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## **CREATIVITY VS. IMITATION: UNDERSTANDING DIVERSITY AND LEGISLATIVE IDENTITY IN THE STATE OF QATAR**

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**ABSTRACT:** *Qatar has a modern legal system, and it witnessed significant developments over the last two decades. The introduction of the permanent Constitution of the State of Qatar 2005 determine the basic pillars of the state and its' public authorities and institutions. The Constitution provides for Islam as the religion of the State and the main source of Qatar's legislation, besides Arabic as the state official language. Al Shura Council is the public institution responsible for legislative function, and shall assume its duties in accordance with the Constitution, Al Shura Council shall follow up to review, renew, and reshape Qatar's distinct legislative frameworks to reflect due understanding of diversity and comparative legal jurisdictions without compromising Qatar's national identity. The Article attempts to provide brief and intensive thoughts on the issue of diversity and national legislative identity.*

**KEYWORDS:** qatar, legislative identity, civil law, diversity, comparative law

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### **INTRODUCTION**

Legislative identity for any legal system is a vital issue that shapes the system and maintain its distinction and special features. By legislative identity, the author mean that the legal system is pertained with its special features, which accommodate the characteristics of the national society and its circumstances, which may differ for other societies. Legislative identity indicates the maturity of the legal system, and reflects the legislator awareness of national society needs, characteristics, and circumstances. Legislative identity also connects the legal system with its original roots and indicates its progressive relationships with comparative legal systems without having what might be called “legislative pollution” by adopting divers and unsuitable rules, which may adversely affects the national legal system<sup>1</sup>.

### **Historical and contextual background**

The fact that Qatar has a modern legal system shall provide a more selective approach while handling identity issues by means of legislation; historically Qatar has not been dominated by a

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<sup>1</sup> “Legislative pollution” is a term used by the author to indicate that a certain legal system consists of randomly borrowed rules or selected concepts from different legal systems regardless of their suitability to the national society according to special characteristics and circumstances of the society in the borrowing legal system.

colonial power in the strict term. British presence in Qatar, and later Ottoman Empire were part of Qatar history; but they were not decisive factors in the development of Qatar political statues or legal system. These two historical existences were not heavy to shape, or even significantly affect the legislative trends in Qatar. Islam, tribal traditions, Arabian notions, and certain national characteristics are the major factors that strongly affect and shape Qatar legislative frameworks. For some reasons and historical rationales, Egypt influenced - in different ways and degrees- the legal traditions in the majority of eastern Arab countries<sup>2</sup>. However, it is still true to argue that even the Egyptian legal traditions were not necessarily domestic in its origins and developments, let alone that Egypt has different national characteristics than most Arab States in terms of history, geography, demography, economic and political circumstances<sup>3</sup>. Therefore, Egyptian influence in the field of legislation may not provide reasonable assistance in shaping a distinct and suitable legislative identity.

It is worth mentioning that, to shape and enhance a distinct national legislative identity, legislator needs to carefully overview comparative legislative experiences to utilize from their successful legislative confrontations and avoid their failures. In so doing, the national legislator needs to be selective and careful while deciding to adopt certain rules compatible to national society needs and circumstances. National legislator may also opt to modify and/or improve these rules to be compatible with national needs and circumstances as well as the notion of public policy and its wide spread ramifications in all aspects of life and legislation.

In order to build a distinct legislative identity the State of Qatar needs to consider multiple dimension approaches which if applied will radically improve Qatar's legislative frameworks by nationalizing legal provisions to cope with Qatar's needs and priorities<sup>4</sup>. These approaches mainly

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<sup>2</sup> Especially Syria, Lebanon, and the majority of Gulf States, i.e. Kuwait, Qatar, Bahrain, United Arab Emirates, and Yemen. It is to be mentioned that, due to historical and political reasons, Arab monarchies i.e. Jordan, Iraq and Saudi Arabia were not affected in the same way and degree by the Egyptian legal traditions and literature.

<sup>3</sup> The USA Central Intelligence Agency, The World Factbook <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>

<sup>4</sup> A standing example for the need to nationalize rules is the Qatari rules on conflict of laws (Articles 10-38 of the Qatar Civil Code); these rules neutralized to the extent that may minimize the chance to apply Qatar's laws in many private international relations with foreign element, because these rules are imported from other jurisdictions with extremely different circumstances. The Qatari Civil Law no 22 of the year 2004 was published in the Official Gazette issue no 11 in

consist of two elements; first: comprehensive and gradual review of Qatar legal frameworks, needless to say that certain laws have priority, .i.e. commercial and civil laws, procedural laws, family law, law relevant to investment, etc. second: due consideration of Qatar society characteristics and comparative law experiences.

Indeed, applying these approaches is due and a never too late step; since his highness the Emir of Qatar announced in October 2019 the formation of a supreme committee to prepare for the first ever-general election of the members of Ashura Council<sup>5</sup>. The preparations shall include at the first stage, the promulgation of the Qatari General Election Law based on Article 78 of the Permanent Constitution of the Qatar. The long-awaited Election Law shall be considered as a milestone for democracy practice and legislative reform in Qatar.

### **Qatar Legislative System: points of weakness and strength**

The legislative system in Qatar is relatively good. However, Qatar needs a due revision to rethink and reshape its' legislative system in accordance with Qatar's identity and its local conditions and traditions. To explain the current situation one may list these reasons:

First: the past and current practical rather than constitutional status of Ashura Council, according to the constitution, this council shall be formed from 45 members, 30 of them shall be elected directly by the people in a general genuine election held according to the election law, and the last 15 members shall appointed by the his highness the Emir. Qatar had never have an election law until now and accordingly the Emir appoints all Ashura Council members. It was only in last few days of October 2019 that the Emir order the appointment of special supreme committee to prepare for the first ever-general election of Ashura Council.

In theory, Shura Council has certain roles and competences. The constitution provides for a decisive legislative role for Ashura Council, and for strong role on monitoring executive power and adoption of the general budget<sup>6</sup>. Nevertheless, and considering the way applied until now in

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8/8/2004 and come into force in 9/9/2004, available online at: <http://www.almeezan.qa/LawPage.aspx?id=2559&language=en>

<sup>5</sup> The Permanent Constitution of Qatar provides for the issuance of special law for election to decide the relevant conditions and procedures for the election process in Article 78, which reads as follows: "The election system shall be determined by virtue of legislation, in which the conditions and procedures of nomination and voting are specified". The Permanent Constitution of the State of Qatar, available online at: <http://www.almeezan.qa/LawPage.aspx?id=2284&language=en>

<sup>6</sup> Articles 76-116 of the Qatari Constitution, The Permanent Constitution of the State of Qatar, available online at: <http://www.almeezan.qa/LawPage.aspx?id=2284&language=en>

forming Ashura Council, and the relatively consulting nature of the council role, Shura Council still lack the efficiency in exercising its powers. One may predict that with the recent Amiri initiative a noticeable radical change will enhance the Council role, and practically implement the provisions of Qatar Constitution.

Second: the multiplicity of legislative tools. According to constitution and constitutional practice, Qatar have many legislative tools or instruments; these tools are the Law in different level of legislation - namely constitution, Ashura Council law and the bylaw or executive list- , Amiri Decree, the Amiri order or command, the Amiri decision, decision of the Council of Ministers, and ministerial decision. The fact that these entire legislative tool are applied make the legislative system complicated and increase the chance for these tools to overlap and contradict.

Third: the absence of Supreme Constitutional Court. Although the a special law to establish such court are now in effect since 2008<sup>7</sup>, the Court is yet not exist in reality and still to start its work in the future with no strong chance to predict this with high or at least reasonable percent of certainty.

Fourth: Qatar national priorities are divers; due to the transformation process of Qatar into regional and international active player. The presence of Qatar as the first Gas exporter and richest country in the world, along with its media influence, sports hub for regional, continental and international sports events. Moreover, Qatar is undergoing huge infrastructure projects to adapt and enable the country to continue its progress in all field in conformity with Qatar National Vision 2030<sup>8</sup>.

These points may contribute to Qatar current legislative system<sup>9</sup>, on the other hand, one may cite certain points that may pave the way to change and improve the legislative framework and identity in the State of Qatar; these points can be summarized as follows;

First: the existence of political will; the leadership of the state indicates its willingness and endeavor to transform Qatar into a successful model of a modern state that observe international standards in good governance and accountability by applying the rule of law and democratic notions and practices in the state administration.

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<sup>7</sup> Law 12 of 2008 establishing the Supreme Constitutional Court, available online in English at: <http://www.almeezan.qa/LawPage.aspx?id=2486&language=en>

<sup>8</sup> Amiri decision No. 44 of 2008 on the endorsement of Qatar National Vision 2030, available online in Arabic at: <http://www.almeezan.qa/LawPage.aspx?id=2845&language=ar>

<sup>9</sup> Generally speaking, Qatar has a civil law system with certain growing features of common law system, See Abdelnaser Hayajneh, “Theoretical Framework for judicial discretion within Qatari and Jordanian Civil Laws: Indications and Implications”, British Journal of Humanities and Social Sciences, January 2015, Vol. 12(2), available online at: [http://www.ajournal.co.uk/HSpdfs/HSvolume12\(2\)/HSVol.12%20\(2\)%20Article%206.pdf](http://www.ajournal.co.uk/HSpdfs/HSvolume12(2)/HSVol.12%20(2)%20Article%206.pdf)

Second: regional and international circumstances, the changes of the region political and geopolitical circumstances improve the chance to initiate the process of reform and reshape of Qatar public policy, which include legislative traditions in the state.

Third: the public awareness among people is relatively good due to Qatar advancing profile in education and free media along with the principled and transparent policy adopted by the state in managing its affairs and international relations. All these factors enhance people eligibility to exercise their political rights and references.

Fourth: the wealthy economy that Qatar enjoys will help the country overcome any challenges or unexpected outcome of its involvement in a radical transformation and reform. Assets acquired by Qatar play crucial role in its stability and prosperity.

An overall assessment of these points of strength and weakness may result in a conclusion that theoretically, Qatar is in the half way to have an efficient legislative system that reflects its own identity and aspirations. However, the author suggests that, according to Qatar's young leadership as well as a relatively a young majority of Qatar's people who is receiving an excellent level of education<sup>10</sup> and enjoying a high living standards, one may predict that Qatar is able to succeed in modernizing and renovation its legislative system in the course of few years. This prediction is based on many indications on the ground, and is supported by figures and facts appeared regularly in international platforms and media outlets<sup>11</sup>.

### **The ways ahead to reshape Qatar Legislative Identity**

Qatar is the richest country in the world in terms of individual's income per year as indicated by many official reports<sup>12</sup>. However, Qatar also has certain pressing characteristics, circumstances and challenges in terms of its history, geography, demography, economy and geopolitics

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<sup>10</sup> Qatar is fourth worldwide in quality of education, <https://www.edarabia.com/60175/qatar-is-fourth-worldwide-in-quality-of-education/>

<sup>11</sup> "15 fascinating facts about Qatar", Oliver Smith, telegraph New paper, 3 October 2019 <https://www.telegraph.co.uk/travel/destinations/middle-east/qatar/articles/facts-about-qatar/>, see also The Richest Country in the World 2019, <https://www.swedishnomad.com/richest-countries-in-the-world/>

<sup>12</sup> Richest Countries in the World 2019, <https://www.gfmag.com/global-data/economic-data/richest-countries-in-the-world>

considerations<sup>13</sup>. Notwithstanding all these challenges, Qatar now is one of the most advanced Arab countries with a very high profile presence at regional and international arenas<sup>14</sup>.

A Cosmopolitan approach in the field of legislation may not fit state with relatively short history in terms of its legal traditions as well as unique social and economic characteristics. Examples of legislative imitation is clear in many domestic laws; civil law, family law, conflict of laws, procedural laws and others. Qatar policy makers and legislative powers need to understand diversity and oversee comparative legislative experiences, and in the meanwhile maintain Qatar's characteristics and priorities when shaping Qatar legislation by means of nationalizing laws apart from imitating and copying other legislative experiences.

The study suggests the adoption and application of certain steps to reshape and improve Qatar legislative system and its identity; these steps are

- 1- Improve and maintain democratic mechanisms in forming legislative authority, a full and freely elected Shura Council members or two third of its members will significantly enhance the constitutional and practical role of the Council.
- 2- Conclude Training programs directed to Shura Council members as well as judges to improve their abilities to study comparative legal systems, its origins, characteristics, developments, and challenges facing these system.
- 3- Recruit social and economic expertise to assist legislators in studying social and economic problems and phenomenons and offer their advice on the best way to confront them by means of legislation.
- 4- Recruit Arab language expertise to offer assistance in preparing legislation, as well as translation in addition to introduce and/or develop new Arabic terminology for foreign terms and expressions within the legal discourse.
- 5- Officially Encourage publication in Arabic, as well as translation in both ways from and into Arabic. Moreover, a great effort is needed in making Arabic legal literature available freely accessible online.
- 6- Encourage overseas students to pursue their studies and researches in Qatar schools and Universities especially in the field of social sciences and law.
- 7- Improve programs to encourage national students to study aboard with due consideration to ensure diversity in their receiving jurisdictions and educational institutions.
- 8- Officially Encourage research in Arabic and comparative legal studies.
- 9- Recruit divers and high quality faculty members in national universities and research centers. Those faculty members must be capable of doing high quality of research with full academic freedom and rewarding incentives scheme.

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<sup>13</sup> The USA Central Intelligence Agency, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/qa.html>

<sup>14</sup> These include but not limited to, educational system, economy, luxurious life standards, political influence, media, and sports.

- 10- Reviewing the current educational patterns in law school, especially in the postgraduate programs; to design these programs with innovative courses and methods instead of the narrative patterns applied so far.
- 11- Introduce joint academic undergraduate and postgraduate programs between college of “Sharia”<sup>15</sup> and the college of Law. To utilize from certain sciences in Islamic studies, i.e. ilm Usul al-fiqh (علم أصول الفقه), science of Ikhtilaf (علم الاختلاف), ilm al Maqasid (علم المقاصد)<sup>16</sup>. These Islamic sciences can be of great potentials and benefits in the legal discourse by offering solid methodologies to understand interpret, compare and apply legal provisions.
- 12- Review Law school study plans so as to add comparative course and increase the diversity of elective courses. Certain courses in the under and post graduate levels should be considered and introduced, legislative policy, interpretation of legal provisions, the theory of law, philosophy of law, research methodology, and comparative legal studies are only examples.
- 13- Conduct gradual – albeit - radical review to Qatar laws in accordance with reasonable timetable with due regard to the importance of the law and its priority.
- 14- Establish and encourage specialized academic media in cooperation and coordination with higher education institutions.

## CONCLUSION AND RECOMMENDATION

The issue of legislative identity is not unique for the State of Qatar, rather, it is in fact exist and valid in many other States with unclear or even unsuitable legal system. Bearing in mind the fact that law is closely connected to social needs and characteristics; then it should be local and respond to national society needs and aspirations. Before utilizing comparative legal systems in other societies, national legislator must take full account to its society and national conditions and priorities. This will certainly rationalize and nationalize provisions of Qatar laws. Nothing in this approach shall be understood to recall the idea of isolation, but a justified rejection of imitation. Qatarization of Qatar legislation shall be considered as a creative step forward in branding Qatar’s legal framework and maintaining the national identity in the field of law.

In Qatar, the issue of legislative identity is of crucial importance and needs sincere efforts of all stakeholders with legal professions and backgrounds to ensure that this identity is made in Qatar. Considering this issue as a national priority in the field of legislation will gradually shape or - may be- reshape and enhance Qatar’s legal and legislative system; a modern national legal system with distinct identity made only for Qatar.

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<sup>15</sup> Sharia is the whole teaching of Islam, consists of worships, transactions, and ethics. Sharia sometimes refers to Islamic Law, or laws derived from Islam.

<sup>16</sup> ilm Usul al-fiqh, ilm al Ikhtilaf and ilm al Maqasid are important Islamic sharia’ sciences innovated and developed by Islamic jurists to derive detailed rules for transactions and different life affairs according to general rules embodied in the Holy Qur’an and Traditions of the Prophet Mohammad peace be upon him.

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