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# **Specifying the Elements of the Political, Social and Economic Democracy in Kuwaiti Constitution**

**Dr. Majid Salman Hussain  
Faculty of Law & Politics**

**Basra University**

## **Abstract:**

The purpose of this research is to see how far the Kuwaiti constitution has taken from the two paradigms of democracy, based upon principles of free individual enterprise and socialists.

As well as, the aim of this research is to identify the main principles of Kuwaiti constitutional law in the context of the political and social values that influence their development. The main theme underlines this research is to compare the articles of Kuwaiti constitution in the aspects of the social and political system with the United Nation's Universal Declaration of Human Rights, Islamic Sharia Law and other Human Rights declarations, which particularly relate to the political freedoms and underpin democracy. These include freedom of expression and assembly, access to information, and national security.

## **1. Introduction**

For any regime or ruling system, its socio-political philosophy is simply a reflection of the ideological and economical environment in which it exists. Democracy in the traditional sense, based upon principles of free individual enterprise, it is in fact political democracy advocated by the rule of people and based on principles of political freedom and equality before the law. However, democracy as defined by the socialists is democracy based on a rule that is for the benefit of the people and to achieve social justice and equality among individuals. These two paradigms of democracy are discussed to see how far the Kuwaiti constitution has taken them?

As well as, the aim of this research is to identify the main principles of Kuwaiti constitutional law in the context of the political and social

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values that influence their development. The main theme underlines this research is to compare the articles of Kuwaiti constitution in the aspects of the social and political system with the United Nation's Universal Declaration of Human Rights and Islamic Sharia Law. Also, other issues have to be discussed such as Human Rights declaration and selected topics which particularly relate to the political freedoms and underpin democracy. These include freedom of expression and assembly, access to information, and national security.

However, to achieve our aim of this research, we have used primary sources, which were the Kuwaiti constitution; the Explanatory memorandum for the Kuwaiti constitution; the Holy Qur'an; the United Nations, Universal Declaration of Human Rights, General Assembly resolution 217 A (111) of 10 December 1948; the United Nation: General Assembly, The Covenant on Economic, Social and Cultural Rights, 3<sup>rd</sup> January 1966, and the United Nation, 'Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile', 1965, Sale no.65.XIV. Also, the secondary sources have been used in this research dealing with various aspects of this subject, in both English and Arabic. Some of these sources deals with aspects of political rights in Kuwaiti constitutional system and some other sources, recently published, deals with the philosophical foundations of human rights and their limits and deals with the modern democracies. However, all these sources provided relevant information about constitutional issues but dealt with different issues from different point of view, written from a general approach and to a large extent none of these sources dealt in details with the issues investigated in this research. However, I hope this study will be regarded as a modest attempt to contribute valuable information about the constitutional system in Kuwait in English Language.

This study has divided to introduction and two sections; the first section deals with the defining political democracy in the constitution. The second section examines the elements of social and economic democracy in the Kuwaiti constitution and this research ended with a conclusion.

## **SECTION ONE - DEFINING POLITICAL DEMOCRACY IN THE CONSTITUTION:**

Human rights have been considered an essential element of democracy and both cannot exist without each other. However, although the large number of declarations, covenants, and other international agreements in the most of countries in our world, human rights still are principle rather than custom. Similarly, the existence of human rights in constitutions does not apply into exact value for all human rights. In reality, the protection of rights requires more than ratified conventions, constitutions, or even independent judiciary. It depends on the nature of a political system and on the social circumstances and values about the political system that exist among the leaders and ordinary citizens.

When we look to the historical experience and to the review of the violations in the present world, recommend that human rights are well protected in political systems based on the principle of separation of powers and with checks and balances that prevent extreme concentration of political power. However, without separation of powers, the rights of individuals and minorities cannot be efficiently protected. It is noteworthy; this fact has become well noticed since the writings of Montesquieu<sup>(1)</sup>.

This kind of checks need an independent courts in order to able the citizens bring their cases about violations before the judiciary. Normally, the courts are subordinated to the executive, and they depend on executive authority for the implementation of their decisions. But the enforcement of constitutional decisions is up to the legislature. Therefore, this relationship make legislature respect the decisions of the constitutional courts and reinstate unconstitutional laws with new laws are essential for protection of these rights<sup>(2)</sup>.

The system of checks and balances between legislative and executive authorities provide common rule and supervision. In the presidential system, the presidential veto and the power to refer laws to courts for judicial review, checks the legislature. In the same time, the

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<sup>(1)</sup> Montesquieu, Charles-Louis, *The spirit of the laws*, (1748), Trans. And Ed. By Anne M. Cohler, Basia C. Miller and Harolg S. Stone, Cambridge: Cambridge university Press, 1989, part 2, book II, Chapter 6.

<sup>(2)</sup> Osiatynski, Wiktor, *Human Rights and Their Limits*, Cambridge: Cambridge university Press, 2010, pp.70-71.

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executive is controlled by the legislative authority with veto of confidence, questions submitted to the government and supervised by parliamentary commissions. However, in the political system based on the principle of separation of powers and with checks and balances, the protection of human rights of particular relevance, there is civilian control over military and security services. Also, Human rights are improved by independence of the media and freedom of speech. Right to information prevents abuse of power under the pretext of secrecy. The practice of freedom and safeguarding of rights is relatively to the strength institutional organisation of civil society, which it should be independent from the state and able of the safeguarding of rights through many political and judicial means.

Human rights can be presented and be valued in political systems that adapt limitation of power. Limited government and a system of checks and balances assisted the safeguarding of rights of individuals and minorities long before the notion of universal declaration of human rights was formulated. However, limited government and guarantees of individual freedom were introduced in England 1689<sup>(3)</sup> and in the USA by 1791<sup>(4)</sup>. Since the end of World War II, human rights have been considered an essential element of democracy; as the conventional opinion states that human rights cannot exist in the absence of democracy and democracy cannot exist without human rights<sup>(5)</sup>.

In the case of Kuwait, the constitution states that the political system base on the principle of separation of powers and with checks and balances (article 50); it also states that the judiciary is independent (article 163) because the need of checks and balances for independent courts in order to able the citizens bring their cases about violation of their rights before the judiciary. The constitution also states that the constitutional court shall be (article 173) to censorship the constitutionality of laws and to reinstate unconstitutional laws with new laws are essential for protection of these

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<sup>(3)</sup> For more details see: Lyon, Ann, *Constitutional History of the United Kingdom*, London: Cavendish Publishing Limited, 2003, pp.254 et seq., and Keir, David Lindsay, *The Constitutional History of Modern Britain since 1485*, eight edition, London: Adam & Charles Black, 1966, pp.268-273.

<sup>(4)</sup> For more details see: Wilson, Woodrow, *Constitutional Government in the United States*, (7th edit.), New York: Columbia University Press, 1927, and Agar, Herbert, *The United States: the President, the Parties & the Constitution*, London: Eyre & Spottiswood, 1950, pp. 625 et seq.

<sup>(5)</sup> Osiatynski, Wiktor, *op cit.*, p.71-72

rights.

However, Kuwaiti constitution defines political democracy very clearly by adoption the principle that sovereignty belongs to the people is the source of all power; it also adopts the principle of equality, and it defines the public rights and freedom (part 2 articles 7-26) and (part 3 articles 27-49). We study these principles as follows:

### **1 - The Constitution adopts the dictum that sovereignty belongs to the Nation.**

The Western concept of 'popular sovereignty' suggested that political authority was legitimate only if it was conferred, and willed, by the people, and not because of the 'state-objectives'. However, it is not the King; the people considered as the source of the law. Article 2 of the Virginia Bill of Rights of 1776 stated this point very briefly: 'All power is vested in, and consequently derived from, the people... Magistrates are their trustees and servants, and at all times amenable to them' <sup>(6)</sup>. A similar notion was stated in the French Declaration of Rights and Duties of Man and Citizen of 1789 that 'The source of all sovereignty is essentially in the nation; no body, no individual can exercise authority that does not proceed from it in plain terms' <sup>(7)</sup>.

The sovereignty of the people was implicit as being unquestionable, that it could not be repealed by some other body. The important act of practicing this sovereignty was thought that the people, when they agree to live together, could give themselves a constitution, in which the people establish a government with powers, which they regulate and control these powers. 'Popular sovereignty' is an attempt to tackle the problem of legitimacy of political institutions. 'The people', is the whole body of a territory's legal residents, whom are seen as the collective source of the state's authority, determining how this authority should be constituted and worked. Consequently, 'popular sovereignty' clarifies itself in the 'constituent sovereignty' of the people, who establish the political

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<sup>(6)</sup> Morison, Samuel Eliot (ed.), Sources and Documents illustrating the American Revolution, 1764-1788 and the Formation of the Federal Constitution, 2nd edition, New York: Oxford University Press, 1965, pp.149-151.

<sup>(7)</sup> Anderson, Frank M. (ed.), The Constitutions and Other Select Documents Illustrative of the History of France, 1789-1901, Minneapolis, MN: Wilson Company, 1904, p.59.

institutions and accordingly create a political community<sup>(8)</sup>.

However, in the case of Kuwaiti constitution, has expressed a strong connection between democracy and sovereignty. The concept of sovereignty in the Kuwaiti constitution shows some similarity with the French Declaration of Rights but the constitution has not gone far from its Arabic characteristics, which shows very clearly in its articles. It is stated that the system of rule in Kuwait is democratic; sovereignty belongs to the people and is the source of all powers, and this sovereignty is exercised in accordance with the way it is shown in the Constitution<sup>(9)</sup>.

In the French tradition, the nation was defined as a unity of individuals who determined to form a voluntary alliance between themselves, as citizens, and enjoyed civil equality and equal political citizenship rights as 'of right'<sup>(10)</sup>. The explanatory note for the Kuwaiti constitution stated the meaning of the word "nation" to be the expression of the democratic principle, which says, "The Nation is the source of all powers". But in the same time the constitution stated in its first article that the population of Kuwait is part of the Arab Nation. Therefore, it could be said that the word "nation", pertaining to the Kuwaiti State (as is the case of Article 6 and others) means the people of the Arab nation in the frame of the State of Kuwait, i.e. the "Arab nation in Kuwait"<sup>(11)</sup>.

It seems that democracy, which is national sovereignty and the rule of the people by the people, is in fact the theoretical dictum contained by most modern constitutions. However, reality shows that in most of the world's states, it is the minority that represents economic power, as in the case of capitalist countries, or the minority that calls itself the Elite or the Vanguard, as in the case of the former socialist countries<sup>(12)</sup>.

Thus we can say that democracy is not achieved by the Constitution through its declaration that sovereignty is for the nation; or by assemblies

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<sup>(8)</sup> Axtmann, Roland, *Democracy: Problems and Perspectives*, Edinburgh: Edinburgh University Press, 2007, pp. 166-167.

<sup>(9)</sup> Kuwaiti constitution: Article 6.

<sup>(10)</sup> Axtmann, Roland, *op cit.*, p.167.

<sup>(11)</sup> Explanatory Note for the Constitution: explanation of Article 6.

<sup>(12)</sup> Al-Salih, 'Uthman, *Al-Nizam al-Dustury wal Mu'assat al-Siyassiyah fi al-Kuwait* (Constitutional System and Political Institutions in Kuwait), Kuwait: University of Kuwait Press, 1989, p. 271.

formulated by the minority under the name of the people's representatives, or by setting up ministerial accountability before these representatives. The existence of real democracy is the existence of mature public opinion overseeing these minority rulers in the achieving of the proper functions of governance so that such a ruling minority will find no other way than to yield to the opinion of the general public and to work in accordance with its demands<sup>(13)</sup>.

## **2 - The Constitution adopts the principle of Equality:**

It can be seen that even though they differ in their definitions of equality, the ruling systems individual for both the ex-socialist countries and the capitalist countries all agree that democracy would not exist except through equality amongst the whole population<sup>(14)</sup>. The first Article of the UN's Universal Declaration of Human Rights stated, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood"<sup>(15)</sup>.

The 1948 Universal Declaration of Human Rights arose from a situation when human beings experienced a terrible abuse for their rights even in the modern history, for example during the wars, such as the World War I and II with its violation towards all the human rights against millions of victims all over the World<sup>(16)</sup>. Also, there were a calls and ambitions for the beginning of a World in which human beings should enjoy freedom; and this aspiration directed against those who tried to prevent these rights being achieved. The declaration insisted on the universality of human characteristics as the foundation for truly human existence. Universality is the foundation for any valid codification of human rights. The preamble of the Universal Declaration did not mention of duties to higher authorities, or towards country, nation, or culture but the declaration itself indicated all

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<sup>(13)</sup> For more details on public opinion see: Bryce, James, *Modern Democracies*, Vol.1, London: Macmillan, 1921, pp. 321 et seq.; Emden, Cecil. S., *The People and the Constitution*, Oxford: Oxford University Press, 1956, pp. 388 et seq.; also al-Sha'ir, Ramsay, *Al-Nadariyat al-'Amat Lil Qanun al-Dusturi*, (General Theory of Constitutional Law), Cairo, 1970, pp.78 et seq.

<sup>(14)</sup> Hauriou, M., *Droit Constitutionnel et Institutions Politiques*, Paris 1972, pp. 638 et seq.

<sup>(15)</sup> United Nations, *Universal Declaration of Human Rights*, General Assembly resolution 217 A (111) of 10 December 1948, Article one.

<sup>(16)</sup> *Ibid.*, (The preamble).



these points very clearly.

In the case of the Kuwaiti constitution is different for a reason that Kuwait gained its independence in 1961, however, on one hand, the constitutional legislators took in consideration that they have to apply the Islamic notions, which had in fact appeared clearly within the text of the constitution, establishing that Shari'a continued to exist in the minds of the people. Therefore, the constitution states that 'the religion of the state is Islam' and that 'Islamic Shari'a shall be a main source of legislation'<sup>(17)</sup>, therefore, the constitutional legislator allocated provisions in the constitution concerned with public rights and duties in its third section which are compatible with Islamic Shari'a law. On the other hand, the constitutional legislators have complied with Universal Declaration of Human Rights, which most of these rights were based upon Islamic Law.

However, the Kuwaiti constitution was influenced by some Islamic notions of justice, cooperation and equality. Hence the Kuwaiti Constitution states that "Justice, Liberty and Equality are the pillars of society..."<sup>(18)</sup> The principle of equality is also stipulated in the constitution, which states that all people are equal in human dignity, and in public rights and duties before the law, without distinction as to race, origin, language or religion<sup>(19)</sup>. This is in fact was no more than the implementation of Islamic Sharia law, where the Holy Qur'an says 'O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other, the most honoured of you in the sight of God is the most righteous of you'<sup>(20)</sup>. As well as 'Believers are brothers'<sup>(21)</sup>. Here the Holy Qur'an clarified that mankind is descended from one pair of parents. Their tribes, race, and nations are convenient labels by which we may know certain differing characteristics. Before God they are all one (equal), and he gets most honour who is most righteous. Also the enforcement of the Muslim Brotherhood is the greatest social ideal of Islam, and Islam cannot be completely realised until this ideal is achieved. Therefore, it is very clear that the constitutional provisions in the aspect of equality are based on the Islamic Shari'a law because as said above that Shari'a is continued to exist in the minds of the people.

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<sup>(17)</sup> Kuwaiti Constitution: Article 2.

<sup>(18)</sup> Kuwaiti constitution: Article 7.

<sup>(19)</sup> Kuwaiti constitution: Article 29.

<sup>(20)</sup> The Holy Qur'an: 'Surat al-Hujurat', verse 13.

<sup>(21)</sup> Ibid, verse 10.

However, the explanatory note for Article 29 also stated the principle of equality in rights and duties in a general way, along with its main applications<sup>( 22 )</sup>. The human rights declaration indicates non-discrimination, together with equality before the law and equal protection of the law without discrimination, establishes a fundamental and universal rule relating to safeguard of human rights. Thus the International covenant on Civil and Political Rights obliges each State Party to respect and guarantee to all people within its land and subject to its jurisdiction the rights acknowledged in the covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status<sup>(23)</sup>. However, although they are stated in the United Nations Declaration of Human Rights, the terms “colour” and “wealth” were avoided in Kuwaiti constitution (Article 29), this is due to the absence of racial prejudice in Kuwait. Discrimination among people due to class or wealth does not exist and is deplored by the Kuwaiti people; therefore there is no need for its negation by special provision in the text.

### **3 - Defining the Public rights and freedoms adopted by the Kuwaiti Constitution:**

The Constitution allocated provisions concerned with public rights and duties in its third section. Its stated social and democratic rights are examined later. The traditional individual freedoms adopted by the Constitution include the followings:

1. Individual Freedom: This involves:

a. The right of the individual in security. The Constitution was specific in tabling the basis on which legal policy was founded so as to balance public power (in safeguarding the society and assuring an individual’s rights) with the country’s framework. This legal balance makes citizens feel secure, due to the rule of the law.

Islam stipulates such rights in its rules and makes personal punishment for individual criminals as stated in the Holy Qur’an: “No bearer of

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<sup>(22)</sup> Explanatory Note of the Kuwaiti constitution: Explanation of Article 29.

<sup>(23)</sup> Eide, Asbjorn and others (Edit.), The Universal Declaration of Human Rights: A Commentary, Oslo: Scandinavian University Press, 1992, p.129.

burdens can bear the burden of another”<sup>(24)</sup> which meant that the salvation for the guilty cannot be attained by the punishment of the innocent. One man cannot bear the burden of another: that would be unjust. Every man must bear his own personal responsibility; in another words, it meant no crime is accused to another. Islamic Sharia lays down that the accused is innocent until proven guilty without any doubt; it also prohibits restrictions on freedom except through the provisions of the law. The Universal Declaration of Human Rights has also ascertained the security of the individual through its Articles 7 to 9<sup>(25)</sup>. However, every person has given the right to equality before the law and equal protection of the law but also any discrimination forbidden under the law and guaranteed to all individuals equal and efficient protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Universal Declaration of Human Rights states that ‘no one shall be subjected to arbitrary arrest, detention or exile’. The protection against arbitrary arrest and detention is one of the most important measurements of the right to freedom of individual. It seems that the Universal Declaration of Human Rights did not lay more detail on this article but for further expansion left to future conventions. In 1965, the United Nation Study on this article adopted the following definition: ‘An arrest or detention is arbitrary if it is (a) on grounds or in accordance with procedures other than those established by law, or (b) under the provisions of a law the purpose of which is incompatible with respect for the right to liberty and security of person’<sup>(26)</sup>.

The Kuwaiti Constitution contains in its texts the right of the individual to safety; therefore, it indicates that no crime and no penalty may be established except by virtue of law, and no penalty may be imposed except for offences committed after the relevant law has come into force<sup>(27)</sup>. This expresses the principle of no crime or punishment, except through the law. The law also stipulates the non-retrospection of criminal law, and there is no punishment except on actions pertaining to those laws, which are stipulated by Articles 32 and 179.

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<sup>(24)</sup> The Holy Qur’an, ‘Surat al-Isra‘i’, verse 15.

<sup>(25)</sup> United Nations, Universal Declaration of Human Rights: Articles 7 to 9.

<sup>(26)</sup> United Nation, ‘Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile’, 1965, Sale no.65.XIV.2.

<sup>(27)</sup> Kuwaiti Constitution: Article 32.

The Constitution further stipulates in its articles that punishment is personal; a man will not be asked about the action of others if he is not a participant in that action<sup>(28)</sup>. It also indicates that no person shall be arrested, detained, searched or compelled to reside in a specified place... except in accordance with the provisions of law<sup>(29)</sup>. Another article states that an accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence are secured. The infliction of physical or moral injury on an accused person is prohibited<sup>(30)</sup>. Article 11 of the UN's Universal Declaration of Human Rights also states that 'everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence'; it also added that 'no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed'<sup>(31)</sup>. However, the first paragraph of this article concerns the basic human rights to be complied with in criminal procedures. The second paragraph of the same article concerns the principle of legality, which limits the application of the criminal law. This article has a strong connection with article 10 in the aspect of the right to a public hearing. In any case, this article consists of the presumption of innocence until proven guilty and the right to defence; it also includes the right to a public hearing and the non-retroactivity of laws.

b. Freedom of movement and selection of abode: here the individual has the right to move to and/or from any place and can choose his/her place of residence; such freedom can be restricted only in accordance with the rules of law. Islamic Sharia outlines this freedom of movement,<sup>(32)</sup> as does Article 13 of the Universal Declaration of Human Rights, which indicates that 'everyone has the right to freedom of movement and residence within the borders of each state; and everyone has the right to leave any country,

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<sup>(28)</sup> Kuwaiti Constitution: Article 33.

<sup>(29)</sup> Kuwaiti Constitution: Article 31.

<sup>(30)</sup> Kuwaiti Constitution: Article 34.

<sup>(31)</sup> United Nations, Universal Declaration of Human Rights: Article 11.

<sup>(32)</sup> Al-Nabhan, Muhammad Farooq, *Nadam al-Hukum fi al-Islam*, Kuwait: Kuwait University Press, 1974, pp. 231-232.

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including his own, and to return to his country' <sup>(33)</sup>. There is a direct connection between the rights and freedoms lay down in article 13 and the reference to the necessities of a democratic society in article 29, and the inclusion of article 13 in the Universal Declaration of Human Rights constitutes a acknowledgment to democracy as the definitive foundation for government. However, everyone lawfully within given territory may move about freely within that territory, without given permission and obstacle, and without having to ask the authorization of the authorities or having to give good reason for anyone presence in any particular place. It is worth noting, some countries with a dictator leadership restricted the freedom of people to move about and to settle as they wish, such as in Iraq during the rule of Saddam Hussein.

The Kuwaiti Constitution stated the right to freedom of abode and movement, which states that no Kuwaiti may be deported from Kuwait or prevented from returning thereto <sup>(34)</sup>. Also, in another Article states that no person shall be arrested, detained, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of law <sup>(35)</sup>. It is very clearly that the Kuwaiti constitution complied with Islamic Shari'a law in this aspect of human rights and Universal Declaration of Human Rights as indicated in its constitutional provisions.

c. The right to enjoy individual privacy: this right also contains the right of privacy in correspondence with, and the sanctity of abode. Concerning the sanctity of abode the Holy Qur'an says: "O ye who believe! Enter not houses other than your own, until ye have asked permission and saluted those in them: that is best for you, in order that ye may heed. If ye find no one in the house, enter not until permission is given to you: if ye are asked to go back, go back: that makes for greater purity for yourselves: and Allah knows well all that ye do" <sup>(36)</sup>. It meant that the principles of respectability and privacy are vital to a cultured life of righteousness and clarity. The Muslim principle of asking polite permission and exchanging greetings guarantees privacy without exclusiveness, and friendliness without undue familiarity. If no one replies;

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<sup>(33)</sup> United Nations, Universal Declaration of Human Rights: Article 13.

<sup>(34)</sup> Kuwaiti Constitution: Article 28.

<sup>(35)</sup> Kuwaiti Constitution: Article 31.

<sup>(36)</sup> The Holy Qur'an: 'Surat al-Noor', Verses 27, 28, and 29.

there may be people in the house not in a presentable state. Or even if the house is empty, you have no right to enter it until you obtain the owner's permission. Human Rights Declaration also dealt with this right by stating that 'no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks'<sup>(37)</sup>. This provision covers a wide range of different interferences. But the right to privacy is connected with the protection of the family, home life, place of residence, correspondence, and physical and mental integrity.

The Kuwaiti Constitution stipulates these rights in respect of privacy; Article 38 states, "Places of residence shall be inviolable. They may not be entered without the permission of their occupants except in the circumstances and manner specified by law"<sup>(38)</sup>. In another article also notes that, freedom of communication by post, telegraph and telephone and the secrecy thereof shall be guaranteed; accordingly, censorship of communications and disclosure of their contents shall not be permitted except in the circumstances and manner specified by law<sup>(39)</sup>. However, these articles cover a large variety of interferences, which has increased significantly in the present time in relation with sophisticated hi-tech progresses and thereby the increased possibility of interferences such as electronic observation carried out by either state agents or private actors. It also the construction of wide-ranging computerised files systems and data banks are another example of modern technological developments which may cause a threat for the protection of privacy; therefore, all these rights has to be respected and laws has to be legislated according to these modern technological developments in order to safeguard the principles of human rights stipulated in the constitution.

2- Freedom of Thought: This is the most important freedom needed by a human in his/her life, since it is connected with his moral values and is the foundation on which his character is moulded. The following represent freedom of thought:

a. Freedom of opinion and its expression: this is a fundamental freedom ordained by Islam. There are many verses in the Holy Qur'an

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<sup>(37)</sup> United Nations, Universal Declaration of Human Rights: Article 12.

<sup>(38)</sup> Kuwaiti Constitution: Article 38.

<sup>(39)</sup> Kuwaiti Constitution: Article 39.

containing sentences that call for man to think, see and imagine, and in which one finds the phrases, “those who think”; “those who contemplate”; “those who recognize”; “those who realize”, and so on<sup>(40)</sup>. The Holy Qur’an directed the God’s messages to the human being for those who believe, understand, consider, identify, and so on..., therefore, the Holy Qur’an indicates that this magnificent nature passage stands out like a hill in landscape, enhancing the beauty of our view, and preparing us for the every-day laws and ordinance which follow. The Universal Declaration of Human Rights also contains such freedom, as states that ‘everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’<sup>(41)</sup>. The right to freedom of opinion and expression as proclaimed in this article of the Universal Declaration of Human Rights constitutes a cornerstone of democratic society. This is the reason why many human rights instruments adopted by the UN bodies since 1948 elaborate principles set out in this article such as the 1966 International Covenant on Civil and Political Rights, paragraphs 1 and 2 of article 19 which indicates that everyone shall have the right to hold opinions without interference and to freedom of expression.

The Kuwaiti Constitution stated that ‘freedom of opinion and scientific research shall be guaranteed. Every person shall have the right to express and propagate his opinion verbally, in writing or otherwise, in accordance with the conditions and procedure specified by law’<sup>(42)</sup>. This article of the right to freedom of opinion and expression constitutes a major element of democratic society. The constitution guaranteed the right freely to express opinion and freedom of speech and the press but it also indicates that such freedoms should not be used for illegal purposes, that is why the constitution indicates there are conditions to be laid down by law to safeguard the use of these rights. However, the right to freedom of opinion and expression, including the freedom of information, is an absolute requirement for a democratic society.

b. The right of belief: within its teaching, Islam states the freedom of belief, as mentioned in the Holy Qur’an: “Let there be no compulsion in religion: Truth stands out clear from error: whoever rejects Tagut (Tyrant)

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<sup>(40)</sup> The Holy Qur’an, ‘Surat al-Baqarat’, verse 164 and ‘Surat al-In’am’, verse 65.

<sup>(41)</sup> United Nations, Universal Declaration of Human Rights: Article 19.

<sup>(42)</sup> Kuwaiti Constitution: Article 36.

and believes in God hath grasped the most trustworthy handhold that never breaks. And God is all knowing and listening”<sup>(43)</sup>. It meant that compulsion is incompatible with religion; because religion depends upon faith and will, and these would be meaningless if induced by force. Also truth and error have been so clearly shown up by the mercy of God that there should be no doubt in the minds of any person of goodwill as to the fundamentals of faith. God’s protection is continuous, and his plan is always to lead us from the depths of darkness into the clearest light. The Declaration of Human Rights stipulates this right of belief in its principles as states that ‘everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance’<sup>(44)</sup>. This right has long custom both in internal and in international law. There are even foundations to say that the basis of the general thought of human rights lies in the long history of protecting religious minorities. In time of Islamic conquest, the Muslims respected and protected the people who have different faith and gave them the rights to keep their religion and to practice it freely or they have the choice to be converted to Islam. However, since the rise of Islam until the present time the most of Islamic states have been applied the freedom of religion and thought; one of these states is Kuwait when promulgated its constitution specified this right in its provisions.

The Kuwaiti Constitution states the freedom of belief very clearly in its provisions when it says, “Freedom of belief is absolute; the State protects the freedom to practise religion in accordance with established customs, provided that it does not conflict with public policy or morals”<sup>(45)</sup>. Although this article seems rather limited, because Kuwaiti constitutional legislator complied with the belief of Kuwait people (who are all Muslim) and in the same time indicated the freedom of other people belief (who are the migrants working in Kuwait), however, it is a step forward with regard to rights of belief when compared with other Gulf States such as Saudi Arabia.

c. The right of learning: here again, Islam called for the right or freedom to learn. This was revealed to the Prophet Muhammad in the first

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<sup>(43)</sup> The Holy Qur'an, 'Surat al-Baqarat', Verse 256.

<sup>(44)</sup> United Nations: op cit, Article 18.

<sup>(45)</sup> Kuwaiti Constitution: Article 35.



verse of the Holy Qur'an, which says, "Read in the name of God; who created the human out of a leech-like clot: read! And thy Lord is most bountiful, who taught the human that he knew not"<sup>(46)</sup> This is a God's message to learn writing, reading and knowledge; this message involves not only the duty of proclaiming into the God's message with visionary way, but also the duty of promulgation and wide spreading of the truth by all who read and understand. This complete meaning of reading refers not only to a particular person and occasion but also gives a universal direction. Islam also encouraged learning and placed the educated at a higher level of knowledge than the ignorant; the Holy Qur'an says, "God raised up, to (suitable) ranks (and degrees), those of you who believe and who have been granted knowledge"<sup>(47)</sup>.

The UN Declaration of Human Rights states such freedom of learning in Article 26, and most modern constitutions stipulate the duty of learning by the citizens and make teaching mandatory and free up to a given stage. Thus, the Kuwaiti Constitution adopted the same principle and stated in its articles that education was a right for Kuwaitis, guaranteed by the State, "in accordance with the law and within limits of public policy and morals. Education in its preliminary stages shall be compulsory and free in accordance with the law which shall lay the necessary plan to eliminate illiteracy"<sup>(48)</sup>. However, the Kuwaiti nation is a Muslim society and Islam indicated very clearly its encouragement for learning and put educated at higher knowledge; therefore, the Kuwaiti constitutional legislator acted in accordance with Islamic Shari'a law in this aspects, and in the same time complied with Universal Declaration of Human Rights, when laid down provision to ensure education in its preliminary stages should be compulsory and free and also set plan to eliminate illiteracy.

d. Freedom of the Press: The Universal Declaration of Human Rights states that 'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontier'<sup>(49)</sup>. This freedom gives individuals rights to express their opinions and thoughts through means of written communication, such as newspapers, magazines, books and leaflets,

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<sup>(46)</sup> The Holy Qur'an, 'Surat al-'Alaq', Verses 1-5.

<sup>(47)</sup> The Holy Qur'an, 'Surat al-Mujadila', Verse 11.

<sup>(48)</sup> Kuwaiti Constitution: Article 40.

<sup>(49)</sup> United Nation: op cit., Article 19.

within the conditions set down by law. The Kuwaiti Constitution stated that “Freedom of the press, printing and publishing shall be guaranteed in accordance with the conditions and manner specified by law”<sup>(50)</sup>. This kind of freedom have created a good environment for democracy in Kuwait by encouraging to publish various news papers and magazines, books in many field to give the Kuwaiti people rights to express their opinions and thoughts.

e. Rights of assembly and establishment of societies: the freedom to have meetings or assemblies means the meeting of individuals in a temporary situation and in a specific place for the purpose of expressing and exchanging thoughts and opinions. However, the right of establishing societies means the ability of individuals to participate in meetings and to exercise a type of activity in a continuous or permanent fashion to achieve a specific purpose. Article 20 of the Declaration of Human Rights stated the rights of meetings and of establishing societies: “Everyone has the right to freedom of peaceful assembly and association”<sup>(51)</sup>. Freedom of association and assembly are important for many human activities undoubtedly relating to the private sphere. They are necessary for any valuable exercise of the freedom of conscience and religion, as stated in article 18 of Universal Declaration of Human Rights (UDHR), and essential also in the field of education, as stated in article 26 of UDHR. The right to form and join trade unions is included in freedom of association, but has been dealt with as a separate matter in association with other rights relating to work, as stated in article 23 paragraph 4 of UDHR.

The Kuwaiti Constitution stipulated the right of the individual in assembly through its provisions, which states:

Individuals shall have the right of private assembly without permission or prior notification, and the police shall not attend such private meetings. Public meetings, processions and gatherings shall be permitted in accordance with the conditions and manner specified by law, provided that their purpose and means are peaceful and not contrary to morals<sup>(52)</sup>.

The explanatory note commented that this article safeguarded

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<sup>(50)</sup> Kuwaiti Constitution: Article 37.

<sup>(51)</sup> United Nations: op cit, Article 20.

<sup>(52)</sup> Kuwaiti Constitution: Article 44.

people's private meetings. Neither the law nor the government requires permission to be sought or advance warnings to be given for such meetings. Nor can the security forces raid these meetings, though this would not prevent people asking for police protection for their meetings in accordance with proper measures. However, public meetings, whether in a normal place of assembly or taking the shape of a procession passing on public roads, or meetings of people in public places, in all their various forms are not possible except "in accordance with conditions and circumstances pointed out by the law"<sup>(53)</sup> and provided that "the purposes of these activities are for peaceful purposes and do not contradict with morals"<sup>(54)</sup>

The law should define the precise meaning of public meetings, as compared with private meetings. Furthermore, assurances for such meetings do not mean permission to exploit such freedom in order to commit a crime or to plot against the law. In this case, penal law and its provisions depict the ways required to ascertain the security of the state and the safety of the people. These provisions, which contain penal punishments and safety measures, would prevent crime happening and would facilitate at the same time the search and tracing of criminals<sup>(55)</sup>.

The Constitution stated in another article that, "Freedom to form associations and unions on a national basis and by peaceful means shall be guaranteed by law. No one may be compelled to join any association or union."<sup>(56)</sup> The explanatory note commented that this determined the freedom of establishing associations and unions (without mentioning the word "organisations"). In its definition it contains political parties so that the constitutional text will not contain the obligation to allow such parties. Further, the non-mention of such an obligation in the text does not mean a constitutional prohibition, since this would be limiting for an indefinite period in the future and would prevent the legislators from allowing the establishment of parties if there was a place for them. Thus, while the constitutional text does not necessarily constitute the freedom to establish political parties, at the same time it does not prohibit such establishments but leaves this matter for the ordinary legislator, without either ordering or

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<sup>(53)</sup> Explanatory Note for the Constitution: Explanation of Article 44.

<sup>(54)</sup> Explanatory Note for the Constitution: explanation of article 44.

<sup>(55)</sup> Explanatory Note for the Constitution: explanation of article 44.

<sup>(56)</sup> Kuwaiti Constitution: Article 43.

prohibiting him in such matters<sup>(57)</sup>.

However, freedom of assembly and freedom of association, together with freedom of expression, constitute the central part in the category of political rights. They are the legal foundation for an active civil society enabling rational-collective will-formation, for the publicity of public affairs, and also for any participatory or representative democratic processes.

3. Rights with social and economic agenda: these rights to freedom include:

a. the freedom of choosing a Profession and a Union: the Universal Declaration of Human Rights outlined such a right in Article 23, which gave the right to a profession and the formation of unions<sup>(58)</sup>. The Kuwaiti Constitution also contains in its texts the freedom to choose employment and form unions; however, the constitution states that “every Kuwaiti has the right to work and to choose the type of his work”<sup>(59)</sup>; and it also states that there is “freedom to form associations and unions... in accordance with the conditions and manner specified by law. No one may be compelled to join any association or union”<sup>(60)</sup>. The constitution in its provisions indicates that the right to work means that the individual should be able to choose employment without the authorities’ interference. Forced work is not acceptable in all its types. However, the wages and the working conditions must reach to an acceptable standard in order to comply with the proper contains of the right to work. Also, the free choice of employment cannot exist if the unemployed are not protected. However, the right to work can be considered as a requirement for the safeguard against discrimination, the freedom of association and other economic and social rights of the employees. The Kuwaiti constitution also indicates that the right to constitute and join labour unions. The freedom to form association, are more important in some extent than the right to work principle. The right to constitute unions without the authorities’ interference is fundamental principle of the international conventions such as the constitution of international labour organisation which was form 1919 and it was revive after World War II. However, the freedom of

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<sup>(57)</sup> Ibid: explanation of article 43.

<sup>(58)</sup> United Nations, op cit: Article 23.

<sup>(59)</sup> Kuwaiti Constitution: Article 41.

<sup>(60)</sup> Kuwaiti Constitution: Article 43.

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association is a civil and political right as well as a social and cultural right.

b. Right of Ownership: the right of ownership is an individual right, and signifies the right of the individual to be a proprietor whose ownership is inviolable and protected from any attack. Islam outlined private ownership, but surrounded it with restrictions in order to direct such ownership in a proper form and reduce its risks<sup>(61)</sup>.

Article 17 of the Universal Declaration of the Human Rights stipulated private ownership<sup>(62)</sup>. Most modern constitutions state that the right of ownership is one of individual choice, though it should not be ignored that such a right has a social function. Moreover, as noted earlier, Articles 16, 17 and 18 of the Kuwaiti Constitution and the comments of the explanatory notes on Article 16, have made private ownership a right for the individual which has a social function regulated by the law<sup>(63)</sup>.

### 4. Rights with Political Agenda:

a. Freedom of Election: it is the freedom of a representative to nominate himself and the freedom of the electorate in choosing whoever is going to represent him. Article 80 stated, “The National Assembly shall be composed of fifty members elected directly by universal suffrage and secret ballot in accordance with the provisions prescribed by the electoral law”<sup>(64)</sup>.

b. Rights of addressing the public authorities: the rights of individuals, societies, unions and people to address the public authorities are stated in Article 45, “Every individual shall have the right to address the public authorities in writing over his signature. Only duly constituted organisations and corporate bodies shall have the right to address the authorities collectively”<sup>(65)</sup>.

However, it should be mentioned that there are absolute rights and rights that are regulated by legislation; for instance, some public rights

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<sup>(61)</sup> Al-Nabhan, Muhammad Farooq, *Al-Itijah al-Jama’I fi al0Tashri’a al-Iqtisadi al-Islami*, Beirut: Dar al-Fikr al-Hadith, pp. 182 et seq.

<sup>(62)</sup> United Nations, op cit: Article 17.

<sup>(63)</sup> Kuwaiti Constitution: Articles 16, 17, 18.

<sup>(64)</sup> Kuwaiti Constitution: Article 80.

<sup>(65)</sup> Kuwaiti Constitution: Article 45.

were made absolute by the Constitution and here the Constitution did not allow for the issuing of a law to regulate it, nor did the ordinary legislation give the right to specify it or put regular limits upon it. For example, the legislator has no right to put limits upon the right of worship. Article 28 of the Constitution states that, “No Kuwaiti may be deported from Kuwait or prevented from returning thereto”<sup>(66)</sup>; this, in fact, is an absolute right for every Kuwaiti and the legislator was not allowed to legislate on this issue. There is another example concerning equality before the law, i.e., that no one can be charged or punished except according to the law; nor is anything retrospective in the Penal Code.

Certain public rights and freedoms are outlined by the text of the Constitution, but their details have been left to be regulated by the legal framework. The ordinary legislator would embark upon the details and the limitation and would then issue them in a law to enable an individual to exercise these rights and freedoms in their objective framework<sup>(67)</sup>.

However, the declaration of human rights is to protect individual dignity; democracy cannot be guaranteed without participation; and dignity cannot be existed without participation. Hence, proper democracy is not achievable without acknowledgment and safeguarding of individual dignity; therefore, democracy and human rights are connected to each other very strongly. In fact, human rights are the basis of modern democracy; thus, there is no democracy without political rights such as the right to vote and to be elected or to participate in the conduct of public affairs. As mentioned earlier that the democracy needs freedom of expression, freedom of movement, freedom of association and the right to assembly, and other conventional civil liberties. Democracy also requires the right to information and freedom of press.

The human rights would be flourishing in democratic states because the democratic system supplies means for censorship the implementation of laws. Human rights are equal for everyone regardless of distinctions of sex, race, wealth, and hierarchy...etc. Democracy establishes equality because the democratic system offers a method for direct those who exercise power. In fact that ruling group can be dismissed in election or the

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<sup>(66)</sup> Kuwaiti Constitution: Article 28.

<sup>(67)</sup> Al-Salih, 'Uthman, *Al-Nizam al-Dustury wal Mu'assat al-Siyassiyah fi al-Kuwait* (Constitutional System and Political Institutions in Kuwait), Kuwait: University of Kuwait Press, 1989, p. 296.

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government can lose support of a minority coalition partner, which already limits their power. Usually, the separation of powers go together with democracy; thus without this principle any safeguarding of human rights is a misleading. Because the individual is in a weaker position than the governmental body or official who breaches the individual rights, the individual should be able to request the state for help, whether dress its issue before the courts, police, and prosecutor, etc., against abuses by state officials. Safeguarding of individuals' rights requires a strong and effective state,<sup>(68)</sup> but state authorities have to be separated and the protective powers of the state have to be made available to individuals and minorities.

However, although there is a strong connection between democracy and human rights but some time democracy could cause intimidation to the rights of individual and minority for example when some times the majority in power could use political rights to raise its opportunities for re-election. It also might suspend the rule of law to safeguard its interest; or it may not apply the rights of an ethnic or religious minority, depending on such standing zeal as religious extremism or ethnic hatred<sup>(69)</sup>. Human rights are to safeguard the individual from a majority, whether as a dissident or as a member of a minority. Therefore, the government should not promulgate some decisions as a valid laws and it should not carry it out, even when this government is working with the support of majority. Human rights protect individuals and minorities when their legal interests conflict with the interest of the majority.

However, there are many means to protect human rights from the democracy's intimidation, such as separation of powers, checks and balances, judicial review, and extraordinary measures for constitutional amendments. This means are the institutional features of modern constitutionalism and they provide the limitation of the determination of the majority and the safeguard of constitutional democracy. Especially, constitutions states in its provisions the protection of minority and individual rights that can be endangered by a majority under interest or

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<sup>(68)</sup> Holmes, Stephen and Cass R. Sunstein, *The Case of Rights: Why Liberty Depends on Taxes*, New York: W.W. Norton & Company, 1999, pp. 48-58.

<sup>(69)</sup> Elster, Jon, 'Majority Rule and Individual Rights', in Shute, Steven and Hurley, Susan, (edits.), *On Human Rights*, New York: Basic Books, 1993, pp.175-216.

passion<sup>(70)</sup>. This kind of constitutional rights is different from legislative rights because they cannot be brought under control by the democratic legislators.

Although acts safeguard individuals and minorities against executive authority, they leave them helpless vis-à-vis legislature that can change an act at will. But in States have a constitutional system with a separation of powers and constitutional courts do not exist, a short-term majority can take certain rights away. However, there are some exceptional cases, \_such as in the case of Hitler, Stalin, Saddam Hussein, and Mugabe of Zimbabwe...etc. presented themselves as the executors of the will of the people as publicised in acts, and issued laws that disregard rights of minorities.

Usually, constitutions stipulate provisions to safeguard rights against legislatures. Therefore, legislators may take up any bill except the proposed bill may contradict with the provisions of the constitution. In this case, the law cannot violate the rights of minorities, even if the majority is in favour of such a law because the constitution cannot be changed by the same rules as the ordinary laws that are being legislated.

Although democratic measures identify the method in which social decision are made, human rights lay down the restrictions to the content of such decisions, according to Sajo 'the extrication of certain issues from majority decision making goes to the heart of constitutionalism'<sup>(71)</sup>. However, even basic rights cannot be absolute; it can be put aside when conflict with other significant values, such as imprisonment contradicts individual freedom, and some measures carried out by police and courts breach privacy...etc. it is important that such invasions into the sphere of personal rights not be illogical, that they be restricted to situations that are defined before a agreed case of interference takes place, and it should not breach the appropriate course of law.

However, in constitutional states, human rights can be restricted or suspended as stipulated in the constitution. Legislative restrictions of rights are authorised in the cases to safeguard some important values such as national security, public safety, public health...etc. Also, the

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<sup>(70)</sup> Sajo, Andras, *Limiting Government: An Introduction to Constitutionalism*, Budapest: Central European University Press, 1999, p.8.

<sup>(71)</sup> *Ibid.*, p.60.



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constitution has to state which rights can be restricted by the legislature.

Usually, the constitution specifies the circumstances and the procedures in which the emergency can be declared. Constitutions also stipulate the restriction of constitutional rights authorised during an emergency and some constitutions state the rights cannot be restricted and others stipulate the rights cannot be suspended even during an emergency. In fact, the rights that are supported during an emergency and cannot be limited within the procedure of constitutional amendment can be considered 'supra-constitutional'.

## SECTION TWO

### ELEMENTS OF SOCIAL AND ECONOMIC DEMOCRACY IN THE KUWAITI CONSTITUTION

With the exception of the collective right of peoples to self-determination stated in the provisions of the covenants, and some references to the rights of trades unions in the covenant on economic, social and cultural rights<sup>(72)</sup> all these rights lay down in Bill are pronounced as individual rights. However, the rights of 'persons' belonging to ethnic, religious and linguistic minorities<sup>(73)</sup> and the rights of the economic, social and cultural, all are pronounced as the rights of 'everyone'. Some time the collective rights have priority over the rights of individuals. Frequently, collective rights become to be state rights which may or may not reveal the interests of the majority<sup>(74)</sup>. However, collective rights are occasionally confounded with economic, social and cultural rights, but the concepts are relatively different because these rights are considered as rights of individuals. The Universal Declaration of Human Rights states that 'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and protection against unemployment'<sup>(75)</sup>. Nevertheless, these rights are not to trade unions or any other collectively; it is belong to individuals. Their inclusion in the declaration and later in the covenant on Economic, social and cultural Rights was another fundamental departure from conventional approaches. Therefore, the claims, that collective right have priority over the rights of the individual and the economic, social and cultural rights have priority over the rights of individuals, must be rejected<sup>(76)</sup>. These rights frequently come into disagreement with the traditional civil and political rights but both types have the same values. Moreover, the democracy has to deal with these challenges in order to resolve such disagreements without affecting individual freedom.

However, the notion of traditional public freedoms was to a certain

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<sup>(72)</sup> United Nation, General Assembly: The Covenant on Economic, Social and Cultural Rights, 3rd January 1966.

<sup>(73)</sup> The covenant on Civil and Political Rights: Article 27.

<sup>(74)</sup> Ricoeur, Paul, *Philosophical Foundations of Human Rights*, Paris: UNESCO, 1986, p.62.

<sup>(75)</sup> United Nation: The Universal Declaration of Human Rights, article 23.

<sup>(76)</sup> Ricoeur, Paul, *op cit.*, p.63.

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extent attached to the doctrine of free enterprise. Here the individual was considered to be the conserver of his rights and freedoms and the State was required to refrain from intervening in the rights of individuals or regulating their activities. Its duty was merely to defend the country from outside attacks and to safeguard security and order<sup>(77)</sup>.

The idea of public rights was connected to the notion of the individual doctrine of equality, which did not extend beyond equality before the law. However, the adoption by the Kuwaiti Constitution of a reasonable individual doctrine encouraged it to add other social and economic rights besides (traditional) political rights for individuals, i.e., the modern right to achieve social justice. The right are formulating the Constitution attempted to achieve this modern outlook on social justice in order to safeguard the citizen against economic power. Here, the Constitution attempted to strike a balance between the public and private economies in order to achieve the social aims of tranquility and prosperity for the people in accordance with its article which stated, that the national economy shall be based on social justice. It is founded on fair co-operation between public and private activities. Its aim shall be economic development, increase in productivity, improvement in the standard of living and achievement of prosperity for the citizen, all within the limits of the law<sup>(78)</sup>.

In addition, as noted before, Article 16 stated that individual property has a social function and that the right of ownership was not absolute. The Constitution also stipulated that granting permission or a monopoly is allowed only through the law, as stated in Article 152, that no concession for exploitation of either a natural resource or a public service may be granted except by a law and for a limited period...,<sup>(79)</sup> while Article 153 stated, that no monopoly shall be granted except by law and for a limited period<sup>(80)</sup>. And as previously mentioned, Article 21 of the Constitution prohibits the private ownership of, and income from, natural resources; these are a property of the State, which will look after them and preserve their use in a proper manner.

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<sup>(77)</sup> Duverger, Maurice, *Institutions Politiques et Droit Constitutionnel*, Paris, T. 1-2, 1971, pp.55 et seq.

<sup>(78)</sup> Kuwaiti Constitution: Article 20.

<sup>(79)</sup> Kuwaiti Constitution: Article 152

<sup>(80)</sup> Kuwaiti Constitution: Article 153.

The Constitution also regulated the position of the weak before the strong, by protecting tenants renting from proprietors and workers from business owners. This was achieved by regulating such relations in a social justice manner rather than according to offer and demand or through the principle of management power as called for by free enterprise doctrines. Article 22 states that relations between employers and employees and between landlords and tenants shall be regulated by law on economic principles, due regard being given to the rules of social justice<sup>(81)</sup>. The Constitution also stated that social justice was the basis of the national economy in production and in the raising of citizens' living standards.

In this regard, the Constitution contained texts prohibiting members of the National Assembly and Ministers from exploiting their positions to accumulate wealth. Article 121 prohibited National Assembly members from appointment to any company directorships or from participating in any contracts signed by the government and those companies; nor could they hire or purchase any public property, or to sell any of their property to government establishments, or bid for anything of this sort<sup>(82)</sup>. As Article 131 stated,

While in office, a Minister shall not hold any other public office or practise, even indirectly, any profession or undertake any industrial, commercial or financial business. Further, he shall not participate in any concession granted by the government or by public bodies or hold the ministerial post with membership of the board of directors of any company. Further, during the said period, a minister shall not buy or take on hire any property of the state even by public auction, nor shall he let, sell or barter any of his property to the government<sup>(83)</sup>.

The Constitution also urged the State to encourage cooperation, savings and life assurances in order to regulate the positions of the

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<sup>(81)</sup> Kuwaiti Constitution: Article 22.

<sup>(82)</sup> Kuwaiti Constitution: Article 121.

<sup>(83)</sup> Kuwaiti Constitution: Article 131

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economically weak. In Article 48 the Constitution stated the exemption of small incomes from duties, which would entail the exclusion of minimum income<sup>(84)</sup>. It also stated in Article 41 that work is a duty of every citizen necessitated by personal dignity and public good. The state shall endeavour to make it available to citizens and make its terms equitable<sup>(85)</sup>. Article 42 said, "There shall be no forced labour except in the cases specified by law for national emergency and with just remuneration"<sup>(86)</sup>.

Articles in the Constitution pointed to the protection of citizens from social dangers. Article 9 spoke of the care and protection of mothers and children and Article 10 referred to the protection of childhood and the safeguarding of children's physical behaviour and spiritual neglect Article 11 states that the State ensures aid for citizens in old age, sickness or inability to work. It also provides them with services of social security, social aid and medical care<sup>(87)</sup>. Articles 13 and 40 assured free education and Article 15 assured health service facilities for prevention of and safety from diseases and epidemics. In addition, Article 25 of the Constitution stated that the State shall ensure the solidarity of society in shouldering burdens resulting from public disasters and calamities and provide compensation for war damages or injuries received by any person as a result of the discharge of his military duties<sup>(88)</sup>. However, for more of our analysis to this subject, it is placed in the conclusion with more details and comparison with other international conventions and human rights declaration.

### **Conclusion**

From our study to this topic of our research we can conclude the following findings:

- 1 - The Kuwaiti constitution divided the elements of the political, social, and economic democracy into two groups: Political rights on the one hand and social and economic rights on the other hand. These two groups differ as to the obligations they impose on the contracting states. Political rights basically create an obligation for the state to refrain from

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<sup>(84)</sup> Kuwaiti Constitution: Article 48.

<sup>(85)</sup> Kuwaiti Constitution: Article 41.

<sup>(86)</sup> Kuwaiti Constitution: Article 42.

<sup>(87)</sup> Kuwaiti Constitution: Article 11.

<sup>(88)</sup> Kuwaiti Constitution: Article 25.

certain activities, while social and economic rights often impose an economic and social burden on contracting states.

- 2 -The liberalism has the same consideration of individualists with rights such as freedom of speech but would also support social and economic rights such as health and education. Wellbeing liberalism prefers democratic mechanisms rather than the courts. However, the political, social and economic rights in Kuwait always have been based on the Arabic and Islamic Shari'a heritage even before its independence. Therefore, the Kuwaiti constitutional legislators dealt with all these rights such as freedom of speech and social and economic rights, such as health and education, according to the Arabic and Islamic shari'a rules. However in the same time, the legislator constituted these rights in the way to comply with the international principles for human rights such as the Universal declaration of Human Rights and others international conventions.
- 3 - Liberal worries the dictatorship of the majority but usually favour a democratic constitution as a compromise between individual freedom and the public interests. In some sense, an elected government can limit freedom by promoting policies that support one way of life over another; and on the other sense, a liberal constitution must not rule out change or claim universal truth for any policy. The liberals support partial checks on democracy by dividing up power<sup>(89)</sup>. Therefore, the Kuwaiti constitutional legislator laid down many means to protect human rights from the democracy's intimidation, such as separation of powers, checks and balances, judicial review, and extraordinary measures for constitutional amendments. Also, the legislator improved human rights in Kuwait by making the media and freedom of speech independence. The practice of freedom and safeguarding of rights is relatively to the strength institutional organisation of civil society, which it should be independent from the state and able of the safeguarding of rights through many political and judicial means. However, human rights can be presented and be valued in political systems that adapt limitation of power. Limited government and a system of checks and balances assisted the safeguarding of rights of individuals and minorities.

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<sup>(89)</sup> Alder, John, Constitutional and Administrative Law, London: Palgrave Macmillan, 2005, P.31.

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- 4 - The constitutional legislator laid down the provisions of human rights is to protect individual dignity; democracy cannot be guaranteed without participation; and dignity cannot be existed without participation. Hence, proper democracy is not achievable without acknowledgment and safeguarding of individual dignity; therefore, democracy and human rights are connected to each other very strongly. In fact, human rights are the basis of modern democracy; thus, there is no democracy without political rights such as the right to vote and to be elected or to participate in the conduct of public affairs. As mentioned earlier that the democracy needs freedom of expression, freedom of movement, freedom of association, freedom of press and the right to assembly, and other conventional civil liberties.
- 5 Kuwaiti constitution has expressed a strong connection between democracy and sovereignty. The concept of sovereignty in the Kuwaiti constitution shows some similarity with the French Declaration of Rights. But the constitution has not gone far from its Arabic characteristics, which shows very clearly in its articles. It is stated that the system of rule in Kuwait is democratic; sovereignty belongs to the people and is the source of all powers, and this sovereignty is exercised in accordance with the way it is shown in the Constitution (Article 6).
- 6 - The democracy is not accomplished by the Constitution through its announcement that sovereignty is for the nation; or by assemblies constituted by the minority under the name of the people's representatives, or by setting up ministerial responsibility before these representatives. The existence of real democracy is the existence of mature public opinion overseeing these minority rulers in the achieving of the proper functions of governance so that such a ruling minority will find no other way than to yield to the opinion of the general public and to work in accordance with its demands. The Kuwaiti constitutional legislator have taken in consideration that democracy is well protected in political systems based on the principle of separation of powers and with checks and balances that prevent extreme concentration of political power. Therefore, in order to secure the democratic life in Kuwait, the legislator laid down provisions to guarantee that the political system base on the principle of separation of powers and with checks and balances (Article 50), and independent of judiciary. (Article 163) This is because the need of checks and balances for independent courts in order to able the citizens to bring their cases about violation of their rights before the judiciary. The constitution also states that the constitutional

court shall be (article 173) to censorship the constitutionality of laws and to reinstate unconstitutional laws with new laws are essential for protection of these rights. However, without separation of powers, the rights of individuals and minorities cannot be efficiently protected.

- 7 - The idea of public rights was connected to the notion of the individual doctrine of equality, which did not extend beyond equality before the law. Although, the ex-socialist countries and the capitalist countries differ in their definitions of equality and the ruling systems but both agree that democracy would not exist except through equality amongst the whole people. However, Kuwaiti constitution defines political democracy very clearly by adoption the principle that sovereignty belongs to the people is the source of all power; it also adopts the principle of equality, and it defines the public rights and freedom (part 2 articles 7-26 and part 3 articles 27-49).
- 8 - The constitutional legislators took in consideration that they have to apply the Islamic notions, which had in fact appeared clearly within the text of the constitution, establishing that Shari'a continued to exist in the minds of the people. Therefore, the constitution states that 'the religion of the state is Islam' and that 'Islamic Shari'a shall be a main source of legislation' (article 2), therefore, the constitutional legislator allocated provisions in the constitution concerned with public rights and duties in its third section which are compatible with Islamic Shari'a law. On the other hand, the constitutional legislators have complied with Universal Declaration of Human Rights, which most of these rights were based upon Islamic Law. Although they are stated in the United Nations Declaration of Human Rights, the terms "colour" and "wealth" were avoided in Kuwaiti constitution (Article 29), this is due to the absence of racial prejudice in Kuwait. Discrimination among people due to class or wealth does not exist and is deplored by the Kuwaiti people; therefore there is no need for its negation by special provision in the text.
- 9 - The adoption by the Kuwaiti Constitution of a reasonable individual doctrine encouraged it to add other social and economic rights besides (traditional) political rights for individuals, i.e., the modern right to achieve social justice. Those formulating the Constitution attempted to achieve this modern outlook on social justice in order to safeguard the citizen against economic power. Here, the Constitution attempted to strike a balance between the public and private economies in order to achieve the social aims of tranquility and prosperity for the people in



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accordance with the content of the constitutional articles.

- 10 - Also, the Kuwaiti constitution states that the right to form and join trade unions is included in the freedom of association (article 43). This right has been dealt with in article 22-1 of the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights (article 23-4), and the International Covenant on Economic, Social and Cultural Right (article 8).
- 11 - The Kuwaiti constitution states in article 11 that social and economic rights have been conceptually associated with the practically dealt with social security policies since the declaration of the constitution in 1962. According to this article, the state ensures aid for citizens in old age, sickness, or inability to work. It also provides them with services of social security, social aid, and medical care. The contain of this article is similar to article 22 of the Universal Declaration of Human Rights, which has shown that the framers of the article deliberately avoided defining a minimum core of the social and economic rights indispensable for the dignity and personal development of any individual. Thus, the definition of minimum entitlements to social and economic goods and services, and the corresponding obligations of the state and society to provide and secure these minimum entitlements, remain as major challenges to the human rights research and action-taking community.
- 12 - The Kuwaiti constitution indicates in article 7 that justice, liberty, equality are the pillars of society; co-operation and mutual help are the firmest bonds between citizens. It also state the right to equal work (article 41), and the right to form and join labour unions, freedom of associations (43) and the right to work and to choose the type of his work (41). However, there is a similarity between these articles and article 23 of the Universal Declaration of Human Rights, which stated that the right to equal pay for equal work and the right to form and join labour unions, freedom of association, are to an even greater extent than the right to work principle products of modern thoughts. The right to form unions without interference from the state is a basic principle of the Constitution of International Labour Organisation (ILO), which was formed in 1919.
- 13 - However, we would like to mention that all the issues of the human rights have been mentioned in the Kuwaiti constitution and the United

Nation Universal Declaration of Human Rights of 1948 and other International conventions were based upon Islamic Sharia Law as explained previously in this research. Therefore, the constitutional legislators in Arabic and Islamic States have to use Islamic Sharia Law as the main source in the Human Rights issues because Islam have dealt with these aspects comprehensively.

- 14- All aspects of the political, social and economic democracy, which have been dealt with by the Kuwaiti constitutional legislator made Kuwait more advance in the process of democracy and human rights in the region and give Kuwaiti constitution international dimensions in this field.

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