

Democracy & Judicial Controlling in Jordan

A Constitutional Study

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Received: July 4, 2011

Accepted: August 16, 2011

doi:10.5539/jpl.v4n2p180

Abstract

The establishment of the constitutional courts is regarded as the main demand for democratic states; the regular courts and high court of justice in Jordan have delivered many several decisions that insist on the issue of judicial review on the constitutionality of law and administrative actions. The present study comprises a number of sections. The first section, general notion on democracy and judicial controlling in Jordan, is statement of the study problems, purposes and significance of the study and the methodology applied by the researchers. Democracy under the constitution of Jordan and the main features of democracy in this constitution are undertaken in the second section.

The third section aims to acquaint the reader with the structure of the judiciary and the national standers pertaining to judicial independence and rule of law in Jordan. The fourth section evaluates the judicial review under the constitution of Jordan and the national charter, while section five examines respectively the role of judiciary in defending human rights of Jordanian citizens and the norms of judicial independence and rule of law in Jordan. The sixth section highlights the issue of constitutional court and the judicial reform in Jordan. The subject of judicial review, control of the constitutionality laws and types of the constitutional review as well judiciary's attitude towards judicial review in Jordan is discussed deeply in the seventh section. Finally, section eight, conclusion and recommendation to the issue of democracy and judicial controlling in Jordan.

This study suggests that the violable constitutional court in Jordan should be provided by the constitution as it is included in the national charter, 1992 which requires a new constitutional amendment. The court should be completely independent and separated from any type of controlling of other courts, either regular or administrative. It also recommends that the court should be interlay constituted from experienced, impartial and talented judges with long term of service and should exercise equally progressive role in intervening power politics and that more precautions may be taken for the court.

Keywords: Democracy, Constitutional law, Constitutional Court, Judiciary & Human Rights

I. Introduction:

Jordan was a part of the Ottoman Empire for more than four centuries. The country was then placed under the League of Nations' mandate which lasted until the achievement of independence on 25th May 1946 (Olwan, 2006). The major democratic process occurred during King Talal short reign (1951-1952); where a relatively liberal Constitution was enacted in 1952 by the first Parliament. However, democratic features of this constitution remained seriously deficient up to the enactment in 1954 of an amendment which made the executive (government cabinet) accountable to the Parliament (Al-Hiary, 1972). The constitution of Jordan, 1952 has adopted the principle of the rule of nation "Sovereignty of Nation", which is one of the most democratic principles of new societies, Article 24 i and ii states that "the nation is the source of all powers and the Nation shall exercise its powers in the manner

prescribed by the present constitution" (Al.Adithialeh,2001).

The constitution of Jordan, 1952 describes the ruling system in the country as a parliamentary with a hereditary monarchy, his majesty the king is the head of the three branches of the state, namely, the executive, legislative and judicial. The Executive authority consists of his Majesty the king and his council of ministers. The cabinet is formed of the Prime Minister and a certain number of ministers as required by the public interest. The cabinet charged with the responsibility of running all internal and external affairs of the state. The jurisdiction of the Prime Minister and Ministers are defined by regulations issued by the cabinet and ratified by the King (Al-Oran, 2000). The legislative authority is comprised of his Majesty the king and Al Umma council (the people's council). H. M. "the king is the head of state and represents the supreme authority in the hierarchy power and he has constitutional immunity against all liabilities (Article 30 of the Constitution of Jordan, 1952). The duties of the members of both House of Representatives and the House of Notables include review and pass law, rules and regulations.

Under the Court Establishment Law of 1951 and the Constitution, the judiciary is independent. There are three types of courts in Jordan: the civil, religious and special courts, made up of one or more judges, but no juries. The Jordanian constitution, stipulates the independence of the judiciary in Article 7, which states: "judges are independent. They are not subject to any power except the power of the law." Article 10 of the constitution also states: "Courts are open to all and they are immune against intervention." This was confirmed by Article 3 of the Jordanian Judicial Independence Law Number 15 of 2000. Article 45 of the Jordanian Constitution stipulates that "all courts shall be free from any interference in their affairs." Also, article 97 reads, "judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law", while article 81 stipulates that "the courts shall be open to all and shall be free from any interference in their affairs." These articles were coined to consecrate the principle of the Independence of the Judiciary and the principle of the sovereignty of law. However, facts and experiences often assert the absence of the rule of law and the consecration of the law of the ruler.

The ordinary courts in Jordan exercise its judicial role on all persons for civil and criminal cases, include case leveled either by the government or against it, except the cases empowered by the constitution or other private laws to be decided by civil or special courts. Therefore, the Jordanian ordinary courts have a jurisdiction on all types of disputes, including administrative, they can abolish any unconstitutional or illegal administrative action. The judicial review on the constitutionality of laws and administrative action is entitled to the High Court of Justice in Jordan (Al Khataib & Al Loasye, 1995).

The present study deals with the role of judiciary in controlling the constitutionality of law and actions of public authorities in Jordan, by which the constitutional provision of the constitution of Jordan will be clarified in order to explain the basis of judicial review and to what extension the ordinary and special courts in Jordan can apply, the nature, characters and jurisdiction of the High Court of Justice and its role in examining the legitimacy of laws and actions also have been highlighted.

1.1 Statement of the Problem:

The present study tries to clarify the constitutional safeguards for both democracy and laws in Jordan, which form the legal framework of a democratic society, the democracy and judicial controlling in Jordan has been a critical issue since there were many attempts to outline the correlation between both concepts. In fact, the judicial controlling is deemed important for the maintenance of democracy and the later is vital to protect the judiciary itself, it has been rightly stated by Laski that "no definition of democracy can adequately comprise the vast history which the concept connotes (Thorson, 1962). Democratization is taken to include any measure of Lego-political liberalization, whether through the extension and buttressing of human rights or through the establishment of political institutions which provide greater opportunity for representation (Niblock,1992). For the issues of sovereignty of nation and the possibility of judicial controlling on law issued by the members of the parliament, as it is considered the symbol of the nation's well, democracy is not government by people, but wise people who are responsible to hold judgments in the society (Lindsay,1962).

By this meaning it is found that democracy is not an aim itself, it is a power structure which serves the people's and enables them to live in peace and social security under the rule of law and guarantees the citizens' rights either individually or collectively (Klee, 2005). Therefore, it can be said that judicial controlling is an essential core for preserving the basic values of democracy which provide for safeguarding personal rights, freedoms and liberties. The democratization process aims at building a civil society, the vital core of this process is to monitor the legitimacy of laws in order to protect citizens' rights and liberties, for this it can be called the solidarity or nation-building (Klee, 2005).

The modern idea of democracy is inseparable from the idea of the state (Kedourie, 1994). It is well known that the

State of Law is restricted in all its actions to the doctrine of the rule of law and this is what differentiates it from the police state, the rule of law can not be existed unless there is a free and impartial judiciary (Abu El. Atham, 2001). The judiciary is the main resort of persons, individual groups and official or civil institutions, moreover, it is the castle for preserving individual rights and liberties as well as the real mirror which reflects the degree of civilization or urbanism of the societies, for all these explanations the judiciary should be independent and free from the intervention of other executive or legislative branches of the state (Abu El. Atham, 2001). Thus, the unquestionable principle of self-determination of nation and peoples presupposes the preparedness to accept the basic idea of democracy, since otherwise the will of people and of nation can not be realized. The United Nations Convention on Political and Civil Rights contains in its Article 25 (a) the obligation of states to enable the citizens "to take part in the conduct of public affairs, directly or through freely chosen representatives", and that can again be qualified as an invocation of democracy. One of the international rules governing the treatment of aliens refers to the right of every one to enjoy the protection by courts when wrongful act, done by public officials, is at stake, the refusal of such protection would consist a wrongful attitude of the state-power, well known as a denial of justice (Doehring, 1992).

1.2 Purpose and Significance of the Study:

The major purpose of this study is to examine the role of the Jordanian judiciary in controlling the constitutionality of laws and administrative actions, include the right to interpret the provisions of the constitution. In this context the related Articles of the constitution to the judicial review in Jordan should be highlighted and discussed, especially as to the power of courts for examination the legitimacy of laws and public authority's actions as well as interpretation of the constitution. The study seeks to identify the role of high court of justice in controlling the constitutionality of laws and administrative actions and the jurisdiction of the special council in interpreting the provisions of the constitution, the necessity for the constitutional amendments in order to establish the constitution court in Jordan will be clarified. In addition, the study discusses in details the democratic values of the constitution, structure of judicial system, independence of judiciary, democracy and the rule of law, judicial review and the constitution and national charter, role of judiciary in defending human rights, judicial reform in Jordan, high court of justice & its jurisdiction, judicial review, control of the constitutionality of laws and types of constitutional controlling, as well as the attitude of judiciary in Jordan towards judicial review.

Modern democracy and democratic welfare states find it very difficult to achieve an acceptable balance between the conflicting demands of judicial role in defending the rule of law and sovereignty of nations (Talmud, 1997). There is in any democracy a complex relationship between judiciary, state and society. More specifically, the constitution can not be amended unless very complicated measures are followed; therefore, such procedural complexity should be reviewed in the context of any possible amendments to the constitution in future. Article 15 of the constitution of Jordan, 1952 states that in the event of the declaration of martial law or a state of emergency, a limited censorship on newspapers, publications, books and broadcasts in matters affecting public safety and national defense may be imposed by law. This exception can be applied only in the case of emergency, thus how can the parliament impose extra legal restriction on the publication law? This unconstitutional law simply because it contradicts with the constitution, furthermore there must be a constitutional court in Jordan that can bring remedies to this problem. The keystone of democracy is human rights, political participation and equal opportunities which are already guaranteed by the constitution and national charter in Jordan (Khider, 2001).

1.3 Data Source and Methodology:

The methodology adopted in the present study is basically case law method in nature, consulting primary and secondary sources such as statutory acts, judicial decisions, reports and other studies. As the study is basically doctrinal, so legal research methodology is applied. The main methodological tools applied in the study are: historical and descriptive method to trace the origin and evolution of the judicial controlling in Jordan, Historical perspective of the democracy and judicial controlling in Jordan, statutory and constitutional scheme relating to this issue.

The study is a modest attempt made on a narrow conspectus and is confined within the limits of its own objectives. At the same time Jordanian Constitutional and legal norms in the field of democracy and judicial controlling as well as verdicts of the regular courts and High Court of Justice of Jordan has been found practical and useful in illustrating the accepted norms of judicial interpretation and analyzing the various issues connected with the study.

II. Democracy under Jordanian Constitution:

The Constitution of Jordan, 1952 represents the steady principles of democracy for Jordanians. It is the key stone for building democracy in Jordan, upon which the infrastructure of the modern democratic system in Jordan is built up, by which the shape of the political system is framed as parliamentary with a hereditary monarchy. In fact, the protection of democratic values of the society and human rights of citizens against the depression of laws is the main

reason behind raising the principle of judicial review on the constitutionality of laws (Fawsi, 1993). The judicial review assures the principles of legitimacy and rule of supremacy of the constitution, which are deemed as the parameter to safeguard the individual rights and liberties and governs the relationship among the public authorities in the state (Fawsi, 1993).

The main features of democracy in this constitution can be highlighted as the constitution provides for public participation in public affairs of the Government, Article 24 of this constitution states that the Nation is the source of all powers and it shall exercise its powers in the manner prescribed by the present Constitution. This Article is considered as essential for democracy building by dealing with citizen as the main party for both stability and political development in the country. The form of the democracy in Jordan has been identified by the constitution as a parliamentary democracy, by which the people have the right to elect their representatives in the parliament in order to exercise by their names the law-making and surveillance on the Executive power of the state. The constitution set in its Article 68 the term of office of the Chamber of Deputies shall be four calendar years commencing from the date of the announcement of the results of the general elections in the Official Gazette. The King may, by a Royal Decree, prolong the term of the Chamber for a period of not less than one year and not more than two years. This article enhances the principle of pluralism and change for the members of the parliament which makes its duty more efficient and capable.

The Jordanian constitution specifically assures the separation between the three organs of the state, namely, the judiciary, executive and legislative branches; the executive power is headed by the king and entitled by majesty's government, the legislative power is exercised by his majesty and House of nation, while the judiciary is completely independent of influence from the executive and legislative branches; the courts are subjected to no other authority than that of the law. Judges are appointed by the Higher Judiciary Council upon a recommendation of the Minister of Justice but require endorsement by a royal decree. The establishment of the Higher Judiciary Council was provided by the Jordanian Judicial Independence law, 2001.

The constitution of Jordan, 1952 expresses the importance of human rights in a whole chapter two entitled "The Rights and Duties of Jordanians" which emphasizes on the different rights and duties of the Jordanian. The constitution also assures the applicability of the rule of law on all Jordanians citizens regardless of their race, language or religion, and safeguards their rights to equality before law and equal opportunities to public employment. It guarantees also the right to expression of opinion by any legal means which ascertains that the respect of human rights is an essential element of the democratic approach in Jordan (See Article 5-23 of the Constitution of Jordan, 1952.). One of the most important features of the modern democracy that provided by the constitution of Jordan is the right to establish associations, bars and political parties. The right of Jordanians to hold meetings within the limits of the law and establishing societies and political parties is safeguarded by Articles 16 and 25 of the Constitution of Jordan, 1952. By this, it can be said that the constitution of Jordan created a solid foundation for the rules of pluralism and political participation through recognition of the right to establish civil society organizations and political parties which are the main circle of the political development.

III. The Judiciary System in Jordan:

The judiciary constitutes one of the basic pillars of any state. The Jordanian Constitution specifies several articles concerning the judiciary, which is one of the three state authorities. Modern and historical states are characterized by the existence of judicial justice, which forms the basis for their development and sustainability (Al-Abdlat, 2007). The existence of an independent judiciary and the prevalence of true justice will marginalize oppression, while the more space there is for oppression the more justice retreats and man is tyrannized. This judiciary system must have fortitude and courage to issue rulings impartially and without influences or pressures from influential persons whether from within or outside the judiciary (Al-Abdlat, 2007).

The Higher Judicial Council is the main body responsible for representing the needs of our judges, and it has the full legal power to look after those needs; from appointment and training, to meeting judges' travel and retirement requirements. It is a completely independent council where we, as the Ministry of Justice, only coordinate with them. No part of the government is allowed to interfere with their operations. My personal role does not go beyond nominating judges. This responsibility I would like to see ceded to a council of senior judges.

The Jordanian constitution specifically states that the role and functions of the judiciary must be completely independent of influence from the executive and legislative branches; the courts are subjected to no other authority than that of the law. Judges are appointed by the Higher Judiciary Council upon a recommendation of the Minister of Justice but require endorsement by a royal decree. They are normally graduates of recognized universities who have served as clerks and officers of the court. The Ministry of Justice, with approval of the King, assigns judges to serve in courts, and has the ability to transfer, promote and dismiss them.

3.1 Independence of judiciary:

There is a strong relationship between judicial independence and democratic system of government (Sherif, 2009). In all judicial systems including the Jordanian ones, no judge can perform duties properly unless he is independent and also immune from being attacked either personally or professionally (Sherif, 2009). This is simply because any attacks on the judiciary, whether it takes place by accident or on systematic basis, definitely harms the overall judicial performance, negatively detract from litigants' fundamental rights and consequently affects judicial independence as a basic foundation for modern, democratic societies. Justice, therefore, cannot exist within any given democratic system of government in the absence of judicial independence. As a result, the prevailing tendency today in the written language of the constitutions and basic laws of modern states is to provide for judicial independence explicitly in their texts (Sherif, 2009).

The Jordanian Constitution has established the general foundation for the independence of the judiciary (Majali & Qaddoura, 2008), Article 6/1 states that "Jordanians shall be equal before the law. There shall be no discrimination between them with regard to their rights and duties on grounds of race, language or religion." Article 27 of the constitution provides that "Judicial powers shall be exercised by the courts of law in their varying types and degrees. All judgments shall be given in accordance with the law and pronounced in the name of the King." Article 45 of the Jordanian Constitution stipulates that "all courts shall be free from any interference in their affairs. While Article 97 advocates that "Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law." Articles 99 to 103 regulate the establishment of courts in general (Majali & Qaddoura, 2008).

Articles 97 to 101 of the Jordanian Constitution recognize the independence of the judiciary and guarantee its impartiality and integrity. Article 97 states: "Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law". Article 101/1 stipulates: "The courts shall be open to all and shall be free from any interference in their affairs".

Under Article 3 of Jordanian Judicial Independence law, 2001 "Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law". In order to ensure complete impartiality, judges are prohibited from assuming jobs outside the judiciary as stipulated in Article 17 of the law: "Judges may not undertake commercial business, act as members of a board of directors of a company, institution or authority, or take on any job or career under penalty of law".

The judiciary must be independent financially and administratively. The Judicial Council as well as the judges is financially dependant on the Ministry of Finance. The judicial authority has no financial independence in spite of its revenue resources such as fees and other means (Al-Abdalat, 2007). However, the judicial authority has no control whatsoever over these resources and all employees who deal with financial and accounting matters report to the Ministry of Finance. Moreover, the Judicial Council has no actual authority over the administrative staff, as the Ministry of Justice handles appointments as well as any disciplinary measures or other procedures. Appointments are often haphazard and appointees lack proficiency (Al-Abdalat, 2007).

3.2 Democracy & the Rule of Law:

One of the most important characteristics in democratic societies is the rule of law, as well as the just treatment of groups and individuals therein where all are equal in terms of rights which are subject to liability and legal monitoring. It is perhaps true that civilized society is characterized by the existence of an independent and competent judiciary capable of applying the articles of the law to all citizens without prejudice (Al-Abdalat, 2007). Due to this doctrine, these laws should be enacted with the general consent of the people, be seen to be in the general interest of all, and be impartially administered within the polity (Dicey 1982). The two concepts of governance and the rule of law are clearly interrelated: without a fair and effective judiciary based on the rule of law one can hardly imagine good governance, when laws cease to apply equally to all, no matter how democratic the political system, the society ceases to be governed by the rule of law (Craig, 2003).

The rule of law, or *siyadat al-Qanun*, particularly necessities courts to apply laws equally to all citizens, whether they are rich or poor; no person is above the law. This concept used by the ancient Greeks was "isonomia," which indicated "equality of laws to all manner of persons" (Florino, 1598). Thus, the rule of law is intimately and inextricably harmonized with the principle of equity and its first recorded uses as a political concept was by the Greek leader Solon who gave the Athenian people "equal laws for the noble and the base" (Hayek, 1960). The rule of law relies on both principles of independence of the judiciary and the separation between powers of the state, namely, the executive, legislative, and judicial authorities, where only the judiciary can burden the task of interpretation and application of laws. Eventually, as contained in the Beijing Statement of Principles on the independence of the Judiciary (Burgis, 2007), in the rule of law judges should be fair, objective and impartial in disputes between individuals and government, as well as between individuals with each others (Burgis, 2007).

Most Jordanians understand democracy as closely related to civil liberties and political rights. This understanding, in essence, does not differ from the concept of democracy in advanced democratic nations (Center for Strategic Studies, University of Jordan, Amman, 2006). The constitution of Jordan, 1952 expresses the importance of human rights in a whole chapter entitled "The Rights and Duties of Jordanians". The constitution prohibits arbitrary interference with privacy, family, and home. Police must obtain a judicial warrant before conducting searches. Under the constitution all Jordanian citizens enjoy equality, civil and human rights regardless of their origin, and the freedom to participate as equals in the democratic process.

The constitution safeguards the rights the civil and political rights for Jordanians, including the right to personal liberty (Article 7 of the Constitution of Jordan, 1952), equity and equality before law (Article 6(1) & (2) of the Constitution of Jordan, 1952), privacy (Article 10 of the Constitution of Jordan, 1952), individual freedom (Article 8 of the Constitution of Jordan states 1952). In this context, it is found the constitution of Jordan, 1952 guarantees the equality of all citizens before law. Equality before the law continues to be a supreme objective and a valuable goal that all free nations and civilized societies seek to realize in order to achieve justice (Al-Tarawneh, 2007). Justice is in conjunction with the judiciary system through which judges strive relentlessly to establish justice whether by abiding by the law themselves or applying it to the litigants. An impartial judiciary is the tool for achieving justice, ensuring its enforcement, and deepening its roots in the society (Al-Tarawneh, 2007). Article 6 (1) of this constitution provides that Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion. It also ensures the right of every individual to go to courts as one of the constitutional principles included in Article 101 which states that the courts shall be open to all and shall be free from any interference in their affairs. The principle of the rule of law requires that the status of the parties in the proceedings before the courts, their rights and the time limits to be complied with during the trial shall be established by the Law (European Commission for Democracy through Law, 1997). This was confirmed in several decisions by the court of cassation, like resolution number 628 for the year 1988. From a practical aspect, however, there are many obstacles that often impede activating these legal provisions, either due to ignorance or to reluctance of going through the judicial process (Abu Hassan & Sukkari, 2007).

IV. Judicial Review & the Jordanian Constitution and National Charter:

The Constitution of Jordan, 1952 is a superior law in the country which includes the basic principles governing the political and judicial system of the state. Moreover, all law enacted by both government or legislative branch should be in harmony with the provisions of the constitution and it's the role of judiciary to examine the constitutionality of executive actions and legislative law and regulations. It should be noted here that the provision of Article 24 of the constitution of Jordan, which provides that the nation is the source of authorities does not contradict with the right of judiciary to monitor the constitutionality of laws.

In fact, the constitution of Jordan does not provide expressly for establishing a constitutional court, for this purpose the establishing of this court needs an amendment of the constitution. However, despite the absence of a constitutional court in Jordan article 9 of the High Court of Justice's Law provides for controlling the constitutionality of laws through the ancillary appeal by a person with interest or through the court abstaining from implementing the unconstitutional law. The unconstitutional law, however, stays effective in the absence of a constitutional court, since a court decision of not implementing it in a certain case does not prevent this implementation in all other cases, which jeopardizes the right of individuals to a fair rule of law, as the constitutional court is the only competent court to repeal an unconstitutional law and to ensure the legality of all states' actions by revoking any unconstitutional action thereof. This is certainly considered the main and most efficient guarantee for compliance with the constitution (Abu Hassan & Sukkari, 2007)

In addition to the Constitution, the National Charter of 1991 (The Jordanian National Charter, The Office of King Hussein I of Jordan Website, 1990), which was formulated by an appointed commission set guidelines for the state of law and future objectives of the Jordanian democratic society. Moreover, it adds new dimensions and more guarantees through future legislation and set a foundation for national institutions and for strengthening the democratic structure of state (Obeidate, 1992). The charter suggested constitutional amendments, stated that these should take place in due time, the execution of the constitutional amendment may lead to the establishment of a constitutional court (Hikmat, 1992). The formers of the national charter insisted for the establishment of the constitutional court, but not as an urgent need, they deal with this issue with the context of supporting the rule of law. The National Charter calls for establishing such a court to "decide on disputes and challenges pertaining to the constitutionality of laws and decrees which are brought before it by interested parties" (The Jordanian National Charter, 1992) Doing so would lend credibility to the legislative process and help in resolving future disputes over the constitutionality of laws (International Crisis Group Middle East Briefing, 2003).

V. The Role of the Judiciary in Defending Human rights:

Judicial safeguards are the most important guarantees to ensure that individual rights and fundamental freedoms are defended against abuse of public authorities (Al-Tarawneh, 2007). The concept of such safeguards is based on the presumption that individuals are entitled to litigation and prosecution if the state infringes on their fundamental freedoms and rights. Individuals have the right to resort to litigation to defend their rights and oblige the state to respect and refrain from abusing those rights. These goals cannot be achieved unless the judiciary enjoys full independence. If the judicial safeguards are proven to be based on integrity, and are fully and effectively applied, it will reflect on the state of human rights and fundamental freedoms (Al-Tarawneh, 2007).

Jordan is subscribing more and more to universal human rights standards. During the last decade, the main international rights conventions have been published in the official gazette, making these conventions part of the Jordanian legal system. These conventions include the international convention on the elimination of all forms of Racial Discrimination, the International covenant on civil and political rights, the International Covenant on Economic and Social and Cultural Rights, the Convention Against Torture and other cruel, inhumane, or degrading treatment or punishment, the Convention on the rights of the Child and the convention on the elimination of all forms of discrimination against women. Reservations made upon ratification or accession to international human rights conventions are regrettable, but the withdrawal of these reservations may be possible in the near future. International conventions of human rights have become part of the national law endorsed by the competent authority and replaced any current law to the extent that such law is not in line with the constitution (Olwan, 2006).

As regarding the political life, a new legislation with regards to political parties was adopted in March 2007; it introduces requirements for the establishment of a political party such as a higher number of members and presence in several governorates. In addition, the electoral system known as "single non-transferable vote" tends to result in votes being cast for individual candidates and is widely acknowledged to be disadvantageous towards the development of political parties (The Council and the European Parliament, Commission Staff Working Document, Brussels, 2008). In the same context, the governments of Jordan adopted a contemporary policy to fight corruption; legislations aim at achieving this policy was adopted, such as the Law on Financial Disclosure and the Law on the Establishment of the Anti-Corruption Commission, 2006 (The Council and the European Parliament, Commission Staff Working Document, Brussels, 2008).

With the adoption of an amended press and publications law in April 2007, it is now prohibited to arrest anybody for the expression of his opinion in oral, written or any other way, but heavy fines may still be imposed. The law on the right of access to information, of June 2007, guarantees citizens the right of access to any document. In case of refusal of access, the information seeker may lodge a complaint. As regard the freedom of assembly, Jordan has ratified most of the major international human rights instruments and in 2006 and 2007 published them in the Official Gazette, which means that they are enforceable in court and supersede national legislation (The Council and the European Parliament, 2008).

Jordan has significantly reduced the number of crimes that carry capital punishment. It voted against the UNGA draft resolution calling for a moratorium on the use of the death penalty, but maintained the de facto moratorium on executions that is in place since May 2006. Regarding child labour in Jordan, initiatives are now being undertaken, focusing on raising awareness and providing education and training to the children. A new family protection programme defines specific measures to protect children from parental abuse (The Council and the European Parliament, Staff, 2008).

In 2007 Jordan published the UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in its Official Gazette, but did not lift all its reservations. The country had registered success in challenging stereotypes and increasing women's participation in public life. Regarding fundamental social rights and core labour standards, the National Labour Committee reported that the government had responded seriously to allegations of abusive conditions and workers rights violations but that abuses still occurred (The Council and the European Parliament, 2008).

In summary, the judiciary's role in defending human rights is achieved through the principle of equality that ensures citizens the right to litigate equally and without discrimination based on their origin, ethnicity, race, language, faith, or personal opinions. This principle necessitates that the judiciary before which all citizens stand must remain one and the same for all, and courts must not change according to the change of those standing trial. In addition to the quality of oneness of the judiciary, this principle demands equality before applied legislation and the penalty code.

VI. Judicial Review in Jordan:

The acceptance of judicial review and the establishment of specialized constitutional considered as a prerequisite of healthy democratic development (Brown, 1998). Judiciaries in the Arab world have been formed by the interaction of the Islamic and civil law traditions. In some countries (such as Sudan and Jordan), there has been some

common-law influence as well (Sherif, 2009). It has been rightly stated that the protection of the constitution is much important than its existence, simply because the judicial controlling on the constitutional legitimacy is the real guarantee to assure that all law and orders issued by the legislative branch of the state are in harmony with the constitution as well as to preserve the balance between the different organs in the country. The judicial controlling aims also at safeguarding personal liberties, human rights, rule of law and justice in a democratic state. The judicial controlling should not be requested by the executive or legislative power, but it can be accessible by lay individuals.

6.1 Control of the Constitutionality of Laws:

Obviously, the Constitution of Jordan, 1952 has no provisions or legislative norms that regulate the composition and operation of constitutional courts or their functions. The matter of the constitutional review of laws under the constitution of Jordan is totally ambiguous, it is not clear that the courts in the country have the right of controlling over the constitutionality of law and regulations or not, even if it is possible theoretically, the constitution does not determine which kind of courts can handle this function (Al.Kaid, 2002).

The judicial review of laws may include examining the constitutionality of laws, regulations and procedures undertaken by public authorities, controlling electoral processes, guaranteeing the individual rights and liberties, policing the constitutionality of political parties or resolving criminal proceedings against high government officials. It may also take the form of the previous precautionary controlling over the constitutionality of laws and regulations, which need the existence of separate and special courts competent to carry out this duty, as it is followed by French model. In fact, the model of post political controlling by judiciary does not exist in Jordan; therefore, the only questioning point under the Jordanian legal system is that to which extent the judicial controlling over the constitutionality of laws, regulations and procedures goes in Jordan? (Al.Khataib, 1998) To answer this question focus should be on the attitude of Jordanian judiciary towards this issue and for how long it is harmonized with the classic Kelsenian model which inspired the creation of these institutions.

In Jordan, judiciary is relatively independent and does protect human rights (Court, and Mease 2003), and the essence of principle of separation between powers consider the judicial review of laws as matter of intervention with the legislative power's function by courts, therefore examining the constitutionality of laws, reviewing regulations and procedures or canceling non-constitutional laws is prohibited as per as this principle unless it is proved that there is legitimate and constitutional basis for courts to operate within this context (Al Hiyari, 1992). The unconstitutional law, however, stays effective in the absence of a constitutional court, since a court decision of not implementing it in a certain case does not prevent this implementation in all other cases, which jeopardizes the right of individuals to a fair rule of law, as the constitutional court is the only competent court to repeal an unconstitutional law and to ensure the legality of all states' actions by revoking any unconstitutional action thereof.

The Establishment of Regular Courts law No (26), 1952 has no provisions regarding judicial control, section 10 (3) of this law provides that the jurisdiction of the higher court of justice includes deciding all case leveled before court by individuals or public authorities for canceling administrative decisions, therefore it can be inferred from this section contradicts with the right of judiciary to monitor the constitutionality of laws, and that establishing a constitutional court for this purpose needs an amendment of the constitution. In accordance to section 10 the High Court of Justice is not competent to decide an appeal for cancellation of administrative decisions, if they are based on opposition with law, abuse of power or misinterpretation of law. It is within the function of the court to cancel any procedure which contradicts with the constitution or law, but it has no right to nullify the law itself (See Section 10 (3) (I) of the Establishment of Regular Courts law No (26), 1952).

Despite the absence of a constitutional court under the constitution of Jordan, 1952, the basis for establishing this court may be inferred from the provisions of the constitution, which provide for safeguarding the individual rights and liberties. Therefore, it can be said that the principle of constitutionality is designed to guarantee the individual rights and freedoms as well as to examine the constitutionality of laws. The constitution includes a group of provisions concerning rights and freedom of citizens, within the acceptable limits of democratic system (Hikmat, 1992). Therefore, the fundamental safeguards to respect the constitution is to enforce the judiciary independence, and activate its constitutional role of control lies in the compliance of the executive authorities to respect the rights and freedoms of individuals, and of the judiciary authority not to issue any legislation that might violate the principle of judicial independence, or encroachment of the judiciary control (Obeidate, 1992).

As regarding the High Court of Justice law No 11 of 1989, it is not mentioned by its provisions any possibility for constitutional review, for this the court can not prove the constitutionality of laws or state actions in the context of general proceedings (Abu Hujiali, 1994). On the other hand, the High Court of Justice Law No. 12 of 1992 grants the right to examine the constitutionality of laws through the establishment of direct action of the stakeholders as follows: the appeals made by any aggrieved party's request to cancel any decision or action under any law violates

the Constitution or any violation of the Constitution or the law.. Appeals by any aggrieved party's request to suspend temporarily the provisions of any law contrary to the Constitution or a violation of the law or the Constitution has already been to the Supreme Court has issued decisions that are adopted by the temporary suspension of the laws because they are contrary to the Constitution. Article 9 of the Supreme Court's Law provides for monitoring the constitutionality of laws through the ancillary appeal by a person with interest or through the court abstaining from implementing the unconstitutional law.

6.2 Types of Constitutional Review:

The judicial controlling on the constitutionality of law is considered necessary for safeguarding the rule of law and supremacy of the constitution within the legal system of the state (Al Shiq,2002). On the contrary, other jurists argue that the only parliament which can exercise its sovereign actions on the filed law-making, simply because it is the representative of the nation, therefore it can be deemed superior to other authorities of the state and no other power can control its jurisdiction (Merzah). Accordingly, there are two types for exercising the political controlling on the constitutionality of laws; the first type is followed in the countries, which consider the parliament as a superior authority in the state, where the constitutionality of laws can be discussed inside the parliament by the head of the legislative council or any of its members (Al. Shrqawi & Tolpah, 1984). While the second type of the political controlling is exercised by a separate political entity established especially to deal with this matter, however, these entities are criticized because they are not independent, fair or impartial due to the potential political influence over them (Salman, 1995). The constitutional review in Jordan is divided into two types as followed:

6.2.1. Political- Legal Controlling Type:

The political- legal controlling type is carried by a special body established to make the necessary interpretation of the constitution. The Higher Council is empowered with the jurisdiction of interpreting the provision of the constitution; it is composed of nine members, including four senators, including the head of Senators, and five other members of the senior judges. The council issues its decisions by the approval of six members of nine, which means the priority is given to the consent of judges (Al Neiamat, 2008).

The Higher Council is competent to decide all forms of deputies regarding to the interpretation of the provisions of the constitution, this competency of the council emanates from Article 57 of the constitution (Article 57 of the Constitution of Jordan, 1952). It falls within the jurisdiction of the council also to prosecute the accused ministers as per as Article 55 of the constitution (Article 57 of the Constitution of Jordan, 1952). As a political- legal body for making review to the legitimacy of constitutional provisions, the council exercises one of the competencies of a constitutional court which is the interpretation of the constitution based on a conditional request and therefore, it should not interpret the constitution on the self-initiative action, but it can exercise this function only upon the request of the executive power that is issued by the Council of Ministers, or by a request of the two branches of the House of nation (Majles Al.Umah) (Article 122 of the Constitution of Jordan, 1952).

Subsequently, the request of interpretation the constitution should be distinguished from the one made for interpretation law to examine its constitutionality, as per Article 123 of the constitution. This Article provides for establishment different tribunal to decide the legitimacy of law and interpret it, for the purpose of Article 123 of the constitution this special tribunal for the interpretation of laws is composed the President of the highest Civil Court as chairman, two of its judges and one senior administrative official, who shall be appointed by the Council of Ministers, as members. It shall also include a member delegated by the Minister concerned from among the senior officials of the Ministry which is involved in the needed interpretation. The decisions of this tribunal are taken by a majority of votes (See Article 123 (iii) of the constitution of Jordan1952), its competences are restricted to only interpret the provisions of laws that had not been interpreted by the courts before, if requested by the Prime Minister (See Article 123 (i) of the constitution of Jordan, 1952).

6.2.2. Judicial Controlling Types:

The principle of the rule of law and supremacy of the constitution may remain impractical without the existence of the judicial controlling on the constitutionality of laws and administrative actions in order to preserve the sovereignty of the constitution. The judicial review has many forms and types, namely judicial annulling control and refraining control, moreover, it can be divided into judicial review on law before or after its enactment (Merghani, 1979). It is upon the nature of the judicial system of the state to follow any type of the judicial review, simply because there is a real relationship between the responsibilities of state towards its legislations and the judicial controlling over those legislations, therefore, such responsibility can be decided (Al Zieaty, 1986).

a. Canceling Control:

This type of judicial controlling on the constitutionality of law can not be exercised unless the constitution provides

expressly for establishment of some kind of courts having the jurisdiction to process so. Therefore, controlling the constitutionality of law by this way requests the constitutional legislator to empower this jurisdiction either to ordinary courts or special courts (Al. Musadiq, 1986). As regard this type of judicial controlling, it is up to the judge to decide the nullification of unconstitutional law or not, for this reason this type of controlling is called canceling control (Shatnawi, 2002).

Accordingly, any individual including legal entities may file a case to the court if their constitutional rights have been violated upon, and relevant remedies provided by law for such violation have been exhausted, and they have doubts about the constitutionality of laws or regulations applied in the final judgment by the court of last resort (Chang, 2005). Therefore, due to this type of judicial controlling the court has no right to examine the question of the constitutionality of laws, unless an appellant claimed the unconstitutionality of the law and leveled a case before the court to review such law, thereafter the court can decide whether the constitutionality of the law, if the law is found unconstitutional then the court can issue an order to nullify it (Al. Azam, 2003).

A clear example of this type is followed by the constitutional system of Germany, where the constitutional court can interpret the constitution in the event of disputes that take place among the state's organs, decide whether a legal rule is in conformity with the constitution, and assert any compliant of the violation of fundamental right individuals (Doehring, 1992). On the same context, it is provided by Articles 102 and 10 of the constitution of Mexico, 1857 and Article 100 of the new amended constitution an application of a judicial controlling call am "Amparo", which means protection of rights of individuals up on their request, bringing balance between the federal authorities of state and examining the constitutionality of public authorities actions (Al. Ghazal, 1982).

b. Refraining Control:

It is meant by this type of judicial controlling that the court may review the law only after its enactment, and while deciding the case if the court finds the law is unconstitutional simply will suspend its application, which means that it can not issue an order for cancellation of the law, but it can abstain from applying it on the future cases (Abu Kuzam, 2001). In Iraq, judiciary exercises judicial controlling on the constitutionality of laws by not applying the unconstitutional law (Makie, 2007). In accordance to this type of judicial review, if any of the case parties claim that the law relied on by the party is unconstitutional, the competent judge deciding the case, whatever criminal, commercial or civil has not to apply such law, at the same time this law can not be annulled by him (Al Zauby, 2010). The judgment of the court of not applying the unconstitutional court has an evidentiary power that may be extended only to the parties of the case, on the same case and before the same court (Al Zauby, 2010).

In Jordan, all types of courts can exercise this kind of review without any need to be based on the constitutional provisions, therefore, the judiciary in Jordan has the right not to apply the unconstitutional law even with absence of the constitutional order to do so. As mentioned above, until the establishment of the constitutional court in Jordan, the High Court of Justice acts in order to nullify any action or procedure which relies on unconstitutional law or regulation and it can also refrain or suspend any law proved unconstitutional as per the provisions of the New Law of the Court No. 12 of 1992. Moreover, the ordinary courts in Jordan may have a vital role in this regard, simply because they have a general jurisdiction on applying the principle of legitimacy and enhancing the concept of the state of legal institutions.

c. Judiciary's Attitude & Judicial Review in Jordan:

In Jordan, the judiciary control did not rise to the level of a democratic rule would aspire for. It can be clarified that the judiciary's attitude towards judicial control on actions of administration and the constitutionality of laws takes many phases; the judicial controlling may concern the actions of executive power or the laws enacted by the legislative power of the house of nation. Therefore, the role of ordinary courts in judicial review to the actions of public authorities of state and laws should be distinguished from the function of the High Court of Justice in exercising judicial controlling on laws and actions of administration. The judicial aptitude concerning the issue of judicial controlling in Jordan can be clarified as follow:

1. Ordinary Court's Scenario:

The judicial power of the Jordanian ordinary courts is controlled with effect that any judgments can be abolished due to its unconstitutional result. It is of a special importance to note that the ordinary courts exercise the judicial controlling on the actions of the public authorities, especially if such actions or procedures contradict with laws, but they don not have the right to examine the constitutionality of law, neither before its enactment nor after, even in case of a clear unconstitutionality state of those laws. Subsequently, the ordinary courts have changed its mood concerning the issue of judicial controlling on the constitutionality of law, and the assurance for the right to examine the legal structure of laws and abolishing or canceling them in case of unconstitutionality has been settled by court's

decision No. 58/74 (Al.Khataib,1998).

The court of cassation, while functioning as court of justice held that " after inspection, it can concluded that section 11 (3) of the Establishment of Regular Courts law, 1951 dose not give the right to High Court of Justice to discus or decide the matter of the constitutionality of legislative laws or in tem laws, for this, it is unusual to decide whether law No (69) of 1951 by which the trial of appellant took place, is constitutional or not" (High Court, 1953). This approach of judiciary has been changed again towards given the courts of Jordan the right to examine the question of the constitutionality of laws, this approach was clarified by the judgment of the Cassation Court in 1967, while deciding the case of East Ghobar Canal Law (Court, 1967).

Practically, all ordinary courts in Jordan avoid being involved with the matter of constitutional controlling on laws and the interpretation of the constitution also is not within the jurisdiction of those courts. Therefore, the only high court of justice can perform the constitutional control, while ordinary courts have no legal basis to examine the constitutionality of laws (Al. Shudifat, 2007).

2. High Court of Justice's Aptitude:

The High Court of Justice in Jordan is one of the special courts, the term specialized court is used to describe any court, other than civil and religious, that has been granted a jurisdiction to rule in specified issues (Special courts also include the Customs Court, Income Tax Court of Appeal and the state security court). The High Court of Justice, which is based in Amman, reviews appeals submitted against administrative rulings. The jurisdiction of the court is outlined exclusively in Article 9 of Law No. 12 of 1992 on the Jordanian High Court of Justice as further amended. The decisions issued by this court are final (Article 26/B of Law No. 12 of 1992 on the High Court of Justice as amended). The High Court employs nine judges and 16 administrative personnel (Majali and Qaddoura, 2008).

The High Court of Justice in Jordan is the only administrative court; Article 100 of the Constitution of Jordan states that "the establishment of the various courts, their categories, their divisions, their jurisdiction and their administration shall be by virtue of a special law, provided that such law provides for the establishment of a High Court of Justice". The jurisdiction of the High Court of Justice is related to the public administration. This includes hearing petitions, issuing injunctions involving public servants charged with wrongdoing, election issues, as well as many other issues specified by the law establishing the High court of Justice. Being the appeal body against disciplinary decisions made by the High Judicial Council, the High Court of Justice should be fully separated from the HJC and able to exercise its control in total independence over High Judicial Council's decisions.

The High Court of Justice, which has jurisdiction over administrative litigation. The decisions of the High Court are final (Article 26/B of law No. 12 of 1992 as amended by Law No. 2 of 2000) reviews appeals submitted against administrative rulings. The jurisdiction of the court is outlined exclusively in Article 9 of Law No. 12 of 1992 on the Jordanian High Court of Justice as further amended. The High Court employs nine judges and 16 administrative personnel. The High Court reviewed 651 cases in 2006, of which 589 were received that year and 62 of which were carried over from 2005. In 2006, the court settled 555 cases and carried over 96 to 2007 (Majali and Qaddoura, 2008).

The high court is competent to review the legitimacy of all the procedures concerning administrative detention, which are issued on the basis of the Crime's Prevention law No (7) 1954, as per as provided in section 12 of the court's law, 1992. in this regard the high court of justice assured that " the judiciary of cancellation is well related to deciding legitimacy" (High Court of Justice, 1984).The judicial review on procedures of administrative detention is divided into two forms, controlling of the defection of procedure's formalities such as defection related to jurisdiction and procedure, and the second type of judicial review is an essential defect, for example abuse of power or contradiction with law (Mohammad, Administrative Detention between Personal liberties and Necessities for Public Order, P.264). There are several judgments of the High Court of Justice which refuse the judicial controlling over the legitimacy of laws; however it should be dealt with those judgments as an exception to the general role of judiciary of Jordan in this context (Al Oamlah, 1995).

In another judgment, the high court of justice held that the matter of enactment of necessary ordinances which are necessary for implementation of laws falls under the jurisdiction of the Government, for this reason the legislative power is prohibited to delegate or empower the Interior Minstar issuing orders instead of such ordinances. Therefore, section 12 of the Rural Administration Law, which give the legislative power such authorities is deemed illegal and non-constitutional (High Court of Justice, 1971,).

In an interoperation of the High Court of Justice in 1987, while deciding a case leveled before it concerning an appeal against the decision of Military Judge to fire an employee from civil service, the court held that on the basis of the provisions of section 4 of the Emergency Administration Regulation of 1970, this case dose not fall within the

jurisdiction of the court and it should not be appealed before this court if the military governor is convinced that an employee is well active in harming the internal or external security of the state (Obeidate, 1992). In the case against the Governor of Irbid, the court concluded that the authority of a governor to suspend any individual in accordance with section 9 of the Defense by Law no. (2) of 1939 is restricted to the suspension of a person in cases of dire need to secure the public safety or defend the kingdom. The procedure adopted by the governor is to be subjected to the assessment of the High Court of Justice. The court held that the governor's decision to suspend the claimant after the court of justice has decided to release him against guarantee, was a breach of the law and deserved to be annulled (Obeidate, 1992).

In fact, the constitution of Jordan, 1952 does not expressly any provision provides for judicial controlling over the constitutionality of laws, the High Court of Justice and other ordinary courts in Jordan prefer to avoid applying unconstitutional laws, but at the same time it can not admonish or stop them, such controlling is regarded as incomplete with the absence of the right either to cancel or nullify the illegal and unconstitutional laws (Al Kaid, 2002). It has to be mentioned that section 20 of the Emergency Administration Regulation of 1970 deprives the High Court of Justice from all its judicial review's competences except those related to pension rights. The court declared in its decision number 44/67 that this regulation is unconstitutional but it has not taken any step to nullify it, however this regulation was formally nullified by the Royal Decree on 30th of March, 1992 (Obeidate, 1992).

VIII. Conclusion & Recommendations:

In this study, we examine the issue of democracy and judicial controlling in Jordan on the constitutionality of laws and public authority's actions on the light of the constitution of Jordan, 1952 and the National Charter, 1992. the present study focused on the possibility of constitutional checks and balance on the power of the judiciary, the real democratic features of the constitution was explored, the independence of judiciary and rule of law have been the most significant elements for catalyzing the role of courts in controlling the constitutionality and main legal logics to establish the constitutional court were elaborated. The present study shows that some of the central features of necessity of establishment of the constitutional court in Jordan, features that have profound consequences for human freedom and welfare, have common constitutional roots.

Although the constitution of Jordan, 1952 has not made explicit whether courts may examine laws and administrative actions that might be regarded as unconstitutional, the constitution itself also does not prohibit the courts from making judicial reviews and control on the constitutionality of laws and procedures. Despite the absence of a constitutional allowance for establishing the constitutional court to deal with these matters, it concluded that the legitimacy of existence of this court emanates from constitutional obligations to protect human rights, which is an essential core of the Jordanian constitution. Therefore, the establishment of the constitutional court may enhance human rights and democracy in this country, where citizens can not be deprived their rights, freedom and liberties.

Before discussing the assumptions and recommendations of this study, it is worthy to highlight three main points that come out of the discussion in the present study. The first is that the judicial controlling in Jordan is still losing its effectiveness with the absence of the constitutional court. The creation of this court requires constitutional amendments and improving national legal systems by incorporating norms from the experience of other countries. The second point is that the reasons for the establishment of the constitutional court emanates from the constitutional legitimacy, which require that the rights of citizens should not be threatened and these rights can not be protected by a weaken judicial system. Therefore, the existence of this court is important in order to preserve citizens' trust in the court system. The third point is that Article 24 of the constitution of Jordan provides for the concept of the rule of nation when it stated that the nation is the source of authorities. Some people believe that this concept contradicts with the right of judiciary to monitor the constitutionality of law, but in fact this concept may include the real essence of the legitimacy of the constitutional court in order to keep balance between the different severing branches of the state.

The principle of Rule of Law assumes that human rights of citizens are safeguarded and there should be no arbitrary application of unconstitutional laws, the government due to this principle can apply only a legitimate law which does not contradict with people interests and rights. Moreover, the principle of the rule of law grants citizens the right to be persecuted and tried only by thier civil judge and the interest of people should have apriority within the context of the state of law. Therefore, as discussed in this study the constitution of Jordan does not bring any prohibition in accordance to establish the constitutional court that is why the national charter provides explicitly for establishing it which reflects the democratic values of the Jordanian society and means that the state of law is a democratic state committed to the rule of law and sovereignty of the nation.

Despite the role of High Court of Justice in judicial controlling on the constitutionality of laws and public authority's actions, there is a real need to establish the constitutional court in Jordan, with a genuine legal framework and wide

jurisdiction in order to assure that only constitutional laws and regulations can be applied on both individuals and institutions. Moreover, the establishment of this court will result in creating a precautionary body against the enactment of the unnecessary legislations by both branches of the state, the legislative and executive. The requested constitutional court which should be established in Jordan as provided in the National Charter, 1992 supposed to focus primarily on human rights. It should be having a strong and significant defense of due process, personal liberties, minority freedoms, economic rights and all types of political and civil rights. Moreover, the proposed court should function without any restrictions to recognize unremunerated rights such as woman rights, electoral rights, freedom of contract and informational and decisional autonomy. The constitutional principles of the legitimacy, proportionality, and legal clarity would be a solid basis mostly relied upon by the violable court to cancel laws and regulations.

The violable constitutional court in Jordan should be provided by the constitution as it is included in the national charter, 1992 which requires a new constitutional amendment. The court should be completely independent and separated from any type of controlling of other courts, either regular or administrative. It is recommended also that it should be interlay constituted from experienced, impartial and talented judges with long term of service. The role of High Court of Justice as a judicial review body in Jordan, as provided by its new amended law of 1992, is not effective enough. The jurisdiction of the court on controlling the constitutionality of laws and actions is limited to not applying the unconstitutional law and not abolishing it. Therefore, to have a court with a wide jurisdiction of annulling the unconstitutional laws needs establishing the constitutional court tasked with the function of judicial review. As discussed earlier, the aptitude of the Jordanian judiciary regarding its power to review law and public authority's actions was some times negative and other time positive, the courts nevertheless asserted its power to interpret the provisions of the constitution, which comes as per as Articles 55, 57, 122 and 123 of the constitution of Jordan, 1952 under the jurisdiction of the "High Tribunal" or Higher Council. Therefore, it is recommended that the task of interpretation of the constitutional provisions and rules should be extended to the requested constitutional court, which can interpret any referred provision of the constitution by the Council of Ministers or the regular courts in the country. Its decision in deciding the refereed case and for which extension it harmonizes with the constitution should be final and obligatory for all authorities of the state.

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