the

ruler. Third, the process must become institutionalised and not subject to the whim of any one ruler or any one ruling family<sup>6</sup>

In the light of the above discussion, if the GCC States are to enjoy long-term stability, internal political reform must be a top priority. The ruling families must realise that, if popular participation is channelled properly it can be a great asset to the regime and a stabilising force in society. If any evolutionary process of political reform is not encouraged and maintained, revolution becomes the only alternative and the Iranian experience is just around the corner.

Indeed, we should bear in mind that Arab traditions and culture permeate the body politic of the GCC States. Political practices will probably always reflect this and will be deeply rooted in Muslim attitudes. This will not constitute a contradiction of democracy as long as the latter is understood from within the Arab-Muslim context. Therefore, it is important in the case of drawing up a reform of the GCC Systems to take into consideration how to make changes to the existing systems without totally rejecting the past. The present systems allow room for peaceful and gradual transition rather than radical change. Moreover, the reform will come about through increasing popular participation in the decision-making process and amending those restrictive provisions in the constitutions, which deny the assemblies real power. Those are the elements which will be discussed in this chapter.

## **6-2. The Road to Democracy.**

Effective political development involves the successful discovery of how traditions can contribute to, and not hinder, the realisation of current national goals. It requires that a suitable place be found for many traditional considerations in the more modern scheme of occurrences. An appropriate fusion of traditional and modern can give stability to development. Change and innovation become entangled with the acceptance of foreign influences. Effective traditional systems may provide an exemplary basis for further development if they provide a people with a firm sense of identity. Yet the force of the traditional system will impede development to the extent that it makes impossible the introduction of any new or modern elements of political culture<sup>7</sup>. Separation of religion and politics has no traditional place in

Muslim society. Muslim societies, in all their social structural and cultural variety, are organic religious systems. The holistic religious ideology typical of Islamic societies ideally fuses religion, government and society. Islamic teaching has the ability to accommodate to the principles necessary for democracy. Islam remains morally resilient and socially and politically effective in the twentieth century due to its enormous body of law and ethics, its capacity for diverse interpretations and the possibilities of adaptation to various social structures and geographical and historical circumstances.

To gain a better appreciation of the differences between the precepts of Islamic democracy and Western democracy, the following sections will probe the topic.

#### **6-2-1. Democratic Principles.**

One important aspect of our study of the GCC Assemblies has been the understanding of the relationship between the role of these assemblies and the basic assumptions and manifestation of democracy.

Democracy as a social science concept has not fared better than other highly contested concepts such as modernisation, development and participation when it comes to reaching an agreed definition<sup>8</sup>. Because of rampant confusion in the very definition of democracy and its requisites and manifestations, authors using the same data or empirical findings have been able to sustain completely different positions regarding legislatures and their roles. Definitions which emphasise one or another of the attributes of democracy, “whether they be the right to vote, self-expression, or assembly, can all be valid provided they possess a reasonable degree of internal coherence”.<sup>9</sup>

At the simplest level, democracy is, according to the Oxford English Dictionary, “Government by the people; that form of government in which the sovereign power resides in the people as a whole, and is exercised either directly by them or by officers elected by them. A state or community in which the government is vested in the people as a whole”. The ideal democracy is, then, a system in which all citizens can participate in decision making and are protected from arbitrary state



action by their ability to restrain the office of the state. The elective process is often seen as the key to the matter and this method of participation in government directly, by plebiscite, or indirectly, by electing a government, is indeed crucial. In such a democracy, everyone has the opportunity to contribute equally to the decision making process. Unfortunately, the realities of human nature have prevented the development of a truly egalitarian system. Nevertheless, some democratic systems operating in the world today have approached the ideal with varying degree of success<sup>10</sup>.

The lack of consensus among scholars on the exact meaning of democracy as a political system, makes it difficult to adopt a definition as a reference point for our study. However, there are some definitions, which may be in order. Dahl notes that the ideal concept of democracy holds that a democratic system is one that “completely or almost completely is responsible to all citizens<sup>11</sup>”. Schumpeter has defined democracy as a political system whose most powerful collective of decision-makers are selected through periodic elections in which candidates freely compete for voters and in which all the adult population is eligible to vote<sup>12</sup>. According to this definition, democracy involves two dimensions: contestation and participation, which Dahl views as critical to his conception of “realistic democracy” or polyarchy<sup>13</sup>. Applying Schumpeter’s dimensions to the GCC States’ system, there is evidence to say that elections are the exception rather than the political norm and when they take place they are often not for all citizens and they do not affect the highest offices in the state.

In the developing countries, Western democracy is viewed, as Kerr observed, in two distinct ways. On the one hand, democracy is a triumph of the will of the masses over the selfishness and privilege of small groups of individuals; it is a process of uniting people rather than dividing them and of emphasising agreement rather than division. However, on the other hand, developing societies tend to perceive Western policies as incongruent with these democratic ideals. The question is, who really has the final say and who runs Western societies: the people through their representatives or the interest groups, political action committees or big corporations ?”<sup>14</sup>.

Comparative political literature has been obsessed with transitions from authoritarian regimes toward an uncertain “something else”. This uncertain something could be one of two alternatives: the transformation to a certain type of democracy or possibly the restoration of a more severe form of authoritarianism. One should reflect that it took the Western states four centuries to develop and achieve stable democratic regimes. Obviously, the institutionalisation of democracy requires time, effort and risk, because the fact of sharing power involves the risk of losing it for ruling elites.

Democracy requires a fertile soil to grow on. Lipset and Curtright connect stable democracy with certain economic and social background conditions, such as high per capita income, widespread literacy and prevalent urban residence<sup>15</sup>. These conditions exist in the GCC societies. Another prerequisite for stable democracy is the need for beliefs or attitudes among citizens that favour democratic principles. The GCC citizens, as we have seen in the previous chapters, seem to cherish these attitudes. In particular, the need for consensus has been emphasised as the basis for democracy, either in the form of a common belief in certain fundamentals or of a procedural consensus on the rules of the game, which Barker calls “the Agreement to Differ”<sup>16</sup>. As we will see, the *shura* endorses the consensus elements.

#### **6-2-2. The Place of Islam in Modernising the GCC States’ Political Culture.**

The formal imperatives of Islam incline towards bestowing legitimacy on the type of centralised structure of political authority characteristic of the GCC States’ governments. The first major decision that the Muslim community had to make was the election of the first *Khalifa* (Caliph; successor) on the death of the Prophet Muhammad (Peace Be upon Him). The *Caliph* held religious and political authority, a practice based on a principle of the *Sunna* (the traditions based on the sayings of the prophet) that religious and temporal power form a pair. Though the rulers of the GCC States do not hold religious title, they are heads of religious communities, which form social, political, legal and cultural systems. In the *shariah*, Muslims have a law that concerns itself with all constitutional and legal matters.

The *Qur’an* uses the word *shura* to refer to ‘mutual consultation between believers’. As the concept of democracy has become the principal political system in

the developed world, the idea of *shura* was embraced by many regimes to explain the adoption of various forms of parliamentary governments in the Muslim world. Although the word democracy in its modern application has become analogous to Western thought in the minds of many Arabs, the idea of popular consent and dialogue between the rulers and subjects is an ancient one with a basis in the *Qur'an*<sup>17</sup>. Although the *Qur'an* firmly emphasises the right of Muslims to discuss and choose in such important matters as the leadership, it refrains from specifying the methods by which this right is to be exercised<sup>18</sup>. Therefore, the adoption of the venerable notion of *shura* into a modern, representative institution is an innovative interpretation of a traditional belief. Practical introduction of traditional Muslim ideas into the modern context is a creative way for the leadership of the GCC States to approach the occasionally sensitive relationship between democracy and Islam.

Islam contains other principles, which could make it responsive to some of the moral and legal prerequisites of democracy, such as the rule of law, recognition of the worth of every human being, and the equality of all citizens before the law. In Islam, there is no place for arbitrary rule by one person or group of individuals. The basis of all decisions and actions of an Islamic state should be, not individual impulse or whim, but the *shariah*, which is a body of regulations drawn from the *Qur'an* and *hadith*. At an abstract level, this meets another requirement of democracy, which is the rule of law<sup>19</sup>. It is important to consider that by upholding *shariah*, Islam affirms the necessity of government on the basis of norms and well-defined guidelines, rather than personal preferences. Islam also has principles, which support the concept of equality of all citizens before the law, regardless of their racial, ethnic and class distinctions.

The Egyptian writer al-Fanjari has compiled, according to Enayat, the most comprehensive catalogue on the relationship between Islam and democracy. He maintains that what is called freedom in Europe is exactly *Adl* (justice), right (*haqq*), consultation (*shura*) and equality (*musawat*) in Islam. This is because the rule of freedom and democracy consists of imparting justice and rights to the people, and the nation's participation is deterring its destiny<sup>20</sup>.



Applying the Islamic principle of democracy on the GCC States experience shows that these systems run counter to our analysis of Islamic constitutional principles and systems. Take, for instance, the GCC Assemblies and their powers within the power of the state. These institutions and their power are subservient to all other institutions and not vice versa, as the analysis of this institution in Islamic constitutional systems requires. As we indicated in this study, in accordance with the assessment of Islamic constitutional systems, members of the assemblies should be freely elected by means of the widest possible suffrage. Furthermore, the limitless authority of the state over individual and his rights, were made goals to strive for, rather than detailed principles for operating in practice. In other words, the GCC systems as they stand now do not correspond to that which the Islamic constitutional system calls for, as our analysis demonstrates.

One can argue that Islam is compatible with the basic tents of democracy since it exhibits most of the Western democratic principles from equality to freedom, from consensus to justice and from tolerance to respect for human dignity. If Islam is to be progressively moved out of its current constitutional dilemma and away from the manipulation of one group, as in the case in the GCC political system, it is necessary to try to change the way that ruling elites think about Islam and interpret it in the light of other contemporary constitutional systems with a universal common denominator. The Islamic tradition is very tolerant with liberty; so in a sense the introduction of some form of election is not only compatible with Islam, but also it is a necessary method to fulfil the basic principles and precepts of Islam.

### **6-3. Legitimizing the GCC Regimes.**

Below the apex of the system, a loss in popular loyalty to the ruler based on gratitude may also be developing. Affluence is one basis of the GCC regimes' legitimacy, and the ideology of progress has been superimposed on pre existing tribal values of responsibility and equality. At first, state welfare functions served the ruler: as these institutions offered employment and an increasing variety of services to the citizen, they assumed many of the functions of traditional leaders. But as the welfare functions become the norm, as services become legitimate claims on the state, they are seen less as examples of the ruler's largesse and more rights that citizens, not subjects, can claim from the state because of nationality. These policies

are thus transforming the citizens' notions of right, obligation and interest towards the state and the regime. The abrogation of welfare rights as oil prices and state revenues fall is going to be a source of future instability.

As oil revenue fell in the 1980s and precipitously since 1986, GCC states began chipping away at subsidies and introducing the idea of user fees and taxes. GCC states began charging for electricity and introduced "symbolic" charges for health and other social services. Taxation systems have been introduced and governments have announced that they will no longer be able to continue their policy of providing free services. Since this is the path that the GCC governments chose, indeed there will be precipitate demands for representation among citizens.

The principle that typically governs the state-society relationship in states with *rentier* economies is a reversal of the slogan, 'no taxation without representation' which was adopted in the American Revolution, and predicates 'no taxation, no representation'<sup>21</sup>. The governing principle in the GCC states for covering governmental expenditure will be the income of taxation and fees for providing social services. This stand will lead to a production state where the citizens are expected to contribute to the welfare of the state through taxation and therefore have a more direct claim to take part in the allocation of state resources. The democratisation trend in the GCC societies is going to be led by the middle stratum which was well educated, urban, politicised and had contact with other parts of the world through business and travel.

The "state of emergency" mentality that inhibited the political thought of the governing elites in the past will not be tolerated. Increased tension will arise both from the substantial new economic damage that has been done throughout the region as a result of the oil crisis and also from the new political animosities it has spawned.

What are operating today in the GCC states is not a democracies but steps to democratise the form of rule. Indeed, the democratisation process needs to transform the system from depending on authoritarian elites to one where the people govern through democratically elected representatives. The natural aim of the process is an institutionalisation of democracy.

### **6-3-1. Elections and their Importance in Improving the Constitutional System of the GCC States.**

Bryce claims that democracy “means nothing more or less than the rule of the whole people expressing their sovereign will by their votes<sup>22</sup>. According to this definition, the people exercise their power by means of election which is a method whereby the people exert their sovereignty. Since the idea is that ‘sovereignty resides in the people’, in the democratic system, people are the source of all power and the exercise of such sovereignty is reflected in three forms:

1-The people might exercise their sovereignty directly by themselves. This type of democracy is known as direct democracy. The ancient democracies were direct democracies in which each citizen participated directly in making the law. This type of sovereignty still exists in small Swiss cantons<sup>23</sup>.

2-The people might exercise their sovereignty by a combination of the foregoing method (through referendum) and by electing representatives (parliament) in order to act as a Legislature on behalf of the people. In this type the people reserve the right to supervise and control the Parliament as individuals or as a body. This type of rule is known as a semi-direct democracy<sup>24</sup>.

3-The people exercise their sovereignty by electing representatives (Parliament). In this method, sovereignty is retained and power vested in parliament instead of the people. This type of democracy is called representative democracy, because the common form of participation of the citizens in the control of government is in voting for representatives who govern on their behalf<sup>25</sup>.

From the foregoing discussion regarding the participation of the people in the forms of the government, it is clear that the electoral system is the core of the democratic system and because of its uniqueness it becomes an essential aspect of the people’s sovereignty in the democratic state. It is important to mention that



election means the right of the people to participate in decisions, rather than merely controlling the decision-makers. Elections from the viewpoint of the individual, are a means by which citizens take their share in political power by voting for the representatives of their choice. Moreover, elections can be considered as a criterion for measuring the awareness of the people in handling their political power to improve different aspects of their state<sup>26</sup>

The social aspects of elections can be seen, particularly in society, which consists of complex social, cultural, political and economic events, unrelated to each other. Consider the election as having an impact on social response and structure. It might create or strengthen a specific form of society and its customs on the one hand, or it could reverse an old tradition, on the other. Take the example of universal suffrage, according to which, in societies that adopted a real democratic system, no person should be excluded or prevented from exercising the voting right (except the usual legal exemptions such as children). However, law does not regulate everything with regard to elections. Social customs and rules will take a major role in determining the nominees' qualifications, the electorate's nature and size. As a consequence, elections will be affected by economic factors, which have a very strong relationship to the social structure, especially in the candidates' requirements and qualifications, as well as influencing public opinion<sup>27</sup>.

Elections also can be considered as historical events because they occur repeatedly, without similarity, with developing new human experience. The regular occurrence of elections is a good opportunity for the people to educate themselves through the evaluation of the performance of their representatives and to gain advantage from their experience for the future. Furthermore, elections provide a unique opportunity for the majority of the people to take part in the political system. When they participate in the election they exercise their right of supervision and control upon their representatives and judge them, supporting and backing the good among them and rejecting the candidates taking irresponsible decisions.

An election is also an event of legal content, due to the different laws and regulations that control the practice of elections and the requirements, which define the qualifications of voters. Electorates and their qualifications differ from one state

to another, depending on suffrage theory. The adoption of universal suffrage is different from a restricted one, and the adoption of the vote as a right is not the same as the theory which defines the vote as a privilege, and each of these concepts has its legal consequences<sup>28</sup>.

The characteristic of voting was and is still an issue of controversy between scholars and researchers. Some scholars consider voting as an individual right of all human beings. According to this theory, every citizen is entitled to the vote on the strength of his or her share in the sovereignty. The disqualification of voters under this theory will be limited to a small number<sup>29</sup>. Other theorists argue that the right to vote should be considered a privilege, so the person will be entitled to vote only if he or she meets the qualifications that are drawn up by law. It is important to point out that, according to this theory, the state has the authority to prevent some people from exercising the right to vote. The state could add new qualifications in order to serve a particular state interest<sup>30</sup>. A third group of scholars argue that the right to vote involves both theories: the rights of the individual and the privilege<sup>31</sup>. The right to vote, like any other political right, is given to the person himself, to exercise personally. At the same time, this right is determined by the law, which regulates it, draws up the conditions attached to it and the process of its practice. Apart from its being just that there should be a right to vote, the vote is considered something, which ought to be exercised with regard to the interest of the state<sup>32</sup>.

The concept of universal suffrage is an essential subject to be discussed at this point, because it is considered apart from the above mentioned theories. Despite the fact that there is no central meaning of the concept of universal suffrage among scholars, it could be said that universal suffrage means the extension of the right to vote to all adults who live in the state, with respect to the usual exceptions and limitations.

Applying the principles of the universal suffrage theory to the only experience of elections in the GCC States, there is evidence as it has been shown in chapter three, that the Kuwaiti electoral system goes in conflict with the above theory. Despite the fact that Article 80 of the Kuwaiti Constitution stipulates that the

National Assembly shall be composed of fifty members elected directly by universal suffrage, in practice, the Kuwaiti electoral law puts great restrictions on women, military persons and nationalised citizens, and prevents them from exercising their right to vote.

Free election and popular participation are not alien to the GCC States' traditions. The central feature of the early positive orientation of participation was the tradition of the tribal *majlis*. The *majlis* at the level of camping unit was composed of all responsible adult males. At higher levels of the tribe, the *majlis* was composed of representatives of all basic units of the tribe and responsible males who were eligible to sit with the council. The formal consensus among tribal notables implied by the notion of selection was an important component in establishing shaijly legitimacy. Furthermore, the Islamic constitutional system, as it has been seen above, asserts the principles of free elections by means of the widest possible suffrage, not only for the members of the assembly but also for the selection of the head of state.

However, unelected legislatures with nominated members representing a small fraction of the society in the GCC states do not provide legitimacy for the regimes of these states. Since election to the legislature is the practice in most political systems, as a prerequisite to its legitimacy in the public mind and hence to the utility of the institution in the political process, certainly early reforms to the existing legislatures may be recommended in order to implement some democratic ideas. A gradual process of free elections of assemblies' members must be the cornerstone of any reform. Representation in the assembly should be open to all citizens, regardless of their race, sex, age and social status. The electoral system of the GCC states should be based on the idea that voting is essentially a right to which all adult citizens resident in the country are entitled.

### **6.3.2. The Concept of Extending Participation and its Importance.**

Universal suffrage means the right of all adults who live in the state to vote with respect to the usual exceptions, such as children, criminals and persons who are mentally incapable. However, there are some countries where there are persons not allowed to participate because they are of the female sex, naturalised citizens, or



under the legal age of majority. Such is the case in the GCC States. As it was revealed by the study, in both states (Oman and Kuwait) where citizens are allowed to vote, less than 4% of the population is entitled to the right to vote, while in other states, the percentage of people who participate is less than 0.2% of the population. There is no doubt that the democracy which exists in the GCC States, in that respect, can only be considered as the 'democracy of the elite'. Having only a few citizens who are actually responsible for maintaining the people's will and exercising the sovereignty on their behalf. This is an unhealthy democracy which suffers from a major defect. The remedy is the extension of the franchise which would introduce many new groups of voters. It is fair to suggest then that the extension of franchise must take place if democracy in the GCC States is to be improved.

#### **a-Voting Age.**

Another illustration of potential pitfalls is Kuwait's decision to set the voting age at twenty-one, Bahrain at twenty, while Qatar's electorate would have been at least twenty-four. The selection of these ages affects a wide number of citizens who are prevented from enjoying voting rights solely because they are below than the legal age of participation according to the GCC standard. Indeed, lowering the voting age for countries such as the GCC, where the rate of participation is low, as has been shown, is undoubtedly an issue of political importance and national interest. It would deepen belief in the democratic principles of these regimes.

The young person who at the age of eighteen is usually a high school graduate has wide knowledge and awareness of political issues in the society. Second, this age group serves other public obligations such as military service. Third, it is contended that this group has spent twelve years in education, by virtue of which an individual must surely be prepared to vote; if not, it speaks ill of the nation's educational system. Fourth, related to the third reason eighteen-years-olds do indeed have enough experience to exercise judgement; since they are as informed as most adults.

Therefore, it is fair to suggest lowering the voting age in the GCC States to eighteen years, as is the case in more than fifty countries over the world.

## **b-Naturalised Citizens.**

In the GCC States, naturalised citizens are prevented from participating in the decision process. While this restriction is prominent in Oman, United Arab Emirates and Saudi Arabia, in Kuwait, Bahrain and Qatar, naturalised citizens are ineligible to participate until the elapse of thirty years from the naturalisation date; however, in practice the restriction is also prominent in these states. Moreover, practice and precedent shows that the sons of a naturalised citizen are disqualified not only from standing, but also from voting in the GCC States. This practice has created two classes of citizenship in these states. This differentiation among citizens is unacceptable and is likely to create and increase the number of persons disloyal to the political and social structure of the society that treats them as second class.

Looking at the citizenship laws of the GCC States, we can find that these laws require twenty years' residence to apply for citizenship. After such long period of residency, surely the applicant has assimilated to his surroundings and accepted the culture and values of the state. Therefore, consideration should be given to the period required to gain citizenship in reforming the GCC laws, in which the general rule should be to grant franchise to the naturalised citizen directly.

## **c-Women's Suffrage .**

According to an Inter-Parliamentary Union report, in most countries women have the right to vote for all of their adult lives, with the exception of 10 countries, among which are five of the GCC States (Kuwait, Bahrain, Qatar, Saudi Arabia and the United Arab Emirates)<sup>33</sup>. Women's suffrage is an essential issue if the constitutional system of these states is to be improved.

GCC Islamic jurists hold three opinions with regard to granting women the right to vote. The first group denies women the right to vote. This group's opinion stands on protecting the interest of the society, more than on Islamic evidence. In the opinion of the second group, a distinction has to be made between two different rights in connection with women's suffrage. They argue that a woman might enjoy the right to vote, but her right to stand will be denied<sup>34</sup>. The opinion of the majority of jurists concerning women's role in politics is that they are entitled to vote as well

as to serve without any distinction<sup>35</sup>.

From the discussion and analysis relating to women's suffrage in chapter three, there is no evidence that supports the denial of women's right to vote and stand for office. Therefore, women according to Islamic law must be granted entitlement to suffrage, regardless of the above arguments concerning their nomination to the assembly.

There are several arguments for women's participation in decision making in the GCC States. The first argument concerns democracy and egalitarianism. According to national census, women constitute half of the population of the GCC States and should be represented proportionally. The recognition of women's rights to full citizenship must be reflected in their effective participation at the various level of political life. There cannot be true democracy where women are virtually excluded from positions of power. The second argument is of differences in interest. Political participation involves articulating, providing and defending interest. Women are conditioned to have different social roles, functions and values. It is reasonable to believe that women are more aware of their needs and are therefore better able to press for them. The current composition of the political decision makers means that women are unable to articulate and defend their own interest. The third argument is one of legitimacy. From the discussion and analysis relating to women's suffrage in chapter three, according to the majority opinion of the Islamic jurists concerning women's role in politics, women are entitled to vote as well as to serve in parliament without any distinction between men and women. Therefore, women's underrepresentation can be dangerous for the legitimacy of the GCC systems since it distances elected representatives from their electorates and, more particularly, the women among their electors. The fourth argument is that women in the GCC States serve in other public sectors, especially military service, yet at the same time they are denied their political rights under the misinterpretation of the society's cultural values and its interest. For example, the United Arab Emirates sent a mission from its army to participate in the peacekeeping in Kosovo, in which several women served. Another example came from Kuwait. During the Iraqi invasion of Kuwait Kuwaiti women played a great role in the liberation of their country.



As is the case for men, there are several indications that show that women's suffrage in GCC States is going to be acquired through a gradual process. One can argue that progress in women's political rights has been initiated. This start is based on domicile and social position, as is the case in Qatar, where women were granted the right to vote and stand for the municipality election in 1999. The Amir of Bahrain has announced that Bahraini women will participate in the municipality election which will take place before the end of the year 2000. In Saudi Arabia, the president of the *Shura Majlis* in his speech in opening session of the Majlis on 28<sup>th</sup> of October 1999, announced that there is no reason to prevent women from attending the *Majlis* sessions to discuss matters related to the interest of women.

From the foregoing discussion, it is safe to conclude that granting women the right to vote and run for office in GCC States is a matter of time.

#### **6.4. The Importance of Establishing a Party System in the GCC States.**

In contemporary states it is difficult to imagine politics without parties. Indeed, there are few traditional regimes in which party and party activities are banned, as is the case in the GCC States. However, while the conduct of both politics and government in modern states seems to require that there be political parties. This does not mean that parties are always revered institutions. In some countries, there is a long-standing distrust of parties. For example, at the beginning of the twentieth century, progressive reformers in many of the American states introduced laws that prohibited parties from contesting local government elections. This did not prevent them from participating informally in these elections, but it did bring about a significant reduction of party activity at this level of politics<sup>36</sup>. Another example comes from a country (Germany) where extensive party involvement in public life appeared to have a high degree of public acceptance, and dissatisfaction with politics could rebound on all major parties. In 1993 a protest movement calling itself "Instead of Party" won seats in the Hamburg provincial Parliament<sup>37</sup>.

##### **6-4-1. The Origin of Political Party.**

Since democracy has been defined as a system of government by people, many thinkers have considered the party system as an effective vehicle for popular

government. Western political parties were an unforeseen outgrowth of development of legislatures and the increasing diversity of interest they represent. The origin of the political parties goes back to the time of the establishment of parliamentary supremacy in England in 1689, when members of parliament were divided as Tories and Whigs, in disagreement, less on fundamentals than in degree, over matters of royal prerogative<sup>38</sup>. As part of the historical study of the development of the party system, Western writers regarded representative governments as the reasons for the existence of political parties. They, in other words, influence the electors in their choice of representatives<sup>39</sup>.

It is customary in the West to associate the development of parties with the rise of parliament<sup>40</sup>. Duverger in discussing the development of party system notes that parties are related to the evolution of national parliaments and the growth in the size of the electorate<sup>41</sup>. In a clear and elaborated discussion, Epstel presented the impact of parliamentary system upon parties' development. He stated that "the constitutional circumstances for the development of political parties is found in the provision for the relations of executive and legislative authority". He added, "The structure of party is either that of a parliamentary system in which the executive authority rests on majority support in the legislative body, or that of the American presidential congressional system, in which each authority is directly and separately elected"<sup>42</sup>.

From the foregoing discussion, it is clear that a better understanding of party system can be gained by understanding the development of representative government and the responsibility of parliamentary cabinet.

#### **6-4-2. Defining Political Party.**

Modern democracy is party democracy; the political institutions and practices that are the essence of democratic government in the west view were the creation of political parties and would be unthinkable without them. Despite the fact that political parties are at the centre of modern democratic politics, many observers have noted that attempting to define political parties is a problematic issue. The problem is that of identifying precisely the boundaries between parties and other

kinds of social and political institutions. For virtually every definition of party produced by political scientists, it is possible to find some institutions that are recognisably parties that do not conform with the definition in some significant way. But this does not mean that political scientists have not proposed constructive and adequate definitions.

Burke, in his definition, emphasised the unique association between the public and parties to serve the national interest:

“A party is body of men united for promoting by their joint endeavours the national interest upon some particular principle on which they are all agreed”<sup>43</sup>.

Finer has sought to define a party in terms of its putting forward candidates to contest elections for public office:

“Representatives are selected, catechized, pledged, supported and afterwards controlled in their parliamentary activities by parties in close and continuous touch with the electorate”<sup>44</sup>.

Lawson states in his definition that the party system serves the public in many different ways:

“To begin with, parties are almost always central suppliers of political information- accurate, false or a convenient blend of both – to a nation’s citizenry. Parties are also important social agencies, continuously making the arrangements necessary to bring together unacquainted individuals who share political beliefs, interests, aspirations. Further, parties are the great synthesizers of that amorphous entity, public opinion”<sup>45</sup>.

Ware brought a definition in which he tried to emphasise the main features of parties:

“A political party is an institution that (a) seeks influence in a state, often by attempting to occupy positions in government, and (b) usually consists of more than a single interest in the society and so to some degree attempts to



‘aggregate interest’<sup>46</sup>.

Since most definitions emphasise the function of parties, then perhaps the best way of unravelling the problem of defining parties is to consider some of the features of parties that at least most observers have thought were key features<sup>47</sup>:

- 1- **Opinion-forming agencies:** political parties articulate issues for their constituents and gather support or opposition to government policies among those constituents. Both during campaigns and between campaigns, they teach (propagandise or educate, depending on one’s viewpoint) the voters regarding the issues and alternatives.
- 2- **Conduct of election:** by proposing candidates and conducting campaigns, parties provide clues to the voters acting as reference groups with which voters can identify.
- 3- **Narrowing choices to a manageable level:** parties combine a number of interests under one umbrella and act as rallying points for diverse interests. The fewer parties in the political system, the more easily they can play this role. Where parties are divided along ideological lines, as is the case in Italy, for example, they are less able to function in this manner.
- 4- **Representing the government to constituents:** parties help to build consensus and to facilitate compromise. Again, this is more true in stable, non-ideological systems or in one-party systems, than in multi-party system.
- 5- **Representing the constituents to the government:** political parties articulate constituent interests to the various decision-making bodies, especially in the divided-powers political system.
- 6- **Building consensus and support for the political system:** parties often fill this function through appeals to patriotic symbols. They may act as instruments of mobilisation, although not necessarily for the regime in power.
- 7- **Managing the transformation of power from one ruling group to another:** political parties imply competition for political power, a concept so necessary to the

democratic-civic culture. By supervising changeover of leadership in an orderly fashion and according to set rules, they prevent bloodshed and provide gentlemen's agreement that the loser will survive to compete again.

- 8- Recruiting and training the new political leaders: parties are one means of assuring there is always an abundant supply of political leadership coming up through the ranks. Great Britain is noted for this type of training of its political leaders.

From the foregoing discussion, it is obvious that both the public and parties associate with each other to serve the national interest, providing the consent of the majority to protect the legitimacy of democracy in any regime. Due to their organised structure and functions, political parties influence the public significantly.

#### **6-4-3. The Status of Political Parties in the GCC States and their Importance to the Newly Established Democracy.**

Huntington argues that the purpose of political parties is to organise participation, to aggregate interest and to serve as the link between social forces and the government. However, he noticed that where traditional political institutions, such as monarchies and feudal parliaments, are carried over into the modern era, parties play a secondary, supplementary role in the political system. The other institutions are the primary source of continuity and legitimacy<sup>48</sup>. However, the existence of an elected assembly is, in itself, an indication of neither the modernity of a political system nor of its susceptibility to modernisation. The same is true of elections. Elections without parties reproduce the status quo; they are a conservative device, which gives a semblance of popular legitimacy to traditional structures and traditional leadership<sup>49</sup>. They help to make the traditional institutions in terms of popular sovereignty, but they are not themselves a source of legitimacy. Their own legitimacy derives from the contributions they make to the political system. Therefore, parties become not just a supplementary organisation; they are instead, the source of legitimacy and authority. Party is the source of legitimacy because it is the institutional embodiment of the national sovereignty.

Despite the importance of parties in organising political participation,

parties are not explicitly or implicitly recognised by any of the GCC constitutions or by other laws. On the other hand, constitutions do not forbid the existence of political parties. Instead, to many GCC writers, this matter is left to the ruling elite to decide on<sup>50</sup>. Although there have been no official explanations from the GCC governments to explain the absence of such an important vehicle for organising and mobilising political participation, there is a combination of the following reasons, which keep GCC states partyless societies.

First, the ruling elites view political parties as divisive forces, which would either challenge their authority or greatly complicate their efforts to unify and modernise the country. GCC governments discourage the establishment of political parties for fear that they menace the society that is perpetuated in the state as one big family, with the ruler as the father figure. Governments argue that there is no need for ideological division that will split this family. This statement is also shared by some GCC elites who have observed the futility, ineffectiveness and poor performance of some of the Arab political parties, which gave an impetus to avoid any debate about instituting such organisations in GCC societies. Second, according to the pure conservative groups, parties simply will introduce irrational and corrupt considerations into the traditional foundation of the GCC political life, which is based on Islamic tradition and Arab heritage. Political parties are perceived as vehicles of public dissent and disruption in a society that values at least a façade of unity; they work against consultation and consensus; they often organise for the purpose of overthrowing the government and they are the instruments of foreign powers, as is the case in most Arab countries where political parties exist. Third, opposition to parties comes from the group who accepts participation but not the necessity to organise it. This group believes that the existing social structure is sufficient to link people to government and there is no need for any intervening structure between the people and its political leaders. Informal groups, which are based mainly on religious, non-ideological and tribal orientations, channel the GCC societies' political activity.

The above arguments against establishing political parties in the GCC states seem to be less arguments against parties than against weak parties. Corruption, division, instability and susceptibility to outside influence all characterise weak



party systems rather than strong ones. They are, indeed, features of weak political systems generally, which lack stable and effective institutions of rule. In their early stage of development, parties appear as factions and seemingly exacerbate conflict and disunion, but as they develop strength parties become ties which bind one social force to another, so creating a basis for loyalty and identity of the political structure of the society. The strong features of the Moroccan political parties, for example, played a great role in the stability and the peaceful transfer of power to the new King after the sudden death of his father.

Moreover, as far as Islamic thought is concerned, Muslim scholars and jurists believe that enjoining the good and forbidding the evil are the main tasks set down by Islamic law. Furthermore, correction and confronting the rulers when in error, as well as opposing their whims are no longer acts that can be undertaken by a single individual, but instead can only be carried out by a collective group of people<sup>51</sup>. Differences of opinion are bound to occur in matters that are subject of *Ijtihad* (the interpretation or exertion of mental efforts to reach a view based on Islamic *Shariah*) and there can be many different alternative ways for dealing with the organisation of areas that are permitted (*Mubah*) in Islam. Because of these differences, the methods of reform and administration are therefore bound to vary because variety is an undeniable fact of life. In fact, differences of opinions over many matters occurred in the Prophet's life but he did not condemn them. What is forbidden under the *Shariah*, rather, are the disputes that lead to failure and weakness<sup>52</sup>. But differences of opinion are complementary and a variety of perspectives is necessary to reach the truth and the most beneficial decision. Such differences should be accompanied by tolerance and broadmindedness as well as abandonment of fanaticism and narrow-mindedness. In the light of the above, plurality of parties in Muslim society is acceptable and there is no need for the authorities to place restrictions on the formation and activities of political parties and groups. Each faction should be free to declare what it advocates and to set out its path, as long as the Islamic *Shariah* is the supreme constitution<sup>53</sup>.

From the foregoing discussion, political parties are necessary for the democratisation process in the GCC states for several reasons. First, the

establishment of the legal party system will not only recognise the existence of parties but also will bring their work to light, rather than at present, where their activities are underground. Second, a party system will improve the electoral system and it will make candidates for assembly rely more on their capability, qualifications and professional skills than on their personal skills, family backgrounds and reputations. Third, parties would be the best remedies to eliminate the personality and kinship relationship between voters and candidates and shift voters' allegiance from personality to ideology. Fourth, the educated new generations are demanding more freedom, more organised participation and a progression towards a mature democracy. The status quo is incompatible with such a demand and the absence of organised political parties makes GCC states cling to their old traditional character.

For the GCC regimes to eliminate the defects found in the party system of other Arab states, they should deal strictly through proper regulation by controlling parties' aims, ideology and their political programme. Moreover, political parties should be guided by national interest.

#### **6-5. Rationalising Authority.**

Historically, elected legislatures may be said to have two primary functions: first to represent the people and second to authorise taxation and control government expenditure. That means that originally the reason for establishing legislature was not only to speak for the people but -as in the case of England- to sanction taxes needed by the Monarch. However, the form of legislature which has come to exist in Western democracy, has many other functions, such as educating and informing the public, controlling the executive and framing legislation.

The study of the legislative role of the GCC assemblies shows that the legislative work carried out by the assemblies has been limited to legislative review, rather than the initiation of major legislation. The extent of review has varied widely. In Kuwait, near-absolute review has been mandated both by history and recent experience. On the other hand, review in other assemblies is more of a privilege extended by the ruler, or a tool to give a public impression of broader participation in the policy making process, than a right. All the assemblies have experienced the right to question members of government, although the Prime



Minister and portfolio-carrying members of ruling families have been sacrosanct everywhere, except- to some extent – in Kuwait. The vote of no confidence has been an issue only in Kuwait, although never formally invoked. There have been at least two isolated instances of a ruler's veto or decree being overridden: the decision to ban all alcohol in Kuwait, including within embassies, and the rejection of a pension decree in Qatar. Indeed, there is at this juncture a need to introduce a reform to make the GCC assemblies more functional to maintain their ability to balance the power of the executive.

GCC Constitutions intended to create legislatures with no formal constitutional powers in the field of legislation, except in debating and proposing amendments to draft-laws. It is implicit in the concept of democracy that the initiative in law making should rest with the elected Parliament. Therefore, to play this role, GCC Assemblies should be empowered to carry out the work of legislation to express the will of the people in the form of law. In spite of the fact that the legislative supremacy of Parliament does not mean that the whole work of legislation is carried on within the Parliament- but the executive has a say in the legislative process- yet the Parliament should not play the role of the lesser partner in the decision-making process. Obviously, in order for GCC assemblies to play such an important role, more is required than to reconcile their power with the constitution. It should be kept in mind that the absence of a strong committee structure means that assemblies will play only the most minimal policy making role.

Ministerial responsibility in its recent form is another major problem in the GCC constitutional experience. Parliaments have several methods of preserving an effective control over the executive. They might make use of parliamentary questions or assert the technique of selected committee, or use the procedure for the legislative decision taking and legitimating process, namely, public debates followed by votes on motions, including calling of ministers to accountability and the vote of confidence.

As it has been shown in chapter 5, unlike other Assemblies in the GCC States, only the Kuwaiti Assembly is empowered with supervisory responsibilities, such as the right to interpellate Cabinet members, question them thoroughly and demand a full explanation on any subject. The Assembly is also empowered to



supervise the government's actions and form a committee for the purpose of inquiry and investigation in relation to any matter that falls under the assembly's jurisdiction. However, in practice the assembly was unable to make the theory of Ministerial Responsibility effective due to the customary rule of the Crown Prince being a Prime Minister.

As that is the case, introducing a more effective ministerial responsibility in the GCC States' system should be a valuable move, not only by increasing the assembly's power, but also by eliminating the customary obstacle. Since the integration of the post of the Crown Prince with the post of Prime Minister is a powerful obstacle to creating effective ministerial responsibility, the recommendation that is made for improving the power of assembly to hold ministers responsible has to satisfy two principles. The first is that the position of Crown Prince should be of a symbolic nature, similar to that of the Head of State. The Crown Prince, according to the present recommendation, would not take an executive job, so he will be in a position of unquestionable Monarch. To promote effective ministerial accountability there should exist the position of the responsible Prime Minister. He will be the principal person responsible for the formation of government and will lead the team of ministers on the floor of the assembly. Therefore, the resignation of the Prime Minister means the resignation of the whole Cabinet, and the passing of a vote of no confidence means the whole Cabinet is involved. If this suggestion is to be adopted with the party system, clearly the party that wins the majority of seats in the Assembly would be the government party.

Dissolution of Parliament is an acceptable mechanism in the executive's hand within parliamentary government. While its adoption and regulation by the Kuwaiti and Bahraini constitutional arrangement is logical, in fact, the dissolution as practised has destroyed the legitimacy of their legal system. First, the constitution, the superior source of legitimacy of the state, was suspended. Second, all acts that took place during the said period were unconstitutional because they were formulated according to methods not permitted in the constitution. Third, the practice of forced dissolution was mainly to support the position of the executive against the legislature.

As it has been indicated in this study, the assembly is unable to make the

theory of ministerial responsibility effective. It must be admitted that it is the Head of State's role to restore the balance between the executive and the assembly. The best suggestions in this respect are: first, to avoid the use of forced dissolution, which weakens the position of assembly in the face of the executive. The monarch has the power to dissolve the assembly for two months, but this right must be a theoretical one, as is the case in England, and even when it is practised it must be dependent on a reasonable minister. Second, fresh elections must take place within sixty days from the date of the dissolution; otherwise the powers of the dissolved Assembly shall be restored.

To implement the above suggestions into practice, the judiciary is the best body to protect such arrangements. The courts' authority in this respect must be enlarged to play a more effective role, since the constitutional values and their importance do not, to a large extent, hold the respect of the politicians.

#### **6-6. The Importance of Establishing a Mechanism to Solve Constitutional Disputes.**

The provision for a peaceful resolution of constitutional disputes is crucial for freedom, peace, order, national unity and the longevity of any political system. The need for this constitutional mechanism is even more obvious in popularly inspired political systems, since freedom of expression – which is an intrinsic characteristic of genuinely popular governments- is liable to lead to divisions of opinion and disagreements among contending individuals, groups and parties. Although differences of opinion are considered to be a healthy sign, the success of this characteristic depends greatly on how the political system provides for the institutionalisation and resolution of conflicts. If the system provides no constitutional method to settle disagreements, force is likely to become the arbiter. In such an event, civil war, cruelty, persecution and despotism are inevitable consequences. According to Mayo, “every political theory provides for this peaceful settlement within a political system, or else it must call upon a *deus ex machina* to impose order, an authority from outside the system of conflict<sup>54</sup> .

Several experiences in the Arab world provide overwhelming evidence to substantiate the above conclusion. For example, the lack of a constitutional



framework to resolve constitutional disputes was one of the primary reasons for the Algerian crisis. It is well known that this incident resulted in a disastrous civil war.

GCC states, like many other underdeveloped countries, and to some degree some developed countries, need to preserve the objectives of their constitutional arrangements. The judiciary is the best body to protect such arrangements, Government tendency towards violating the constitution is the reason for the discordant relations between principles and practices. The experience of the Kuwaiti and the United Arab Emirates' courts and their willingness to review and decide upon cases involving the highly political questions, there is a need to reform this experience so that it may become the model for other states.

The creation of the proposed supreme constitutional tribunal in the GCC states needs to be in conformity with certain requirement to make it worthwhile. The main principle is the endowment of the tribunal with the final authority to adjudicate all disputes and disagreements that may arise between the executive and the assembly. These disputes may be referred to the court by either of the two branches. Decisions of the court must be made constitutionally final and binding on all the state's institutions, bodies and citizens. No decision may be reversed except by another ruling from the same court. Only if the court has this clear-cut mandate could it be expected to play a major role for the sake of stability and respect for the rule of the law. Moreover, the court should be opened for the citizens whenever they feel that their interests need protection or when any governmental department violates their rights and freedoms. The challenge of the constitutionality of Acts would make the governmental departments responsible.

The form of this court, its composition and the internal rules for its operation are to be worked out by consultation between the executive and the assembly. Accordingly, members of the court may be selected by the assembly and approved by the head of the state.

Since the duty of the court is to adjudicate matters of extreme importance its members should be selected carefully. Its members should be individuals who besides being the most pious in the state, possess sufficient experience and acumen in world affairs. Moreover, in order to enable the court to fulfil its constitutional



obligations, its members must be guaranteed the necessary constitutional safeguards. The most important of these guarantees are sufficient income and appointment for life. No member of the court may be subject to early retirement (before the age of seventy) or to removal from office by any authority in the state except for a proven violation of his trust, or for health considerations that preclude proper discharge of his duties. On the other hand, members of the court should be barred from holding any other paid post, whether during their active tenures or after they leave office. The prohibition against assuming a paid position after leaving office is to help prevent possible collusion with interest groups in office. As long as the state guarantees judges sufficient income for life, this requirement should not constitute a serious burden for them. These constitutional provisions would provide the basic objective conditions for the impartial and dispassionate conduct of the court.

## **6-7- Conclusion.**

In the light of the above discussion, if the GCC States are to enjoy long-term stability, internal political reform must be a top priority. The ruling families must realise that, if popular participation is channelled properly it can be a great asset to the regime and a stabilising force in society. If any evolutionary process of political reform is not encouraged and maintained, revolution becomes the only alternative and the Iranian experience is just around the corner.

Therefore, it is important in the case of drawing up a reform for the GCC systems, to take into consideration how to make changes to the existing systems without totally rejecting the past. The present systems allow room for peaceful and gradual transition rather than radical change. Moreover, the reform will come about through increasing popular participation in the decision-making process and amending those restrictive provisions in the constitutions, which deny the assemblies real power.

There are several internal and external factors that support the need for a reform to establish democratic regimes in the GCC States. Most important is the Iraqi invasion of Kuwait. This crisis had a great impact on the social and political system of the GCC States. These states experienced and developed a new political approach, especially in relations between the governments and their people. This experience led the political elites to rethink their approach to politics and seek more extensive domestic support and stronger foreign alliance. The Gulf war provides the incentive and the will to get the people more involved in the decision - making process. Therefore, the GCC States are being forced not only by their citizens but also by Western Countries to deal with the issue of political participation more seriously than they have in the past.

A successful democratic process requires more than instant wealth to translate the people's goodwill and traditional loyalty and support into a functional system of participatory government. For democracy to function effectively, at least three basic conditions must be fulfilled. First, the relationship between the

government and the governed must be clearly defined. Second, democracy must be recognised as a right that belongs to the people, rather than being a gift from the ruler. Third, the process must become institutionalised and not subject to the whim of any one ruler or any one ruling family.

In order to implement the above democratic ideals, a gradual process of free elections of assemblies' members must be the cornerstone of any reform. Representation in the assembly should be open to all citizens, regardless of their race, sex, age and social status. The electoral system of the GCC states should be based on the idea that voting is essentially a right to which all adult citizens resident in the country are entitled.

Political parties, moreover, are necessary for the democratisation process in the GCC states. The establishment of the legal party system will not only recognise the existence of parties but also will bring their work to light, rather than at present, where their activities are underground. A party system will not only improve the electoral system, but it will be the best remedy to eliminate the personality and kinship relationship between voters and candidates and shift voters' allegiance from personality to ideology.

The educated new generations are demanding more freedom, more organised participation and a progression towards a mature democracy. The status quo is incompatible with such a demand and the absence of organised political parties makes GCC states cling to their old traditional character.

To put the above suggestions to work, the judiciary is the best body to protect such arrangements. The courts' authority in this respect must be enlarged to play a more effective role, since the constitutional values and their importance do not, to a large extent hold the respect of the politicians.

History shows that the seeds of democracy do exist in the political culture of the GCC States. Therefore, one can predict that the above suggestions can be seen in the near future.



## Endnotes.

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## Conclusion

During the past two and half centuries the Gulf Cooperation Council States (GCC) have been ruled by members of the ruling families. Despite this, the governments have not been based on a shared consultative responsibility between the rulers and the various family heads. Until the establishment of a National Assembly, the family heads consulted with their own people. Such consultations, over the years, became a valued tradition. Thus the actions, of rulers were strongly affected by both tradition and the influence of the family heads.

The GCC States can best be described as newly emergent post-traditional states. Compared to other developing countries they are well able to provide for the needs of their citizenry, and the few short decades of oil-fuelled modernization have been accompanied by a significant degree of political development. The most important effect during the period of political change has been the process of institutionalisation, which has included a number of aspects. There has been an emphasis on constitutionalism, both in the writing of a formal constitution and the creation of a broader constitutional framework, which defines the nature and organisation of the state and determines the scope and extent of activities of the regime. The GCC States' governments became the source of authority and prosperity, and the legal structure of these states became more complex, partly Islamic and partly Western, embracing commercial, banking, labour, traffic, administrative and criminal regulations. With the introduction of administrative reforms, a new source of "legitimacy" emerged: a corpus of laws, announcements, decisions and decrees made and enacted by an increasingly sophisticated government, followed by a system of representation, were created to give regimes an aura of "legitimacy" through public delegation.

The most important aspect of political culture is the legitimacy of the government. GCC people apparently believe in the regime's legitimacy as a traditionally based authoritarian monarchy in the post traditional era. The ruling family has appropriated the institutions, symbols and rhetoric of Islam and tribalism to provide ideological support for its rule. What appears as traditional political culture is actually a creation of recent decades. Rulers use a language laden with Islamic and tribal references to persuade citizens of the legitimacy of the political system. They depict their system as representing the apogee of religious and tribal traditions and claim that

obedience to it is a religious and cultural duty. They employ these images and institutions to establish emotional links with their subjects.

The following analysis points out how GCC political systems use the traditional heritage and aspects of popular culture to enhance their legitimacy.

### **Shura and Democracy.**

The formal imperative of Islam inclines towards bestowing legitimacy on the type of centralised structure of political authority characteristic of the contemporary governments of the GCC States. The first major decision that the Muslim community had to make was the election of the first Khalifa (caliph; successor) on the death of the Prophet Muhammad. The Khalifa held religious and political authority, a practice based on a principle of the Sunnah (the traditions based on the sayings of the Prophet). Although the rulers of the GCC States do not hold religious title, they head religious communities, which constitute the social, political, legal and cultural system. In the Shariah, Muslims have a law that concerns itself with all constitutional and legal matters.

The Holy Qur'an uses the word *Shura* to refer to "mutual consultation between believers". As the concept of democracy has become the principal political system in the developed world, the idea of *shura* was embraced by many regimes to explain the adoption of various forms of parliamentary government in the Muslim world. Although the word democracy in its modern application has become analogous to Western thought in the minds of many Arabs, the idea of popular consent and dialogue between rulers and subjects is an ancient one with a basis in the Qur'an. There are no details in the Qur'an regarding the apparatus to be used for consultation. However, the *Majlis Al-Shura* or its equivalent in the GCC States was developed with the traditional Islamic thought in view. The adaptation of the venerable *shura* into a modern representative institution is an innovative interpretation of a traditional belief. The practical introduction of traditional Muslim ideas into a modern context is a creative way for GCC leadership to approach the occasionally sensitive relationship between democracy and Islam. Islam contains other principles, which could make it responsive to the moral and legal prerequisites of democracy, such as the rule of law, recognition of the worth of every human being and the equality of all citizens before the law. (for further details on *shura* and democracy see chapter two of this study).



In Islam there is no place for arbitrary rule by one person or group of individuals. The basis of all decisions and actions of an Islamic state should be, not individual impulse or whim, but the Shariah, which is a body of regulations drawn from the Qur'an and the *hadith*. At an abstract level, this meets another requirement of democracy, which is the rule of law.

Islam also has principles, which support the concept of the equality of all citizens before the law, regardless of their racial, ethnic and class distinctions.

With the growth of influence of Western political models in the Islamic states, it becomes impossible to avoid the question whether Islam is compatible with the imported secular Western institutions such as constitution, legislatures, political parties, popular elections and modern notions of citizenship. Institutions like these were originally perceived by conservative Muslims to be inextricably linked with Western civilization and, hence alien to, and incompatible with Islam.

In contrast, liberal Muslims argue that these institutions were acceptable in Islam, because there were no specific Islamic guide lines on how to set up a system of government suitable for the use in the era of nation state. Moreover, the Muslim world is now constituted as separate independent nation state which have more recently adopted some of the power structures and legal concepts of modern state.

As the case in the Western liberal democratic societies, one can not speak of Islamic discourse as a common feature of the Islamic societies except at a very high level of abstraction and generalization. The role of Islam in political, constitutional and legal systems of Islamic countries should be seen as integral underlying the social production of meaning. In other words, there is no universal Islam model but a variety of local Islamic culture. The countries of the present Muslim world are governed by a wide variety of regimes.

At one end of the spectrum, there is the traditional "constitutional" monarchies in Morocco, GCC states and Jordan, or a military/ single party as in Iraq and Syria. At the other end, some Islamic countries such as Bangladesh and Malaysia enjoy a reasonable degree of democratic constitutional government.

## **Tribal Structure : An Important Social and Political Support.**

Tribal heritage is another important pillar of the GCC States' social and political structure. Until recently political allegiance to a territorial unit, such as is implicit in the European State system, was unknown in Arabia. An individual's loyalty was personal, to the tribe, the *shaikh*, or a leader of greater consequence. A ruler exercised dominion over a territory due to his authority over tribes inhabiting it. Tribes have played an important role in the history and the development of the GCC States. The most significant factor related to the economic, social and political implications of tribal influence is the decline of the tribe as the principal political unit. Decentralised and egalitarian in nature, the tribe has been replaced by the state, which has ultimate political control. Of significance in this process of transformation has been a noticeable shift from a primarily nomadic population to a seminomadic or sedentary population. Tribal structure may persist; but control by tribal rulers is declining. Reasons for this include new economic incentives, such as oil, political pressures to settle population, and the introduction of health, welfare, and educational services that can be most efficiently administered by the government among a sedentarised population. Yet throughout the GCC states, tribal identity is still a significant cultural and locally influential political factor. Although the most obvious and important tribal component in the modern states of the GCC countries is the status of the ruling family, whose position is absolute, there have been other results as well. Several important concepts embodied in the GCC governmental practice are founded expressly on tribal custom. Among these ideas is that of the *Majlis*, an informal, public session during which the ordinary citizen is granted personal access to the ruler, can present a petition and has an opportunity for immediate remediation. Another effect of tribalism is the *shura* the process of consultation with tribal or community notables, a concept that has been formally incorporated into the government's provision for consultative assembly, the *Majlis Al-Shura*. The incorporation of these traditional practices in the operation of government has imparted a sense of continuity in the midst of rapid change. ( for more details of the tribal political role in the GCC political system see chapter two)

Tribal attitudes, by their essence, have contributed to the stability of the political systems of the GCC states. For centuries, the pattern of political allegiance in the tribal community was hierarchical, with authority focused on the shaikh, or tribal



leader. Assisted by a few tribal elders and religious personages, the shaikh acted as the central authority, the final decision-maker and the ultimate judge. However, he could not operate outside tribal laws and customs and was as restrained by them as any member of the tribe. Arab tribal tradition requires the shaikh of each tribe to consult the notables and senior members of the tribe to exchange views on all matters of public significance. The Qur'an itself offers no specifics concerning the mechanism to be used for consultation. Throughout history, the Islamic and tribal directive to consult has not served to uphold effectual widespread political participation. The tradition of consultation limited that prerogative to prominent personages. It did not include the concept of an organised loyal opposition, nor involve the idea of representation as opposed to consultation.

In the process of transferring the loyalty of the Bedouin from the tribe to the nation, the kings, sultans, and amirs of the Gulf States have tended to function and be perceived as tribal rulers. They have uniformly sought to create a perception among their populations of "ruler accessibility", which itself was an attribute of tribal political authority.

### **Impact of Oil Wealth on State/Society Relationship**

The discovery of oil has influenced and shaped the political systems in the GCC States. Oil has played a supremely significant role. The greatest impact of oil was that it gave rulers direct access to external revenues, generated outside the local economy, where once their revenues had to be squeezed from the population through the merchants, who in turn exacted a political price. The new oil revenues snapped the link binding the rulers to the merchants.

Oil revenues allowed the rulers to deal directly with the population by hiring nationals into the bureaucracy, and as a result merchants were deprived of a politically useful workforce. The external nature of oil rents, the enclave nature of industry and the size of the boom spared rulers the need to extract, through taxation and repression, economic and social resources obtained through other networks of obligations such as tribal and religious groups. The rulers were thus freed from their historical dependence on merchants.

The breakdown in the old ruling coalition binding the trading families and the rulers and its replacement by a new set of elites constitute a pattern of response to oil



that occurs repeatedly. Oil gave these regimes the resources necessary to develop new allies among the national population through distributive policies. The benefits of oil have trickled down to most nationals. As a result, many groups which were previously unaffected have begun to feel the impact of these changes. The prosperity that citizens enjoy has direct impact in two areas - social services and employment. Citizens are entitled to free education, health care, and a variety of subsidised goods and services, including housing, as well as direct transfers of wealth. The second mechanism for distributing revenues is employment. In order to provide a wide range of services there was a great expansion of bureaucracies, which the Gulf regimes favoured, since it was seen as a sign of modernism and a dignified way of disbursing wealth. The consequence has been the increase of bureaucracy in scope and size in these States. By 1990, more than 60 % of the national work force in the GCC States were working for the State.

Distributive and development policies rapidly increased the role and size of the State. To maintain control over the new States, rulers turned increasingly to the ruling families. Members of the ruling families constitute the most powerful subset of the GCC governing elites, joined by a small but influential group of prominent merchants and professional State administrators. This social coalition relies on tribal authority, control of the central bureaucracy and, when necessary, armed force to maintain its predominant position in the local society. The family was chosen because it offered the most reliable set of allies, a group with a vested interest in monarchical rule. The ruling family also provided a ready-made proto-institution. The political role of the ruling families was an important break with the past. Until oil, the ruling families were not a cohesive political institution; rulers were dependent on influential merchants' families, and members of the ruling families were excluded from the rulers' decisions. With oil, rulers strengthened family networks to provide more reliable elites as recruitment pools for increasing large and bureaucratic governments, catalysed by oil. The most distant family claimants were eliminated; the less distant received increased allowances; the nearer claimants, sinecures and the closest relatives, High State posts. The rulers control politics and political institutions primarily through the ruling families. The ruling family council makes critical decisions. As the ruling families became more cohesive and more powerful relative to the society, the rulers became less absolute and less powerful relative to their own families.

The era of modernisation in the GCC States has possessed many positive socio-economic and political elements which have fostered the increase of political participation within these States' societies. The most important regime change has been the withdrawal from formal political life of historically influential economic elites. Oil allowed the rulers to force the merchants to choose between wealth and formal power in a way they would not normally have been forced to do. The merchants' withdrawal from formal politics was accompanied by the development of new kinds of ties: first between the rulers and their ruling families, whose political role grew as rulers sought loyal allies; and second between the rulers and the citizen population, through social programmes and State employment. With the growth of bureaucracy, the decision making elite also expanded. Many of the new decision-makers were recruits from the ranks of the middle class mainly employed by the growing government bureaucracy. This group of educated youth has been imbued with a sense of political importance, and has sought to increase its role in decision-making and in the political system in general. Members of this group have recognised that these objectives could not be achieved within the traditional structure, and that a modern institutionalised framework for participation was required.

Despite the fact that the GCC States in their process of development, modernisation and nation building imply the same characteristic features of the modern state which is premised on popular sovereignty, constitutionalism, a legal system in which citizens have equal rights and obligations and a common allegiance to the nation as a basis for solidarity. GCC States can not claim that they have reached the modern version of the nation state. In order to promote the idea of a nation state it is necessary to strengthen the tie of national loyalty, which is difficult to achieve as long as loyalty is submitted to the ruler. Nation state concerns require the GCC political system to be reformed in a way that loyalty should be developed into an affective instrument to create conditions in which the citizens submit their loyalty to a large entity, the state, rather than to one person.

### **Institutionalisation of Popular Participation.**

The widening of political participation seems almost inevitable in many developing nations, which have embarked on a course of modernisation. The move toward political participation can be viewed as a direct consequence of several social



factors which operate in modernising societies. The GCC States are rapidly becoming urban societies, with more than half of their populations living in urbanised areas. Educational facilities have proliferated at all levels and become highly valued social provisions. Consequently, the populations are becoming increasingly better educated, and illiteracy has already become a thing of the past. With urbanisation and industrialisation has come the gradual emergence of the middle class.

There are several means of active participation in the Gulf systems. For instance, there is the traditional participation through the institution of the *Majlis* or council and the *Shura*. The rulers are not absolute monarchs, but their families form the primary decision-making bodies of the States, influence them, and display a wide variety of opinions. There is also indirect participation, which occurs in some States through the activities of social and sports clubs, student organisations and professional societies. Finally, all of the GCC States have formal national councils at the national level. Despite all these opportunities, it cannot be said that today's Gulf citizens enjoy maximal opportunities for political participation. (for more information on the participation process in the GCC States see chapter one)

In the absence of political parties, the clubs and societies, whose memberships include a majority of the GCC States' elite public, have exercised the essential functions performed by political parties in other political systems. Although none of the clubs and societies was established for political reasons or to perform an explicit political function, they have all provided the milieu for the elite public to develop political opinions and to articulate them. Clubs have performed a role in the political life of the GCC States such that both the ruling families and the elite public have perceived them as agents of political institutions. Regarding the role of clubs in the GCC States as compared to the role of traditional political parties in developed or developing countries, it should be emphasised that, structurally or formally, the clubs have played a role in the growth of the GCC nations, especially in the strengthening of identity, legitimacy, and integration. As they were the places where the educated met, the clubs, though officially nonpolitical, became in reality centres for things political.

The social change caused by oil wealth, with its opportunity for development, education, travel, changing lifestyle, and rulers' personal goals, together with the growing awareness of participation among the people, created the transitional stages in the political evolution from traditional to modern societies. This trend involved the



adoption of written constitutions which placed emphasis on western-inspired principles of division of powers between the branches of government and some degree of legislative power sharing between the rulers and National Councils. However, the path to modern parliaments has not been smooth in some of the GCC States.

The most important effect of the period of political change has been the process of institutionalisation, which has included a number of aspects. There has been an emphasis on constitutionalism, both in the writing of a formal constitution and the creation of a broader constitutional framework, which defines the nature and organisation of the state and determines the scope and extent of activities of the regime. The GCC States' governments became the source of authority and prosperity, and the legal structure of these states became more complex, partly Islamic and partly Western, embracing commercial, banking, labour, traffic, administrative and criminal regulations. With the introduction of administrative reforms, a new source of "legitimacy" emerged: a corpus of laws, announcements, decisions and decrees made and enacted by an increasingly sophisticated government, followed by a system of representation, created to give regimes an aura of "legitimacy" through public delegation.

As has been noted, the traditional roots of GCC societies, which are based on Islamic and tribal structure, are participatory. However, the nature of this participation is unlike that of the West. Instead, it is one with its own indigenous institutions and cultural background. In this environment, participation is based on the institutions of *shura* and *majlis*, with an emphasis on consultation and consensus. To these traditional pillars of legitimacy, the GCC states have adapted their constitutional framework and institutionalised government structures. The written constitutions of these states place emphasis on Western-inspired principles of sovereignty residing in the people, the separation of powers between the branches of government and some degree of legislative power-sharing between the ruler and national council.

The attempt to marry traditional and modern bases of legitimacy is not without its ambiguity. With reference to the tribal structure, the success of traditional participation depends primarily on the egalitarianism of the tribal order. The shaikh is first among equals and people are free to change ideas and opinions on a wide variety of social, economic and political matters. The concept of *shura* evokes the golden age of the Rashidun caliphs and reflects an ideal of full interchange between ruler and ruled, which is absent from the modern Islamic world.

A textual analysis of these constitutions casts doubt on their efficacy in producing a meaningful participatory government. Extensive rulers' prerogatives contained in the constitutions indicate a desire to give the appearance of change while still concentrating power in the rulers. Despite the shortcomings of the GCC experience with participation by Western democratic standards, the constitutions represent the first attempt to define the rights of their citizens and the organisation of their governmental institutions.

Although the GCC States have achieved the building of modern government structures, authority has remained strongly vested in the person of the ruler and his family. The move towards Constitutional Monarchy has not in any significant way eliminated the traditional legitimacy.

### **The evaluation of the GCC Assemblies.**

Most of the GCC Constitutions during their adoption of the Assembly system were aware of the importance of the wide participation of the people in improving the system. For that reason, their constitutions adopted the concept of universal suffrage. This concept means that the right to vote shall be extended to all adult citizens who as a result will be qualified to participate in the representative system.

Despite this fact, up to the present, eligibility for participation is restricted in the GCC States. First, parliamentary elections are held only in Kuwait. In Oman, despite the fact that the law requires members of the council to be elected, the practice turns out to some what different and in other states members are appointed by the ruler. Second, as a consequence of the tight controls on citizenship and very restricted qualifications on membership, a very large number of people, holding a high educational level in these societies, are prevented from participating in the selection process. Moreover, the sex qualification required by most of the GCC States not only lowers the participation ratio but is also in conflict with the democratic principles stated by these states' constitutions and it contradicts with the Islamic aspect of human rights.

Finally, it is reasonable to say that the membership of the GCC Assemblies secures the dominance of male Arabs from the dominate merchant, tribal and co-operative families in these states. In fact, the practice of selecting assembly members and its leadership process highlights the prevalence of the old social structure and the continuity of the traditional way of consultation. Therefore the GCC Assemblies are unrepresentative of



their societies. (for more information on membership of assemblies in the GCC see chapter three).

The constitutional arrangements for legislatures in the GCC States, indicates that there are similarities in the functions among the legislatures of Oman, United Arab Emirates, Qatar and Saudi Arabia. First, these legislatures may not be involved in the first step in the life of law (initiation). Second, they may discuss, debate and amend or reject a bill but what they lack is mandatory power. Third, the government may take advantage of the period that the legislature is out of session to promulgate unchallenged laws under its power to promulgate laws in cases of urgency. In short, it seems that according to the constitutions, the role of legislatures as far as legislation is concerned is to a large extent consultative. In fact, these constitutions grant the legislatures unrestricted rights to express recommendations as to their wishes and demands relating to any public issues. On the other hand, the Kuwaiti Assembly has demonstrated a capacity to resist executive initiatives, to force modifications upon the executive and even on occasion to defeat executive proposals.

It is clear that most of the GCC Constitutions intended to create legislatures with no formal constitutional powers in the field of legislation except in debating and proposing amendments to draft-laws. In contrast to the strict theory of the constitutions, in practice legislatures have attempted to play a much more positive role in the legislative function.

As regards the legislature's political function, the constitutions of the GCC States deprive legislatures of many significant and efficient controls. Despite the shortcomings in the political function, GCC Assemblies have endeavoured to present themselves as an independent and critical body. In all GCC Constitutions, the legislatures do not have the power to establish investigating committees, yet the governments of Kuwait and United Arab Emirate have agreed to the formation of such committees in several cases.

In the fiscal field -with the exception of the Kuwaiti Constitution- constitutions not only prevent assemblies' members from initiating financial bills, but even deprive them of the right to accept or amend the most important element of the financial function, which is the budget. Regarding the committee system, it is worth mentioning that GCC States are unique in having a full and direct commitment in their constitutions to a system of committees in their legislatures. In other words the constitutions do not



allow the legislatures to work without committees in law-making. Despite the fact that the committee system is permanent and specialised, they are facing certain difficulties. Obviously, in order for committees to be important, more is required than this kind of structure. It should be kept in mind that the absence of strong committees suggests a very weak legislature. Internally, that means that it is capable of playing only the most minimal policy making role. (functions of the GCC legislatures are studied in chapter four of this thesis)

In examining the means available to the GCC Assemblies for exerting influence upon the executive (and vice versa). The issue of warnings by the Assembly was used most frequently and with the greatest effect, but on balance, that the government continued to have the upper hand vis-à-vis the Assembly in the matter of exerting influence upon the policy process.

It is evident that there is no division of legislative and executive powers in most of the GCC States, and that the separate headings for these powers in the constitution do not have sufficient content, either theoretically or practically. The Head of State is the supreme executive as well as legislative body of the Government.

Unlike other Assemblies in the GCC States, the Kuwaiti National Assembly is empowered with supervision responsibilities, such as the right to interpellate Cabinet members, question them thoroughly and demand a full explanation on any subject. The Assembly is also empowered to supervise the government's actions, and form a committee for inquiry and investigative purposes in relation to any matter that falls under the Assembly's jurisdiction. However, due to many customary rules, the legislature, as has been shown, was unable to make the theory of Ministerial Responsibility effective, and on very rare occasions the Assembly was successful in holding ministers' responsibility to enforce their resignation.

Dissolution of Parliament is an acceptable weapon existing within parliamentary government. While its adoption and regulation by the Kuwaiti and Bahraini constitutional arrangement is logical, in fact, the dissolution as practiced destroyed the legitimacy of the legal system. By this revolutionary step, first, the constitution, the superior source of legitimacy of the state was suspended. Second, all acts that took place during the said period were unconstitutional because they were formulated according to methods not permitted in the constitution. Third, the practice of forced dissolution was mainly to support the executive against the legislature. The

dissolution of the Assembly gave credence to the argument that the Kuwaiti and Bahraini experiment had succeeded to a degree which the government perceived to be undermining and dangerous to its authority. Moreover, it signifies that both Assemblies were strong and defiant institutions that wanted to exercise their functions to the fullest, unlike the legislatures of other GCC States, which are merely a rubber-stamp survivalists. (further information on the checks and balances of the three arms of the government is in chapter five)

### **Reform; an essential element**

GCC regimes are aware that their oil- and investment- fuelled revenues can only buy time and cannot respond and channel the latent and active demands and frustration forever. The ruling elites know that popular participation and political reforms are crucial for lasting political stability and legitimacy for these States.

These are several internal and external factors that conducive to reform to establish democratic regimes in the GCC States. Most important are the educated new generations are demanding more freedom, more organised participation and a progression towards a mature democracy. The status quo is incompatible with such demand and the absence of organised political institutions make GCC states cling to their old traditional character. Second, the Iraqi invasion of Kuwait had a great impact on the social and political systems of the GCC States. These states experienced and developed a new political approach, especially in respect of relations between the governments and their people. This experience led the political elites to rethink their approach to politics and seek more extensive domestic support and stronger foreign alliance. The Gulf war provided the incentive and the will to get the people more involved in the decision - making process. Therefore, the GCC States are being forced not only by their citizens but also by Western Countries to deal with the issue of political participation more seriously than they have in the past.

It is important in the case of drawing up a reform for the GCC Systems to mention that the Western model of democracy cannot be implemented into the GCC societies where cultural and religious patterns are strong. Instead it is important to take into consideration how to make changes to the existing systems without totally rejecting the past. The present systems allow room for peaceful and gradual transition rather than radical change. Moreover, the reform will come about through increasing popular



participation in the decision-making process and amending those restrictive provisions in the constitutions, which deny the assemblies real power.

A successful democratic process requires more than instant wealth to translate the people's goodwill and traditional loyalty and support into a functional system of participatory government. For democracy to function effectively, at least three basic conditions must be fulfilled. First, the relationship between the government and the governed must be clearly defined. Second, democracy must be recognised as a right that belongs to the people, rather than being a gift from the ruler. Third, the process must become institutionalised and not subject to the whim of any one ruler or any one ruling family.

To promote a stable political system through the careful selection of the new constitutional arrangements, certain early reforms to the existing constitutional system in the GCC states is recommended in order to implement the above democratic ideals. A gradual process of free elections of assemblies' members must be the cornerstone of any reform. Representation in the assembly should be open to all citizens regardless of their race, sex, age and social status. The electoral system of the GCC states should be based on the idea that voting is essentially a right to which all adult citizens resident in the country are entitled.

The legislature must be allowed to participate actively in the law making process and to operate positive control over the executive. Its decision must be taken seriously and acted upon. Finally, in order to ensure the effectiveness of legislature it must be a major partner in any future constitution making process.

The introduction of party system appears to be central in improving the constitutional system of the GCC states. It must be noted that although the GCC elites are rejecting the idea of party system, it is always possible to find a way of convincing. In convincing the GCC elites of party system it is quite easy to take the advantage of other country experience. By stimulating a very strict regulations on parties and by defining a certain check technique within and over them to avoid the discouraging experience of other Arab countries which, was the main reason behind the rejection of party system in the GCC states.

To put the above suggestions to work, the judiciary is the best body to protect such arrangements. The courts' authority in this respect must be enlarged to play a more effective role, since the constitutional values and their importance do not, to a large



extent hold the respect of the politicians. (see the proposed reform of the GCC participation system in chapter six)

A real reform should be supported through the creation of more freedom, more organised participation and a progression towards a mature democracy. Civil society exists where a combination of associations, clubs, guild, syndicate, federation, and groups come together to provide a buffer between state and citizens. Although GCC States have succeeded in establishing internal security organisations that prevent domestic discontent from escalating into movements threatening to the state, this has come at a price to civil society. The political space consisting of mediating institutions between society and government usually gets co-opted or suppressed by state security authorities. Professional associations and Chamber of Commerce are allowed, but are closely overseen by the state. The concentration of economic power in the hands of the state or a few families allied to the ruling families has limited economic autonomy and therefore the political freedom of the GCC businesspersons. Independent professional associations such as faculty and alumni associations at the national university; lawyers', engineers', doctors' and white-colour Unions do not exist in most of the GCC States and when they do exist as in Kuwait and the United Arab Emirates, they do not play an important role. Social groups may play an important organisational role as centres of political discussion, if not of overt political activity. Television, radio and printed media are often controlled directly by the state or are in the hands of private ventures close to state officials. Independent newspapers and other publications are liable to state censorship. Seeking the foundation of democracy means that society must be in a position to communicate freely and to give expression to the full diversity of views. Media institutions should constitute a particularly important element of the public sphere. Their role is to distribute the information necessary for citizens about any developments in the society, form a view about these developments and follow the public debate on these issues. The main prerequisite for the media to be able to perform their proper role is their freedom and independence. The constitutions should provide a guarantee for institutional freedom of expression an explicit prohibition of all forms of prior restraint by state. The media statutes should provide an explicit rejection of all forms of external or internal interference; a guarantee of maximum access to public information in a special freedom of information act.

In the light of the above discussion, if the GCC States are to enjoy long-term stability, internal political reform must be a top priority. The ruling families must realise that, if popular participation is channeled properly it can be a great asset to the regime and a stabilising force in society. New political institutions, constitutional arrangements and political parties can be used as acceptable channels for the distribution of powers among the whole society.

History shows that the seeds of democracy do exist in the political culture of the GCC States. Therefore, one can predict that the above suggestions might be seen in the near future.

This study has discussed political systems that are little known and institutions that until now have been understudied. Hopefully this study will help to broaden the knowledge of GCC States' political systems in general and their Assemblies in particular. Finally it is hoped that this study will guide and inspire others and be a prelude to more scholarly research about the GCC political systems.

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