

# Women and Nationality Laws in the GCC States Gender Discrimination and Violation of Constitutional Rights

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## Abstract

*The paper reviews the situation of a number of GCC states where women married to non-national husbands find themselves and their children in a unique and un-justiciable position. The paper systematically reviews constitutional provisions for equality, and looks at the case law in these states that promise gender equality for all before the law. But it notes that a major exception in all GCC states is that of the right of women married to non-national men, to pass nationality to their children. The objectives of this article rest on proving that nationality laws of the GCC States appertaining to the practice of not allowing national women married to foreign men to pass nationality to their children is breaching a constitution rules. The study adopted a comparative and analytical approach, where the relevant data have been analyzed; this includes constitutional laws, nationality laws, case law of the high courts in the GCC States as well as books and articles. This study has shown that although all GCC States have declared in their constitutions that rights and freedoms are ensured and guaranteed, in practice, the story is different: the right of gender equality and right of litigation are being violated. This study has demonstrated that rules on acquisition of nationality in the GCC States involves clear discrimination against national women. Such a situation undoubtedly beaches the constitutional provisions of equality, and therefore should be amended. In a situation of developing human rights awareness in the GCC states, this paper explores how there appears to be an exception, in the form of nationality rights for women and children. The paper reviews the situation of a number of GCC states where women married to non-national husbands find themselves and their children in a unique and un-justiciable position. The paper systematically reviews constitutional provisions for equality, and looks at the case law in these states that promise gender equality for all before the law. But it notes that a major exception in all GCC states is that of the right of women married to non-national men, to pass nationality to their children. The paper asks if this anomaly is still justified in the 21st century. The objectives of this article rest on proving that nationality laws of the GCC States appertaining to the practice of not allowing national women married to foreign men to pass nationality to their children is breaching a constitution rules. The study adopted a comparative and analytical approach, where the relevant data have been analyzed; this includes constitutional laws, nationality laws, case law of the high courts in the GCC States as well as books and articles. This study has shown that although all GCC States have declared in their constitutions that rights and freedoms are ensured and guaranteed, in practice, the story is different: the right of gender equality and right of litigation are being violated. This study has demonstrated that rules on acquisition of nationality in the GCC States involves clear discrimination against national women. Such a situation undoubtedly beaches the constitutional provisions of equality, and therefore should be amended.*

**Keywords:** GCC States, Constitutional Rights, Nationality, Gender Equality.

## INTRODUCTION

One of the ongoing anomalies in the GCC states concerns the rules applicable to national women where their right to pass nationality to their children is denied. This article claims that the rules endorsing the exclusion of children from enjoying their mothers' nationality are gender discriminatory. The article demonstrates that this discrimination is at its most obvious in situations where children born to fathers' who are GCC Nationals automatically enjoy their father's nationality; whereas the children of a woman who also enjoy GCC nationality, but whose husband in not a GCC national, are debarred from taking their mothers nationality, or can only do in limited circumstances. This situation has led to discribie women as second-class citizens, as they have not equal rights to men (Al-Shuaibi, 2017).

Such discriminatory rules not only have a profound impact on the whole sphere of Human Rights in respect of women, but also have a detrimental impact on the children of such a marriage whereby children of national women and foreign men are likely to become stateless (Kanchana, 2020). A lack of judicial scrutiny and accountability compounds the unfair nationality laws which enforce this discrimination and collectively deprive women and their children from access to the courts.

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Thus, nationality laws of the GCC States appear to contradict those GCC constitutions, which guarantee and protect the rights of individuals, but nevertheless deprive women and children of their rights in respect of: -

- a) Equality,
- b) Access to justice,

Therefore, in the context of equality and access to justice, this article explores whether in this situation, it can be claimed that the constitution reigns supreme, which implies that no other law should contradict the constitutional provisions. If it is to be assumed that the constitution is supreme law, then it is necessary to examine the status of nationality law within the constitutional framework. Consequently, this article argues that if the constitution is supreme, then the current position whereby national mothers deprived of transfer their nationality to their children is a violation of their constitutional right. This article further explores what appears to be the unsolvable problem relating to access to justice to challenge nationality law, which currently prevent victims from seeking judicial redress.

This article uses a critical analysis arising from a collection of legal materials such as statutes, case law, official documents, and legal literature. Furthermore, it undertakes a comparative analysis between constitutional practices of each of the GCC States to identify the challenges of their constitutions as well as to find the best practices. This paper is divided into three main sections. The first section shed the light on the notion of supremacy of the constitution. The second section focuses on nationality laws in the GCC States. The third section attempts to identify the area of contradiction between the constitution and nationality law.

To understand constitutional supremacy clearly, I want to begin with the historical background to the emergence of the constitution in the modern era, in written and unwritten forms, such as the Constitution of the United States 1787 and that of the United Kingdom. These examples, in the first place provide a broad understanding of 'the supremacy of the constitution', a well-recognised concept. Alternatively, they demonstrate the central role of constitutional rules in entrenching fundamental rights of citizens. Then I will move on to evaluate the role of the constitution and its supremacy in the GCC States legal systems.

## **UNDERSTANDING THE SUPREMACY OF THE CONSTITUTION**

The supremacy of the constitution as a principle has become recognized in most constitutions around the world. Beginning with the Constitution of the United States of America (1787), regarded as a first written constitution in the modern world, Article 6 (2) states: 'The constitution . . . shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding'. Alexander Hamilton who is considered one of the fathers of the American Federal Constitution underlined the concept of supremacy of the constitution in an interesting way. He wrote in the Federalist Papers:

*'No legislative act [therefore] contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorise, but what they forbid'* (United States House of Representatives, 2023).

The underlying supremacy of the constitution is confirmed by cases such as *Marbury v. Madison*, where the United States Supreme Court, for the first time, declared right of judiciary to review of the constitutionality of laws and decided that an act of Congress invalid (*Marbury v. Madison*, 5 U.S. 1 Cranch 137, 1803).

Even in states that do not have a written constitution such as the United Kingdom, no one person or governmental body is recognised by the law having a right to breach an act of Parliament (Limbach, 2001). A significant moment in English legal history was the case of *Bonham* (1610) which is regarded as accepting judicial review of Parliament's Acts. The judges - for a long time - could not avoid the English principle of parliamentary supremacy. Sir Edward Coke, Chief Justice of the Court of Common Pleas, defined the parliamentary authority as a superior and cannot be confined. In his words, he described Parliamentary authority as 'so transcendent and absolute, as it cannot be confined, either for causes or persons, within any bounds'(8 Co. Rep. 114a, 77 Eng. Rep. 646 (C.P. 1610).

Whilst the constitutional supremacy is established, adopted and applied in the sophisticated written and unwritten constitutions as in the case of the United States of America and the United Kingdom. The question arises: are other parts of the world have also founded their constitutions under the concept of ‘supremacy of the constitution’? The question is concerted in the next sub-section to the real focus of this thesis, which is the GCC States.

The GCC States started to promulgate their constitutions after the 1960s, in three successive generations. The first generation of constitutions includes constitutions of Kuwait 1962, Qatar 1970, the United Arab of Emairtes 1971 and Bahrain 1973, all of which were adopted after independence. The second generation dated back to the 1990’s and included the Basic Law of Governance of Saudi Arabia 1992 and the Basic Law of Oman 1996. The third generation includes the new constitutions of Bahrain 2002, Qatar 2004, the Basic Law of Oman 2021 and amendments of the Constitutions of the United Arab Emirates 2009.

Interestingly, Bahrain, Kuwait, Qatar and the United Arab Emirates have used the Arabic word ‘*dustur*’ or ‘*al-dustur*’ (Constitution) to describe their constitutions. Oman and Saudi Arabia, on the other hand, describe their constitutions as ‘*al-nizam al-asasi li-l-hukm*’ (the Basic Law of the State). Whether the terms used are ‘Basic Law’ as in Oman and Saudi Arabia, or ‘constitution’ as in the rest of the GCC States, it is important to recognise that they fundamentally represent the same principle of regulating an important matter of the governance and society (Gonzalez et al., 2008). Therefore, and to avoid confusion, the descriptors *dustur* (constitution), and ‘*al-nizam al-asasi li-l-hukm*’ (basic law of the state), will be used interchangeably.

Most GCC States describe ‘supremacy of the constitution’ in their constitutions differently, however it suggests the same meaning: laws should not contradict with a constitutional provision, or in other words; the constitution has precedence over ordinary laws. To illustrate this, in Bahrain, Saudi Arabia and United Arab Emirates, they use words such as ‘contravene’, ‘pursuant’ and ‘precedence’ to describe a superiority of the constitution over other laws in the state. Similarly, in the case of Kuwait and Oman, they use words which tend to be protective i.e. ‘do not conflict’ and ‘laws shall conform’ to the constitution. All these words are, not only represent a supremacy of the constitution linguistically, but more importantly, they entrench this concept substantively by revoking the validity of laws which contradict with a constitution (See the judgments of High/Constitutional Courts of; Bahrain in the case No. 3/2014/D, Year12 Judicial, Kuwait Constitutional Court Case No. 3670/2008, Oman in the case No. 81/2013 Year 12 and Qatar Case No. 189/2010).

For example, the High Court of the United Arab Emirates, in the Case 2/28 on 18th May 2009, decided that any local legislation is obliged to conform to the law at the higher level (federal law), and both must not contradict the constitution. Basically, the court emphasised what the constitution in Article 151 has stated: ‘*The provisions of this Constitution shall prevail over the Constitutions of the member Emirates of the UAE and the federal laws which are issued in accordance with the provisions of this Constitution shall have priority over the legislations, regulations and decisions issued by the authorities of the Emirates. In case of conflict, that part of the inferior legislation which is inconsistent with the superior legislation shall be rendered null and void to the extent that removes the inconsistency. In case of dispute, the matter shall be referred to the Federal Supreme Court for its ruling.*’

The case of Qatar is, prima facie, slightly different. According to Article 121 ‘The Executive together with Emir must function in accordance with the constitution, in othe words, any legislation irrespectives of their level of whether it is issued by a government body or not, must conform with the constitution. This is a view which is embodied in article 57 of the Qatar constitution which states ‘Respect for the Constitution, ... are duties of all who reside in the State of Qatar or enter its territory’. Also, respect for the constitution as a supreme law of Qatar has been affirmed clearly by an Explanatory Memorandum to the Permanent Constitution attacheded to Qatar Constitution. It explained Article 57 by saying that the constitution is a foundation of the state, the core of social and legal philosophy and therefore, acting in accordance is obligatory to all people reside in the state ( Explanatory Memorandum to the Permanent Constitution, 2005).

Both Qatar and the other GCC states emphasis unequivocally, the supremacy of the constitution form the perspective of substantive law.

Establishing a special court, a 'Constitutional Court, Supreme Court or High Court' is another element that underlines the superiority of a constitution in the GCC States. The primary role of these courts is to determine whether the law, in different forms, is contrary with a constitutional principles and provisions. Judgments of these courts are an obligatory and plea to all authorities and individual on a state (Resolution of Emirates Supreme Court No. 1, Year 34 Judicial 09/06/2008). According to AlSaiq - the Judge of the Emirates Supreme Court-laws in origin are constitutional as they are supposed to be issued in conformity with the constitution, however, if they do not conform to the requirements of the constitution the high court is entitled to void the validity of such contradictions (Al Saiq, 2015).

Judging from these provisions, together with due regard to judicial precedents, there is undoubted evidence, that concept of supremacy of the constitution is, in many cases, enshrined in the GCC States legal systems. Constitutions in these states appear to hold a place at the top of the pyramid of all legal norms and claim priority over state action and legislation.

However, it is necessary to pursue these arguments a little further and assess the proposition that constitutions of the GCC States are supreme over ordinary laws. To these ends, I want to evaluate the status of nationality, and critically examine existing law pertaining to nationality, by seeking to understand their status in relation to the constitution. In other words, there is an important question as to the extent to which legislation in the GCC States has paid attention to the concept of constitutional supremacy when formulating nationality laws.

## **NATIONALITY LAW**

A constitution is concerned with regulating the main rules and principles of governing the state, and leaves details of these rules and principles to be regulated by ordinary laws. However, constitutions might award a constitutional characteristic of supremacy to certain law. Affording a constitutional characteristic of supremacy is basically raising the status of a law to a constitutional level. Hence, laws which have been given a constitutional status;

- (a) Cannot be violated by ordinary laws, and
- (b) Cannot be amended without following constitutional procedures.

With regard to nationality laws of the GCC states, all constitutions refer to nationality. Whilst five of them make simple references to the notion that 'nationality' will be regulated by the law. In other words, matters of nationality law are not regarded as being at the same level of constitutional issues. Qatar the only state, in its constitution, raises the issue of nationality law to a constitutional level.

### **Bahrain, Kuwait, Oman, Saudi Arabia and United Arab Emirates**

In five out of six of the GCC States, nationality law does not have constitutional status or at least is not regarded as having a constitutional characteristic of supremacy. Literally all the five states consider nationality law as ordinary law. Their constitutions' formulations are quite similar in stipulating the 'nationality' by using the phrase 'nationality shall be determined by the law'.

Placing nationality at the heart of the constitution, might be seen, from the perspective of those who formulated the constitution, as affording nationality a constitutional characteristic of supremacy. Nonetheless, if there was an intention to elevate nationality laws to a constitutional level, it would have been done. The Kuwait Constitution 1962, for instance, exclusively afforded a constitutional characteristic to matters of inheritance of the throne. Article 4 states that: '...All of the provisions governing the succession to the Principality shall be set out in a special Ordinance to be promulgated within one year from the coming into force of this Constitution. This special Ordinance shall have force of constitutional law and may not therefore be amended save in the manner prescribed for the amendment of the Constitution itself. If the framers of the Kuwait Constitution 1962 mean to grant constitutional status to nationality law; as they clearly intended by reference to inheritance of the throne in Article 4, they would do clearly by stating their intentions in the constitution itself. The contrary is true, excluding law i.e. nationality from special requirements means regarded it as an ordinary law.

This is exactly the case in the rest of the GCC States, if it was their intention to grant constitutional status to nationality law, they would mention this explicitly in their constitutions. Therefore, as far as this research is concerned, nationality as law in the GCC States, except Qatar, is not superior to the constitution or at same level of constitutionality, rather, it is regarded as ordinary law.

## **Qatar**

Explicitly, the Qatar Constitution 2004 granted the former Qatar nationality law 2/1962 a constitutional characteristic of supremacy. Based on Article 41 of Qatar Constitution, nationality law enjoys the same level and force as a constitutional provision. Article 41 states that 'Qatari nationality and the rules governing it shall be prescribed by law, and the same shall have a similar power to that of the Constitution'. Stating nationality law as enjoying constitutional force means that it cannot be contradicted and may not be amended unless following certain rules. The Explanatory Document of Qatar Constitution issued in 2005 explains the being a constitutional characteristic by saying '...Such law shall have constitutional status, i.e. the law's provisions shall be preserved as Articles of the Constitution'.

While accepting this interpretation as a fact and concluding that the Qatar nationality law is superior to ordinary law and regarded at a constitutional level; there is still a need to examine the constitutionality of the new nationality law 83/2005. It seems that the previous Qatar nationality Act 2/1961 was valid when the Qatar Constitution was enacted in 2004. Article 43 states that 'What has been decided by the laws and regulations issued prior to the coming into force of this Constitution remains valid and effective, unless amended according to its provisions...'. Therefore, introducing a new nationality law 83/2005' is breaching a constitutional rules, because the new law was introduced before the ten-year period passed according to Article 148. Article 148 of Qatar Constitution 2004 stipulates that 'Any of the articles of this Constitution may not be subject for a request to amend before the lapse of ten years from the date of its coming into force', which is in this circumstance: it should be in 2014 instead of 2005 - after only one year from issuing the Constitution 2004 (Al Said, 2008).

From these discussions concerning the status of nationality laws in the GCC States, it seems that all of their nationality laws are considered inferior to their constitutions, including the new Qatar nationality law 38/2005 (unless it amends according to Article 148 of Qatar constitution Act 2004). The superiority of the constitution, therefore, obliges other pieces of legislation to be subordinate to the constitution and conform to its provisions. Laws such as nationality law should not contradict constitutional provisions.

Therefore, and to return to the principal issue of national women who facing discriminatory status and violate their constitutional rights to be treated in equal base as men, particularly in passing nationality to their children. Having said that this paper moves on to explore the reality and the contradictions of this premise.

## **AREAS OF CONTRADICTION**

Protecting the rights of individuals is fundamental to a fair and just society, particularly at a domestic level. In domestic law, it is possible to recognise fundamental rights from 'their location at the top of the hierarchy of the legal system as directly binding on the legislature, executive and judiciary' Alexy argues that adopting a fundamental rights at the highest level of the legal system of a state has advantages and disadvantages. One of the advantage of this approach is the flexibility that can be used to justify and interpret a constitutional principle on which more precise meaning. And one of disadvantages is the level of an ambiguity that could face the interpreters (Alexy, 2010). In fact, not all rights within a state legal system can be regarded as fundamental rights. For example, living in a clean environment and the right to access the internet although important, are dependent on availability of certain conditions such as development and resources of a given state. In any event, they are not a fundamental.

Clearly it is therefore important to identify certain rights that are fundamental to society, and Goodpaster notes a number of problems that arise when determining which rights are fundamental and which are not i.e. the absence of a definite list of fundamental rights and the lack of a widely accepted criteria (Goodpaster, 1973). However it is argued that some rights are fundamental because:-

(a) They are guaranteed and are protected constitutionally,

(b) They are justiciable.

Within these two themes I want to explore the validity of the proposition that the non-acquisition of nationality in the GCC states is a violation of fundamental rights.

## **Gender Equality and Constitutional Protection**

### **Bahrain, Oman and Qatar**

The Constitutions of Bahrain, Oman and Qatar clearly address the issue of gender equality. For example, Article 18 of the Bahrain Constitution 2002 states: 'People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed'. An Explanatory Document of the Bahrain Constitution affirmed that the constitution is keen to ensure that gender equality between men and women is applied in all political, social, cultural and economic arenas. Moreover, and concerning political affairs, Article 1(F) affords both men and women the eligibility to participate in public affairs e.g. the right to vote and to stand for elections.

As in Bahrain, prohibition of gender discrimination also appears in the Omani and Qatari constitutions. Articles 21 of the Omani Constitution of 2021, and 35 of the Qatar Constitution of 2004, guarantee gender equality among their citizens. For instance, Article 17 of Oman Constitution Act 1996 stated 'All citizens are equal before the Law and share the same public rights and duties. There shall be no discrimination amongst them on the ground of gender, origin, colour, language, religion, sect, domicile, or social status'. This is also the case in Qatar, where Article 35 of Qatar constitution Act 2004 stated 'All persons are equal before the law and there shall be no discrimination whatsoever on grounds of sex, race, language, or religion'.

### **Kuwait, Saudi Arabia and United Arab Emirates**

Kuwait, Saudi Arabia and United Arab Emirates emphasise the importance of the right to equality in their constitutions. In Kuwait equality is described as being one of the pillars of their society; Saudi Arabia describes the right to equality as being a foundation of its system, and the United Arab Emirates see equality as one of its aims of forming a union. Observers have noticed that the GCC States have made progress on this issue during the last two decades, in particular in the political processes (The World Bank, 2013). Kuwait in 2006 for instance, granted their national women the same rights as men in terms of a right to vote and run for office. Similarly, in the United Arab Emirates, women have been elected or appointed to public office. Women have also become as visible as men in public life, education and business in Saudi Arabia (Kelly and Breslin, 2010).

Although this progress seems to imply some movement in the political life of those states, in terms of the protection of equality generally, it has to be pointed out that these states still practice inequality based on gender. Nationality laws still contain provisions that practice a discriminatory attitude towards national GCC women (George, 2019). Women are still denied equality before the law regarding their ability to pass nationality to their children, and their husbands face unequal difficulty in the process of naturalization. Overall giving preferential treatment to men is undoubtedly breaching the constitutional provisions of equality and has to be condemned as unconstitutional (Alessa, 2007).

## **Gender Equality and Judicial Protection**

### **Kuwait**

The judicial protection of gender equality is well-recognised in Kuwait. In a remarkable case in 2008, a Kuwaiti woman made an application No. 3670/2008 to the Kuwait Constitutional Court, in which she complained that her husband had prevented her from leaving the country. Clause 1 of Article 15 of Passport Law Act 11/1962 (amended by Act 105/1994) deprived her of the right to obtain a passport without the approval of her husband. Clause 1 of Article 15 stated 'The wife may not be granted a separate passport without the consent of the husband'.

This complaint was addressed by the Kuwaiti Constitutional Court, who concluded that clause 1 of Article 15 of the Passport Law, violated the fundamental constitutional right to 'equality'. The Court's conclusion that

gender equality was an inherited right not only in the Kuwaiti constitution 1962, but also in most constitutions around the world as well as in the Universal Declaration of Human Rights 1948 and Islamic Sharia. Therefore, on 25th October 2009, the court found that Clause 1 of Article 15 of the Passport Law 11/1962 unconstitutional (Marinero, 2009).

### Other GCC States

If comparisons were to be drawn between the Kuwait Constitutional Court, and other Constitutional Courts in the GCC states, it appears that other constitutional/high courts in the GCC do not address gender equality in their adjudications; and this evidence has been ascertained from the case law. However, there are cases in which the courts have affirmed equality as a constitutional right and principle in a general sense, and regard any violation of these rights as unconstitutional.

The Constitutional Court of Bahrain reviewed Article 142 of Central Bank of Bahrain Law Act 64/2006. In the Case No. (D/2014/3) 12 judicial Year, the court decided that Article 142 was unconstitutional because it discriminated arbitrarily between Bahian's citizens irrespective of gender. The court said that Article 142 restricted the right to litigation for those who were employed in the bank by asking them to get a prior approval from management of the bank before seeking a court judgment. The Constitutional Court considered that inequality of treatment between those employers of the Bank and other applicants.

In Qatar, the Constitutional Court considered Case No. 189/2010, on the 4th January 2010, and found that the Decision of the Certificate Equivalency Committee was unconstitutional. The Committee denied the appellant's right to have his LLB certificate, which had been issued by a foreign university, recognised; whereas, it did recognise the validity of a similar certificate granted to another citizen by the same foreign university. The court considered that there had been discrimination between the two people without justifiable reason. It held that the Certificate Equivalency Committee Decision was unconstitutional.

Oman, which has not established a constitutional court in their legal system, nevertheless enshrines the principle of equality judicially. The Administrative Court in case (No. 39. Year 6 Appeal), stated that it was illegal under the court's jurisdiction to grant a right to one citizen and deny this right to another, when there exist identical legal situations.

Similarly, in Saudi Arabia, Judge Mohammed Al Jathlani (Administrative Court) contended that although there was no constitutional court in the Saudi Arabia, all courts are considered constitutional courts. He said that the courts look at the constitutionality of the laws before deciding on the merit of the dispute (Al Jathlani, 2017). Al Jathlani raises the question that if the courts do not have this right to evaluate a case from a constitutional perspective, then it would be possible for any government body to violate the constitution, and the citizen would have no redress.

Whilst this is not intended to be a comprehensive analysis of case law, it serves to illustrate the point that in Kuwait there is a clear precedent for challenge whereas the process of challenging inequality in other GCC states, is possible but less clear (Waas, 2014, pp 28).

Therefore, and to return to the earlier 'themes' for measuring the the validity of the proposition that the non-acquisition of nationality in the GCC states violates fundamental rights which should be protected

- (a) Constitutionally,
- (b) They are justiciable

It is clear that, from a theoretical point of view, and from the perspective of case law, these rights are protected and justiciable.

However, there remains a serious lacuna in the law, in which the whole question of nationality, and the ability of women to pass their nationality to their children is not addressed. Therefore, this paper moves on to examine the right of access to justice to seek redress over the issue of nationality: this raises the question as to why there is a significant lack of case law, and why there is no challenge to nationality law in the courts.

## **Right of Access to Justice**

The right of access to justice and the right to a fair trial or the right of litigation are different phrases that have same meaning (Sharp, 2016). Access to justice enables people to exercise their rights and challenge discriminatory law and policy. The Chief Justice of the Supreme Court of Canada Beverley McLachlin has called access to justice a ‘fundamental right not an accessory’ (University of Toronto Faculty of Law Newsroom, 2011). Article 8 of the Universal Declaration of Human Rights 1948 devotes a specific provision to confirm that a right to access to justice is a fundamental right and should be guaranteed by a constitution. Article 8 of UDHR says ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law’.

Domestic law in the GCC States has responded to the protection of the right of access to justice positively, and all of them stipulate this right in their constitutions. Moreover, almost all of them have used the same phrases in the Arabic language: *Haqb Al Takhaze* (right to litigation) which hints at consensus among those who framed the constitutions that right of litigation is a fundamental constitutional right. A textual analysis reveals that most GCC states including Bahrain (Article 20), Kuwait (Article 166), Oman (Article 25), Qatar (Article 135), Saudi Arabia (Article 47), have used the phrase ‘The right to litigate is guaranteed’. In the United Arab Emirates, the formulation is slightly different. Article 41 of its Constitution Act 1971 states ‘Every person shall have the right to submit complaints to the competent authorities, including the judicial authorities, concerning the abuse or infringement of the rights and freedoms stipulated in this paper.’

Denying a right to access to justice is denying a fundamental constitutional right. This is how, in case No. 43 Year 2008, the Kuwait Constitutional Court described it when it held that deprivation of access to justice, stipulated in Article 5 of Code of Criminal Procedures and Trails, is unconstitutional. The judgment affirmed that allowing one person to litigate and whilst depriving another of the same right is a breach of equality, and a breach of the rules of the right to justice according to article 166 of Kuwait Constitution Act 1962. Article 166 stated ‘The right to litigation is guaranteed to all...’. This is typically the case in Oman where the Administration Court decided in case No.131, Year 6, that litigation is a constitutional right according to Article 30 of the Oman Constitution 2021. This arose when a Prison Administration refused to allow a prisoner to institute litigation, claiming that a ‘prisoner’ has no right to do so while he is in prison. The Administrative Court described the action of the Prison Administration as illegal because it deprived a prisoner of a right to access to justice. Similarly in the United Arab Emirates, the Litigation Law of Principality of Ajman Act 7/1999 was found by the high court to be contradictory to the constitutional right to litigation according to Article 41 of the United Arab Emirates Constitution 1971.

In Saudi Arabia, the High Administrative Court, (*Divan Al-Mazalem*) has defended the right to litigate. Case No. 31/2 Year 2012 Appeal, illustrates this point. The appellant had been infected by virus in his eyes and was diagnosed by a hospital, who told him he had a chronic disease in his eyes, which did not have a cure. After consulting other hospitals, it was revealed that he had been diagnosed incorrectly. However, Article 40 of the Medical Practice System Act M.59/2005 constrains the right to litigate against a decision of Director of Medical Affairs, consequently, the appellant was not able to bring an action. Therefore, the court held that constraints on the right to find an action against a decision of Director of Medical Affairs are unlawful based on Article 47 of Saudi Arabia Constitution 1992.

Clearly it becomes more evident that the deprivation of the right of litigation deprives individuals of their fundamental constitutional right; and this is obviously so with reference to the constitutions of the GCC States. As a result, neglect of this right is unconstitutional.

However, this still does not address the issue of why there is a lack of case law on nationality issues, and why there is no challenge to nationality law in the courts.

It is significant that almost all GCC States deny the right to litigate on nationality matters. In other words, the courts have not jurisdiction to examine nationality matters either by nationality law as in Bahrain (Article 11), Oman (Article 4), or by the court law itself as in Kuwait (Article 1 of High Administrative Court of Kuwait Act 20/1981). In Oman, Article 4 of Nationality 2014 states ‘the court are not entitled to review nationality matters



or any disputes relevant to nationality'. This is also the case in Bahrain and Kuwait. Article 11 of Bahrain Nationality Law 1963 reads "Judgments which are issued concerning nationality or any of the conditions required by this law for a person to be of Bahrain nationality will not have any obligatory nature for Ministry of Interior except if the Ministry has been proceeding such claims'. The exclusion of the courts from reviewing these issues is familiar to the English law in the 'Ouster Clause', when the courts are prevented from reviewing a particular executive decision.

Some commentators take the view that the deprivation of the right to litigation in nationality matters is based not on any legal evaluation, rather on political issues such as the concept of sovereignty (Al-Nakib, 2006). Recently the Kuwaiti Parliament rejected a proposal to introduce a bill aimed at give the Administrative Court control over nationality; the State Minister for Cabinet Affairs of Kuwait affirmed that granting a court power to review nationality matter contradicted the principle of sovereignty (press reader, 2017).

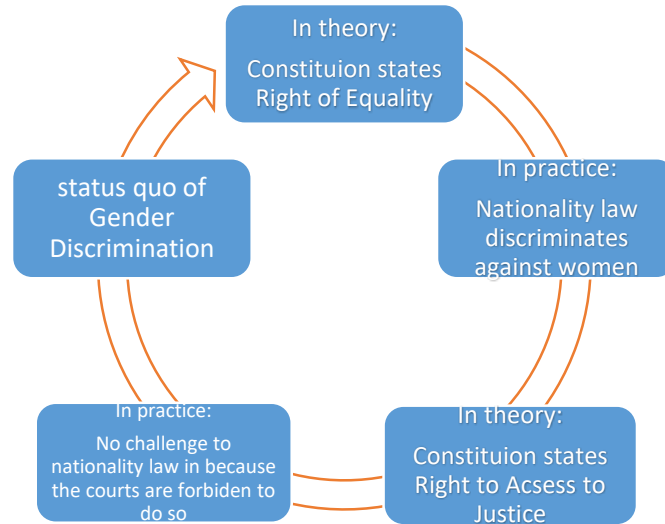
With respect to other GCC States: for instance, in Qatar and the Emirates, although nationality laws do not contain an explicit provision that prevents a person from raising nationality matters by judicial scrutiny, there are other pieces of legislation that prohibit a court from examining nationality cases. Article 13 of Qatari Judicial Authority Act 10/2003 forbids a court from reviewing direct or indirectly, the state's sovereignty act or nationality matters.

Emirates also regard nationality matters as falling under sovereignty acts and as being related to the state's supreme policy. This has been affirmed by Article 21 of the Emirates Nationality Act 1972 which denies a right to litigation for those damaged by an authorities' decision relating to nationality. Article 21 states that 'The resolution of the Council of Ministers 'the Cabinet' concerning nationality matters on applications connected with proving original nationality, acquired nationality, denaturalization and withdrawal of nationality is final'. Badria argues that 'matters related to the grant or withdrawal of the nationality and to naturalization are sovereignty acts connected with the state's supreme policy (Al-Awadhi, 2016).

The only state that does not forbid courts from reviewing nationality matters, at least for those who are claiming nationality originally is Saudi Arabia. This matter was ruled upon by Saudi Arabia's Appeal Court in its judgment No. 242/AS/2/2009. In this case a person's Saudi nationality had been cancelled because he had no obvious connection to Saudi Arabia. Interestingly, the Appeal court rejected the appellants claim, not on the merits of his case, but because of mistake in the litigation procedures.

The judgements cited here are from the administrative courts, which again are under a scrutiny of constitutional/High courts of the state. Therefore, if the constitutional courts of the GCC states were to examine ordinary law, (nationality law and Court Law) they would find them to be unconstitutional as they violate a fundamental constitutional right to litigation. The Chair of the Emirates High Court maintains that the constitutional courts around the world do not take a single approach to administering the law, but there are united in their role of protection constitutional provisions from any violations.

Thus, it can be concluded that there is a credibility gap between those constitutional provisions that guarantee an individual's rights and laws that deny those rights. In short, the chart below summaries that whereas in theory the constitutions of various GCC states (supreme law of state) guarantee rights of; gender equality and access to justice, in practice the story is not where the nationality law (ordinary law), which should be compatible with constitutional provisions, but is not.



Figure

## CONCLUSTION

This paper has addressed some critical issues central to the question of women, children, nationality and the state. The focus of the paper has been on the constitutionality of nationality law and other related issues under various state legal systems. Conceptually all GCC States have declared in their constitutions that rights and freedoms are ensured and guaranteed, but in practice, the story is different. Because although there is undoubted evidence, that the concept of supremacy of the constitution is, in many cases, enshrined in the GCC States legal systems, the real issues is located in the justiciability of those rights.

This paper has established that not all states take a similar approach toward nationality law. Most of them regard nationality law as ordinary law, with the noticeable exception of Qatar where its constitution considers nationality law at the constitutional level. However, even in Qatar the constitutionality of nationality law itself is being questioned.

I have attempted to demonstrate that prima facie, the GCC countries adhere to various practices which protect fundamental rights, but that there is a significant contradiction insofar as there is an exception to all these practices – and that is Nationality Law. In reviewing areas of contradiction, it becomes clear that nationality law and its discriminatory content is excluded from challenges and judicial scrutiny. Access to justice in order to challenge a whole range of discriminatory practices and constitutional anomalies is either guaranteed or permitted but with one important and significant exception and that is Nationality Law. Whilst this anomaly continues the victims are women and children who still suffer from deprivation of rights that have on the face of it, been protected and guaranteed constitutionally.

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