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**In the Name of God, the Beneficent, the Merciful**

**Explanatory Memorandum on Amendments to the Constitution of the Kingdom of Bahrain issued in 2002**

Bahrain witnessed political and constitutional changes since it adopted a Constitution on 6 December 1973. In view of the desire of H. H. the Amir to achieve progress and prosperity to the country, and to develop its political system to realize a sound democratic way of life in keeping with the democratic ethos prevalent in the world today, its general principles were delineated recording the bases of this development from the political, social and economic angles. These principles were endorsed by the National Action Charter and placed before the people in a referendum on 14 February 2001. The people of Bahrain accorded to it an overwhelming consensus to act as an authority for marching on the road to democracy, which the State wanted to consummate.

This Charter contained the political philosophy, which should govern the Bahrain society in future including its historic personality, and illustrating the infrastructure needed for its society, its system of rule, which will be implemented in future and it describes the functioning of parliamentary way of life. The Charter included the fundamentals of economics for the society, the basis of national security, inter-Gulf and foreign relations and the changes, which were to be made to the existing Constitution to activate the basic concepts mentioned in it.

Whereas the activation of the principles mentioned in this Charter requires that the process of amending the existing Constitution harmonizes with the larger aims contained in it and which will enable Bahrain to continue its march within the framework of the modernization of the State institutions and their constitutional powers; H. H. the Amir entrusted the Technical Consultative Committee by virtue of Decree No. (5) of 2001 with the task of preparing draft constitutional amendments in terms described by the National Action Charter as needful. However, it was for this Committee to take into consideration the bases and principles contained in the Charter, which would serve the country's interests. The President of this Committee was to raise the draft changes proposed to H. H. the Amir enclosing an explanatory memorandum with all studies showing different legal opinions before preparing the draft amendments so that His Highness could take appropriate steps for issuing the amended Constitution.

The Committee benefited from the opinions of constitutional experts of different countries, discussed different points of view in regard to the procedures to be followed for changing the Constitution and the amendments to be carried out in keeping with the principles contained in the National Action Charter.

In this explanatory memorandum, the Committee has explained the method by which the opinion crystallized over amending the present Constitution, and the changes, which were effected to this Constitution and the justification for them within the framework of legal opinions and studies presented by experts.

**SECTION ONE**

**THE MANNER IN WHICH THE CONSTITUTION WAS AMENDED**

Questions were raised in the Committee, which was formed for the purpose of preparing the draft amendments to the Constitution, on the means and procedures to be adopted for changing the Constitution, so that they realized the principles approved by the people in a referendum on the Charter.

Adherence to these procedures required that the Committee should begin by defining the extent of obligatory commitment imposed by the general principles contained in the Charter and futuristic guidelines forming the basis of constitutional amendments;  and thereafter determine the manner in which the Constitution should be amended in the light of the principles and rules contained in the Charter.

**First: The Obligatory Force of National Action Charter:**

Some States proceed by laying down the general principles defining the new philosophy, which aims at realizing them through the medium of declarations of rights or charters before the world at large, so that they could be a means of guaranteeing the rights and liberties of the people.  The examples thereof are the American Declaration of Rights, the French Declaration of Rights, the Egyptian National Action Charter and the Algerian National Action Charter.

With the desire of H. H. the Amir for laying down a philosophy and the basis for channeling the future course of democracy in Bahrain, His Highness decided to have recourse to the latest democratic system prevalent in the world of today. Accordingly a national referendum was held over a document incorporating those principles, bases and goals. This goes along with what the present Constitution has incorporated in saying that the people have the sovereignty and they are the source of all power.

Differences dogged the jurists over defining the legal force of the various declarations and charters as some saw them as surpassing the Constitution, while some others saw them having as much validity as a constitutional document. The majority was inclined to the view that such declarations and documents were considered obligatory by the framers of the Constitution and thus enjoyed a higher status as they represented major trends which the people desired and they included settled constitutional principles in human consciousness in society.  Hence it was essential that the constitutional jurist and the ordinary jurist alike should abide them. Hence some referred to them as "the Constitution of constitutions".

The Committee settled for the view that the nature of the National Action Charter of the State of Bahrain, whether considered to be above the status of the Constitution or of the same status, nevertheless it has an obligatory quality, based on the following facts:

1. The Charter was issued following a national referendum of people having sovereignty in the State. Similarly, the form in which the principles and bases have been drafted give the impression of being compulsory, which render them a basis for amending the Constitution and laying down laws.

2. His Highness the Amir's address to the Nation referring the Charter to the people for a referendum Stated: “The Charter will be considered as the authority for our national march ahead. We shall go ahead with right guidance in our national action and continue our advance on this basis until we modernize the State institutions and their constitutional powers and achieve in each phase what we consider to be reflecting the aspirations of the people."  This confirms that the Charter is the guide for future action and a compulsory basis for the State to develop its legal systems so as to guarantee its progress.

3. What has appeared in the Charter about looking forward to the future says: "All are in agreement over the contents of the Charter, both at the level of the Government and of the people. Taking into consideration that it represents an instrument of future action for the country, and the implementation of the basic concepts contained in it necessitate certain constitutional changes, it is essential to abide by the following:  ..." This emphasizes the obligatory nature of the principles outlined in it and the need for the Constitution to comply with them.

4. What further emphasizes its obligatory nature is the provision in the Charter which says:  "The agreement of the people over the Charter expresses their desire to realize a stable and prosperous future for the country under the leadership of H. H. Shaikh Hamad Bin Isa A1 Khalifa, the Amir"

**Second: The means of changing the existing Constitution of the State of Bahrain in the light of the Charter:**

The Constitution of the State of Bahrain issued in 1973 included the text of Article 104 providing for procedures for amending it. The text of this Article stated: "Any change in the provisions of this Constitution should be carried out with the approval of two thirds majority constituting the National Assembly and the ratification thereof by the Amir in exception of the rule contained in Article (35) of this Constitution".

Questions were raised about the manner in which this Constitution could be amended, within the framework of the principles and rules contained in the National Action Charter as being the ultimate document in the State of Bahrain to be followed by the Constitutional legislature.

In the light of constitutional principles determined by constitutional concepts and the developments witnessed by the State of Bahrain the Committee veered to the view that Article 104 of the existing Constitution was no longer valid for amending the Constitution within the framework of procedures Stated therein for the following reasons:

1. The expressions contained in the Charter aver in their context that the people have entrusted H. H. the Amir with effecting constitutional changes.

2. The letter raised by the President of the Supreme Committee for preparing the Draft Charter to H. H. the Amir, which was under the gaze of the people at the time of the referendum. Stated: "The Committee, on completion of its sittings, decided to raise the Draft National Charter to H. H. the Amir as a document of our renewal of trust and a pledge of allegiance, so that His Highness may proceed as he may think fit and proper in the interests of the country:'

This Statement confirmed that the Committee prepared the Draft Charter and the people who agreed with its contents entrusted to His Highness such measures, as he considered necessary to activism and implement the Charter by bringing about the amendment of the Constitution within the framework of the principles and rules of the Charter as necessary.

3. The will of the people as expressed in the referendum and the acceptance by H. H. the Amir of the people's will by ratification of the Charter, make it clear that the people entrusted to His Highness the steps to be taken to amend the Constitution within the scope of the principles and rules contained in the Charter and to select the means considered suitable for effecting the constitutional changes, their approval and issuance.

**4. If H. H. the Amir desired within the framework of the Charter and authorization by the people, to apply Article 104 of the existing Constitution for amending its provisions, he will not be able to do so in the light of the prescribed constitutional principles and the prevailing conditions in Bahrain as such application will not be possible for the following reasons:**

- The National Council stands dissolved and the Amiri Order No 4 issued on 26 August 1975 terminated the operation of the rules dealing with the National Council as contained in the Constitution of Bahrain of 1973.  As against it this Council is non-existent constitutionally, particularly since the people affirmed it by their endorsement of the National Action Charter against the background of the non-existence of the Council, thus confirming the absence of any role for it in the constitutional life of Bahrain. Any recourse to it now would be considered an affront to national will expressed through its endorsement of the Charter, and the nonabidance by H.H. the Amir of the implementation of the national will.  Hence it will not be possible for this Council, which is non-existent constitutionally to exercise its mandates contained in the present Constitution, which includes its agreement to the amending of the Constitution.

- Apart from the constitutional non-existence of the National Council, it is also non-existent actually and in fact.

Despite the existence of the Amiri Order No 4 of 1975 dissolving the National Council and transferring the legislative authority to H. H. the Amir and the Council of Ministers and even if it is said that it is possible that this order could be cancelled, such a demand did not find its place in the Charter apart from the fact that it is not in harmony with its texts even if this opinion is made operative and given a new lease of life in this Council. It is attributable to the fact that the tenure of the National Council according to the present Constitution was fixed at four years. This period ended and with it ended the actual and legal existence of the Council. Its revival in its old folly became legally untenable.

It will not be possible to talk of holding elections to a new Council undertaking the amending of the Constitution by following the procedures laid down in Article (104) of the Constitution of 1973 because it violates the principles contained in the Charter. These principles became operative with their approval by the people in a referendum, which resulted in the cancellation of the rules contained in the current constitution, which were contrary to it, as from the date of the said approval, contrary to the current Constitution. The Charter adopted the system of bi-cameral legislature with women's participation in elections and their candidacy for the membership of representative councils. It will not be possible to apply these new principles before the Constitution is amended for organizing the methods of selecting the two Councils defining their prerogatives and the conditions for selecting their members and the nature of such selections.

The Committee concluded this submission of the prescribed constitutional principles and the current situation in Bahrain noting that the only way to change the Constitution lay in effecting it through a sincere Amiri will, in implementation of the commitment entrusted to H.H. the Amir by the people in the referendum over the Charter, and its acceptance by His Highness by ratifying it.  The constitutional amendments in this case will be considered as having been issued in pursuance of the people's desire. What was issued by H. H. the Amir was in implementation of it.

Without a doubt, the legislative authority has the right, after the return of parliamentary life in the wake of the changes effected in the Constitution of 1973, to suggest other changes or change the amendments in accordance with the procedures laid down in the amended Constitution,

**Section Two**

**CHANGES MADE TO THE CONSTITUTION AND THEIR JUSTIFICATION**

The Articles of the Charter r mentioned the subjects, which needed constitutional amendments. In this connection these words may be quoted:" whereas H, H. the Amir is desirous of establishing a democratic system anchoring a balanced structure guaranteeing constitutional political palmer ship between the people and the Movement; separating the three organs of authority; strengthening the instruments of judicial authority, establishing a Constitutional Court and a Bureau for Financial Control, and whereas, there was abundant Royal intent to change over at the beginning' of the Third Millennium to a modem State complementing its political and constitutional framework, for interacting with the latest developments at the local, regional and global levels: and whereas the lesson of the experience of Bahrain in political and economic action throughout the past three decades requires that we take into account the new political, economic, social and legislative developments; and in order to face the future challenges in the wake of new developments at the global level. We veered to the opinion that we abide by certain immutable national, political and constitutional facts in the identity of the State in confirmation of the system of heredity constitutional democratic monarchy whereby the King of the country served his people. He is a symbol of an independent identity with hopes and aspirations for progress, for introducing modernization in the Constitution of the county in the light of the democratic experiences of different countries in enlarging the base of people's participation in bearing the burden of rule and administration. Some of these experiments proved that the adoption of a bi-cameral system of legislation offered the advantage of benefiting from the wisdom of knowledgeable and experienced members of the Consultative Council. Interacting with people's opinion of different persuasions since the Council members were elected directly." The Second Chapter Stated: First: The system of rule in Bahrain will be a hereditary constellational monarchy. Second: It was proper that Bahrain should take its place among the constitutional monarchies having a democratic system, which could materialize people's aspirations for progress. Fourth: The system of rule in the State of Bahrain will be democratic. Sovereignty therein will be of the people who will be the source of all authority. Fifth: The system of rule, dedicated to the well-established democratic principle, will be based on the separation of the three organs of authority as per the rules of the Constitution: legislative, executive and judiciary, with co-operation between them as per the rules of the Constitution. H. H. the Amir will be at the head of the three organs of authority. Sixth: The State will work for completing the judicial bodies provided for in the Constitution and lay down the Judicial body which will have jurisdiction over disputes concerning the constitutionality of the laws and regulations. Seventh: The people, men and women, will enjoy the right to participate in public affairs and have political rights in the Country starting with the right of election and candidacy.... "And what was Stated in the Third Chapter: First: It will be necessary to establish a Bureau for Financial Control" and what appeared in the Fifth Chapter. ".. For greater people's participation in public affairs and inspired by the principle of consultation as being a vital Islamic principle on which is based the system of rule in Bahrain, and believing in the rights of the people as a whole, and their right to exercise their rights in line with ancient democratic practices. It was in Bahrain's interest to organize its legislative authority through two Councils ... a Council freely elected directly to undertake legislative functions ... and a nominated Council consisting of experienced and specialist members whose expertise could be availed of as advice based on knowledge and experience.

**Within the framework of the principles of the people's will and their trends as contained in the Charter, the constitutional amendments were made highlighting the following pioneering concepts:**

1. According a share to the application of the esteemed Islamic Shari'a more than that included in the un-amended constitution. The changes emphasized that the Islamic Shari'a was deep-rooted in the people's conscience and occupied a position worthy of it.

The text of the Constitution before its amendment, Stated in its Article (2) that the State Religion was Islam, and that the Islamic Shari' a was the main source of legislation, and that in Article (6) it provided that the State will protect the Islamic heritage, and in Article 7 (b) it said that it would patronize religious education at various stages and types of education.

Constitutional amendments were introduced to enlarge their scope. They did not halt at these texts only but extended them to reflect the effect of Islamic Shari'a on other texts of the Constitution. In this context Article (33) Stated that the King was the Faithful Protector of Religion and thus the responsibility of protecting religion devolved on the Head of State and the highest authority in it assuring greater protection.  From this also proceeded the adoption of the system of the Consultative Council in addition to the Council of Deputies. (Article 52 and subsequent Articles) implementing God's injunctions: {and consult them in affairs}; {Their affairs are mutual consul} and in support of the Sunna of the Prophet peace be upon him on consultation and justice and emphasizing the enhancement of Islamic Shari'a in this consultation by providing for a national referendum in Article (43). In the field of emphasizing the role of Islamic Shari'a as forming the basis of the system of rule in the Kingdom, Article (5) referred to the need for guaranteeing equality between men and women without treading on the rules of Islamic Shari'a. Articles (23, 24 and 27) Stated that it should be ensured that the freedom of opinion, of scientific research, printing and publishing, forming societies and guilds, shall not offend the Islamic faith. Abidance by the laws of Islamic Shari'a and the base on which rests the true religion of Islam is the condition for practicing these rights and liberties.

All these texts were introduced to ensure that the Islamic Shari'a, in the sense of Islamic Jurisprudence, was the main source of legislation which would direct the law-maker to the basic Islamic perspective without preventing him from innovating rules from other sources on matters on which the Islamic Jurisprudence had not pronounced its verdict or it was considered desirable to frame rules about them which did not violate it, in keeping with the needs of natural developments over a period of time.

No doubt that these texts emphasized that the State Religion was Islam and the Islamic Shari'a had a basic role in society which was not incompatible with the sanctity of worship or the freedom to perform religious rituals. This was confirmed in Article (22) of the Constitution which Stated: "Freedom of conscience is absolute. The State guarantees the sanctity of worship and the freedom to perform religious rituals, take out processions and to hold religious gatherings in accordance with the normal practice followed in the country."

2. Deepening the democratic trend, the amendments ensured more public rights and liberties as well as obligations for a greater activation of the democratic system in keeping with human rights over which the world community lays emphasis always.

3. Developing the concepts adopted by the Constitution before its amendment combining the features of both the Parliamentary and Presidential systems and adding to them some features resembling direct democracy:

If the un-amended Constitution,, was to adopt a middle road to introduce a representational system whereby certain features of both the parliamentary and presidential systems were combined in the interests of national unity and stability this trend, hence the constitutional amendments affirmed this direction, and did not forget, while accepting the merits of the parliamentary system, the drawbacks as revealed in democratic experiments even as the merit of stability in the presidential system did not escape their notice.

In defining the contours of this middle path between the Parliamentary and the Presidential systems and selecting a position in between them for the Constitution of Bahrain, the constitutional amendments preceded in the direction of adopting from both, which harmonized legal and theoretical considerations and local compulsions and practical positions This trend led to defining the powers of the King as the Head of State and relations between the Legislative and executive authorities.

If the established rule Stated that the conventional representative system was based on the independence of the Deputies in exercising their prescribed powers in respect of the people who were not entitled to participate with them in their exercise, It was the result of the development of systems adopted certain semi- direct features of democracy departing from the basic tenets of the traditional representational system.  After the Deputies assumed authority for themselves, it was the right of the people to assert their participation in its exercise and do so actively. Thus the modem trends inclined towards transplanting the widely prevalent representative system with certain features of semi-direct democracy.

In keeping with this global trend which is picking up today and desiring enlargement of the people's participation in the conduct of the Kingdom's affairs, the constitutional amendments adopted the concept of national referendum.  While this idea is in keeping with the development of contemporary constitutional systems, its adoption has been of the Holy Qur'an there is the story in the Surat A1 Naml of the advise sought by Bilgis, the Queen of Sheba from the knowledgeable people of her community, God Almighty says in His sacred book: "in the name of God, the Beneficent, the Merciful ((She said, "O eminent ones, to me has been delivered a noble letter. It is from Solomon, it reads: 'In the name of Allah, the Entirely Merciful, the Especially Merciful. Be not haughty with me but come to me in submission [as Muslims]. She said, "O eminent ones, advise me in my affair. I would not decide a matter until you witness [for| me.M))And to the end of the Verses.  Thus the Queen consulted her people in the matter and they delegated to her the authority to act as she thought fit. She decided to send to Solomon a gift to see what would be his response ... to the end of the well-known story.

**Acting on the bases and principles contained in the Charter and within the framework of what has been Stated above, certain amendments were made in the texts of the Constitution of 1973 so as to achieve the aim which people entertained and confirmed in the referendum.**

**These changes were in respect of two basic matters; the system of monarchy and the bi-cameral system. These two matters were subdivided under other rules which were compatible with them and which complemented the principles contained in them, in addition to certain subsidiary rules to which the Charter referred.**

**First: The Monarchical Form is the basic pillar of the System of Rule:**

Complementary imports were put together of what the Charter contained as the core of ushering in a new reign. It acted as a pivot for bringing about the required changes, for preserving national unity and stability. Based on it was the desire that the Head of State should be the father figure for the sons of the soil, one and all. This is what was emphasised in the Charter, it stated "political and constitutional constants should be adhered to in the identity of the State to ensure the system of constitutional democratic hereditary monarchy whereby the King of the country serves his people and symbolizes their independent identity and aspirations."

The hereditary system was an immutable political and constitutional fact on which Bahrain was based throughout its hoary history, whereby the spirit of a single united family joined them together, the rulers and the ruled alike. The ruler of a country with a hereditary system is known by various titles such as King, Amir, Sultan, Emperor or Kaiser.  The title adopted by the Constitution before the issuance of the Chatter was "The Amir" but the Charter preferred the title "The King" so that it went along with the development achieved by Bahrain and could proceed further to realize its aspirations in future. Thus it stated: "God Almighty bestowed on Bahrain the bounty of stability and it achieved progress by leaps and bounds and faced many challenges. After it acquired a measure of maturity in international relations and in its sovereign institutions based on equality between its citizens and protection of their interests and unity, it was but moot that Bahrain should occupy its place among the constitutional monarchies enjoying a democratic system, capable of realizing for its people their aspirations for progress."

The Charter gave expression to the effects of it in Chapter Six (First Clause) saying: "The system of rule in the State of Bahrain will be a constitutional hereditary monarchy."

Despite the fact that the titles the "King" and the "Amir" refer to broadly the same system, which is hereditary or monarchical there is no doubt that the term monarchy differs in its exact technical import from the term' the Amiri System'.  The term "King" is not used in a Kingdom except for a single person who is its head, apex and leader. However, the term Amir may be used in some states to princes of royal family. Hence the term 'the King' singles him out both in his title as well as in his stature, making him both a symbol of the Kingdom and of its people, whether inside or outside the country. This uniqueness is matched by considerable increase in the King's responsibilities towards his country and his people necessitating changes in rules contained in the Constitution.

In implementation of what the Charter stated about changing the name of the State of Bahrain to the Kingdom of Bahrain and its Head as the King, the constitutional amendments aimed at achieving this goal. Paragraph (b) of Article (1) stated: "Rule over the Kingdom of Bahrain will be a constitutional monarchy. The rule passed from the Late Shaikh Isa Bin Salman A1 Khalifa to his eldest son Shaikh Hamad Bin Isa AI Khalifa and will pass on hereafter to his eldest son and so on in hereditary succession, unless the King appoints during his lifetime, a son other than the eldest son as his successor, according to the rules of succession outlined in the Decree on Succession."

This amendment to the text of the first paragraph of Article (1) necessitated changes to certain texts of the Constitution to bring in the term "the King" to replace the term "the Amir" and substitute 'the Kingdom of Bahrain' for the 'State of Bahrain', as well as some others to be in conformity with these new terms and the adoption of the bi-cameral legislature.

**1- Texts in which the terms "The King" and "The Kingdom of Bahrain" occur:**

The title' Amir ' was altered to read' The King' and' The State of Bahrain' to' The Kingdom of Bahrain' in the texts appearing in the two articles  1 (a. b. c. d), 32 (b), the title of Section One in Chapter Four; Articles 33, 34, 35, 37 Paragraph One, Article 38 Paragraph One, Articles 39, 40, 41, 42, 46, 47 (b, e), , Articles 52, 54 (b, c, d),Article 58 ,Second Paragraph, , Article 64 (b, c): and Article 67 (d),Articles 70, 71 73 ,First Paragraph, , Articles 74, 75 ,First Paragraph), Articles 76, 78, 83, 86, 87, 89) (b), Articles 90, 99 Second Paragraph, Articles 101, 106 First and Third Paragraphs and Article 120 (a, c. d).

The amendment of some of these Articles was restricted to changing the nomenclature alone without changing the texts of the Constitution as they were before the amendment: and some Articles, as will be outlined, included the nomenclature and the consequent rules resulting from it.

**2- The rules. Which were changed so as to be in harmony" with the monarchical system:**

The adoption of the system of monarchy necessitated a change in some of the Articles in the existing Constitution and addition of some new ones. These are as under:

**Article 33:**

The Charter provisioned that the rule aimed at protecting the country, enhancing its status, preserving national unity, achieving a comprehensive development in the political, economic, social, cultural and other spheres. Since, according to the Charter, the King is the fountainhead of the triple powers of the legislative, executive and judicial authority, and the main burden for realizing the goals laid down in the Charter for facing the future challenges in the wake of the new developments on the world stage rested on his shoulders. Article (33) was amended defining the responsibilities of the King in his capacity as the head of State and an arbiter between its different organs.

A - Clauses (a, b) Stated that "the King is the Head of State and its highest representative. He enjoys absolute immunity, which cannot be impinged. He is the Faithful Defender of Faith and the country and the symbol of national integrity. He protects the legality of rule, the supremacy of the Constitution and law, the rights of the people, institutions and their freedom,"

B - Dedicated to democratic principles and clarifying the role of the Government in the management of the affairs of the Kingdom, clause (c) was amended to read: "The King shall exercise his powers both directly and through his Ministers".  In accordance with the well-established constitutional systems of the world, which have opted for the parliamentary system or a representational system incorporating certain features of the Presidential system; the King will exercise these prerogatives through royal orders and decrees,  Before the decrees are put up to the King, the Prime Minister and the concerned Ministers will sign them as the case may be.

In conformity with these prerogatives, which the Constitution has bestowed on the King for his exclusive use, the orders will be issued as Royal Injunctions under only the King's signature without the signatures of the Prime Minister or the Ministers. As for other jurisdictions which the King exercises through his Ministers, they will be in the shape of decrees signed by the King after the signature thereon of the Prime Minister and the concerned Ministers according to circumstances, meaning thereby that he will be content with the signature of the Prime Minister in cases where the subject of the Decree does not concern any specific ministry or many ministries. In this case the signature of the King is not merely a certification of the signature of the Council of the Prime Minister and the concerned Ministers but that the King has the right to approve or disapprove of the decree as he may think fit.

C - As a result of the adoption of the bi-cameral system, clause (f) was added to accord the right to the King, by a Royal Order, to appoint members to one of the two Councils (Consultative Council) and relieve them, so that the formation of the Consultative Council differed from the formation of the Council of Deputies as the latter was to be by direct election from among the citizens. This is in conformity with the constitutional rules, which provide for a bi-cameral legislature with dissimilarity in the mode of selecting members for the two Councils.

D - Since the Defence Force needs to protect the secrecy of its proceedings and its command is one of the basic functions of the King, as well as protecting the independence of the country, and the safety of its soil internally and externally, and in implementation of the oath taken as per Clause (J) of Article (33) Clause (g) was amended to enable the King to honor his oath by assuming command of the Defence Force and allot to it national tasks inside the territory of the Kingdom and outside it, and that the Defence Force could establish with him a direct relationship and preserve necessary secrecy in its affairs. There is no doubt that in order to realize these goals, what is issued by the King in pursuance of Clause (g) will be in the shape of Royal Decrees signed by the King alone, even when the Minister of Defence is present.

By virtue of this text the King assumes the command of the Defence Force and orders the raising and disbandment of military units and their weaponry. He supervises all their affairs including the strategy for national Defence, concepts of use of force, planning and programming their development for facing the challenges faced by the Kingdom within the framework of its obligations at the Gulf in regional and global levels. It is the King who will order the use of force within or outside the Kingdom.

The phrase "preserve the necessary secrecy in its affairs" refers to plans for construction and development, orders and instructions regarding operational plans, the organizational structure for military budgets including future provisions, man-power outlays, all military documents and correspondence bearing the security classification 'secret' and 'top secret', information about preparedness and battle- efficiency, funds ear-marked for security and military intelligence and budgetary provisions for projects concerning armament, recruitment and development. This is no bar to recurring budgetary provisions for the Defence Force bearing the same number in the general budget of the State.

E -In pursuance of achieving maximum measure of independence for the judiciary and in view of the existence of several judicial entities in Bahrain, the Charter has projected the need for establishing a Judicial Body, which will undertake supervision over the constitutionality of legislation. Article (106) of the amended Constitution stipulates the establishing of a Constitutional Court) This is the concern expressed in Article (106) of this amended Constitution by establishing a Constitutional Court wherein paragraph (c) provides for the King to head the Supreme Judicial Council and appoint Judges by Royal Decrees based on the recommendations of the Supreme Judicial Council. This confirms the independence of the Judiciary and keeps it immune from the domination of the executive since it is directly linked to the King as the Head of State. This does not prevent, in the nature of things, the King from nominating a deputy to preside over the Supreme Judicial Council on his behalf from among the current Presidents of the Judicial Bodies or potentially one in the future.

F -Paragraph (J) was added to state that the King could create, grant or withdraw civil, military and other honorary titles. He could authorize anyone else to do so on his behalf. This is a right that can be exercised by virtue of a Royal Decree

G -Regulating the form in which the King would take the Constitutional Oath and specifying the body before which this oath is to be taken, Paragraph (I) of the Article was amended to read: " The King, at the time of assuming the throne, at a special session of the National Council, shall take the following oath:" ... It means that the King would take the oath once while ascending the throne. If he had taken an oath before any body other than the newly formed National Council, it would not be necessary to repeat the oath before the new Council. The oath taken earlier before the body existing at the time would be considered adequate.

H -In view of the fact that the Royal Court is associated with the functions of the King, which requires that it should enjoy his special confidence, the custom followed in some monarchies is that the King should have absolute freedom in appointing its staff and mode of functioning. Hence, paragraph (m) was added to the said Article (33) to state: "The Royal court will be Subordinate to the King and will be organized as per Special Royal Decree."

In conformity with this text there is a separation of the regulations governing the transaction of work at the Royal Court and the rules applied to the special budget and its control and supervision. The King will issue a Royal Decree regulating the system of functioning of the Royal Court. As for the budget of the Royal court and supervision over it, a special Royal Decree will be issued on it signed by the King in addition to the signature of the President of the Council of Ministers. The Rules and Regulations of organization of work at the Royal Court will cover all aspects of the working system, such as the appointment of officials, allotment of duties between them and the system of work and other duties, which are naturally associated approval with them. As for the budget of the Court and its supervision, the functions include all that concerns its determination, and the rules of expenditure and the competent authority to supervise such expenditure that may be from within the Court or outside, in the shape of a Committee or any other body. The Decree issued in respect of all such matters need not be placed before the National Assembly.

**Article 35**:

A- Article 35 (a), prior to its amendment, was restricted to defining the right of the King to suggest laws. In view of the fact that the Constitution represented the highest legal principles, some people opined that the term law was not comprehensive enough to be applied to the Constitution. Some asserted that the term' law' embraced all legal principles including the Constitution, which led to the interpretation by a few people saying that the right to suggest amendments to the Constitution has not been included in the text dealing with the prerogative of the King to introduce legislation. Hence Article (35) (a) was amended to forestall any differences in interpretation by stating clearly that the King will have the right to amend the Constitution and propose laws. He will also have the right to propose amendments to the Constitution in addition to his right to moot laws as provided for in the Constitution before it was amended.

B- Paragraph (b) of this Article stated prior to its amendment the fixed period within which the law should be returned to the National Council for its review as thirty days. Since this period was not enough to examine the draft law raised before the King for his approval, particularly in view of Article (106) defining the right of the King to refer the draft laws to the Constitutional Court before issuing them for its views about its conformity with the Constitution, this paragraph was amended to extend the period to six months. This was to allow sufficient time for a close study of the draft law and to assess the extent of its conformity or nonconformity with the Constitution before it was approved or referred back to the Consultative Council and the Council of Deputies for its review or to the Constitutional Court.

C- Paragraph (d) of this Article provided that the approval of the draft law after it is returned by the King should be by a two thirds majority of the members of the Consultative Council and the Council of Deputies or the National Assembly as the case may be.

**Article 36**:

Whereas the legal principle States that necessity makes the forbidden lawful, and the safety of the State is above law, and keeping in view the possible exposure of the Kingdom to emergency situations threatening the safety of the country externally such as war and internally such as civil disturbances, floods, epidemics and the like, it was necessary to equip the authorities of the State with exceptional means which could guarantee the protection of the State and its safety under these circumstances.

As these situations vary in their extent, from minor to great, as well as seriousness, one has to be careful in not trampling upon the rights and liberties of the people except to the bare minimum extent needed to cope with the situation. Article (36) of the Constitution has differentiated between two types of situations, viz., State of National Security and the State of Martial Law. The means employed by the State will depend upon the situation the State is faced with and it would differ in either of the situations stated above.

A State of National Security is declared to gain control over a situation in the country which threatens public security either in the entire Kingdom or in any part thereof, in order to secure the rights of the people and to gain control over the situation expeditiously. Martial Law will not be declared except when the security and safety of the Kingdom are threatened; or when the normal laws are inadequate to cope with the situation; or when the Declaration of State of National Security does not serve the purpose; and the situation demands the adoption of exceptional and extraordinary measures for curbing intrigue and armed insurgency and impose security for the safety of the Kingdom and the Bahrain Defence Force.

Based on this differentiation when a State of National Security is declared, the necessary procedures required to regain control of a situation in any case are less stringent and suppressive of people's rights and liberties than those which are enforced when a declaration of Martial Law is made.

Article (36) (b) stipulates that a 'State of National Security or Martial Law will not be declared except by a Decree. Under all circumstances the declaration shall not extend for more than three months. It will not be extended except with the approval of the National Assembly by a majority of those present.'

Under the circumstances, it does not prevent the King from seeking the opinion of the Council of Deputies or the Consultative Council or both, over declaring a State of National Security or Martial Law in advance if the situation permitted. It is a matter left to the discretion of the King without making it obligatory for him.

By virtue of this Paragraph, the Declaration of State of National Security or Martial Law may cover all parts of the State or a part of it, The King may, while making the declarations through a Royal Decree, issue instructions, which may be considered necessary for the Defence of the Kingdom even if they violated the laws currently in operation.

**Article 38**:

This Article contains the matter of Royal Decrees of Law, which the King may issue in the absence of the two Councils. This power has been hedged in by many restraints in terms of time and circumstances as to when they could be issued and the duration of their enforcement.

As the settled rule States that these Decrees will be considered as promulgated and acted upon from the date of their issuance to the date they are referred to the two Councils, consequentially there will be an emergence of legal centers and acquisition of rights by individuals during this interim period. In order to protect these rights and centers, in the case of the two Councils disapproving the Decrees issued, Article (38) was amended to provide for the termination of these consequences as from the date of issue of the order stating refusal by the two Councils, as the case may be; or from the date on which it was to be placed before the two Councils if not done.  Termination in this case does not have retrospective effect. This is in conformity with the fact that these Decrees derived their strength from Article (38) itself. Hence the date of termination win be the date of disapproval, or after the passage of a month since their issue without first placing them before the Consultative Council and the Council of Deputies if in session, or after a month of the first meeting of the two Councils in case of the dissolution of the Council of Deputies or the suspension of the sittings of the Consultative Council or in the case of the conclusion of the legislative term without the Decrees being placed before the two Councils while the exceptional legislative rights Stated in this Article come to an end and the natural prerogatives of the two Councils are restored.

There should be differentiation between the Law Decrees issued in the course of representational life (that is, in between the sessions of the two Councils or when the Council of Deputies is dissolved and the meetings of the Consultative Council are adjourned and the legislative sessions of both Councils have concluded), and the Decrees which are issued when Parliamentary life is suspended. It is the first category alone on which Article (38) is applicable whereby they become invalid if they are not placed before the two Councils within a month of their meeting or if the two Councils do not approve of them. As for the other category, their legal validity remains intact when the Parliament returns to representational life. These laws will remain in force unless cancelled by the Parliament or amended by other laws, as they do not come under the purview of Article (38), which does not spontaneously apply except in the case of representational life. They are subject to rules and regulations contained in the Royal Decree about the suspension of parliamentary life since this matter has been entrusted to the King and the; Council of Ministers.  Based on it, if it is not intended that these legal decrees are cancelled or amended by law at the recall of Parliamentary life, the legislative authority should frame fresh laws for cancelling them or amending them or else they will remain in force.

**Article 42**:

This Article was added to lay down paragraph (a) which states the prerogative of the King to issue orders for holding elections to the Council of Deputies according to the legal procedure laid down for it. And Paragraph (b) empowers the King to convene the National Assembly or adjourn its sessions by a Royal Decree or open the session. Whereas Paragraph (c) of this Article provided for the right of the King to dissolve the Council of Deputies by a Decree, it did not add anything new in this regard. Though it transcribed the relevant text contained in the Constitution of 1973 in the first paragraph of Article (65) for the sake of coordinating the various texts of the Constitution.

**Article 43:**

As a result of the development witnessed by the contemporary world in the democratic process, most of the modem constitutions adopted the widely prevalent representational system through a national referendum, which is considered a manifestation of semi - direct democracy.

All constitutional amendments followed in this direction and a national referendum was decided upon which would allow the people to actively participate and exercise their power. Hence Article (43) was added to accord to the King, if he so intended, the right to hold a people's referendum about the laws and important issues linked with the country's highest interests. The result of the referendum was obligatory and operative from the date of its announcement and publication in the Official Gazette.

**Article 50:**

In order to activate the role of the local administrative bodies and to enable them to achieve local development, Article (50) (a) was reinforced by adding to it: ' It will guarantee to the administrative bodies of the Municipalities the administration of public utilities of a local character which enter their domain and their supervision.

**Second: Adoption of the bi-cameral system of representation:**

Countries differ in defining the system by which a Parliament is constituted in two ways.  These are the systems of either a single house or of two houses. Both these systems have their supporters and opponents. The selection of either system by a State is not governed by mere theoretical considerations but by the circumstances faced by it and its past experience.

The most important feature of a bi-cameral system is that it provides for benefiting from knowledgeable and experienced people who are appointed to the Council interacting with the opinions of different segments of the people who are elected by direct election. Thus on the one hand, we have in the Parliament people with experience, knowledge and wisdom in the field of legislation and on the other youthful elements bursting with enthusiasm.

The bi-cameral system provides for the division of legislative responsibility between the two bodies. It represents a sure guarantee for a proper conduct of Parliamentary proceedings whereby the principle of mutual supervision is realized in respect of their functioning. This prevents attempts by anyone of them to be arbitrary in legislation and confrontational with the other authority, particularly with the Executive. This is what protects the State from the evil of conflict and wrangling against authority leading to waste of national effort and damage to public interest.

The adoption of the bi-cameral system prevents errors and hastens legislation. If either Council commits an error or is guided by sentiment or temporary influences, the other rectifies the error when the matter is placed before it. A debate on draft laws for the second time in the other Council ensures better clarity and hence avoidance of error especially when the legislative authority lays down the legal bases marked by relative stability. It is neither necessary nor in the public interest to hurry in these matters. If the passage of draft laws and their discussion in the two Councils slows down the process of law making as claimed by its critics who oppose this system, what compensates this delay is the fact that the laws that are passed have better acceptability and serve public interest better than if they had been passed by a single house.

Moreover, this system lessens the chances of confrontation between the legislative and the executive wings of authority.  If the legislative authority were to consist of a single house, such confrontation could lead to political violence. If, however, it were to consist of two houses and one of them differed with the Government, the other would play the role of an arbitrator between them. If it concurs with one of the two it would force the other party to soften its attitude. Thus a comprehensive peace and a friendly arbitration will prevail among the public authorities. It has been observed that constitutional systems having a single legislature have a shorter life or lesser stability than the bi-cameral system. This phenomenon is visible in the history of England, Belgium, and France etc.

These merits of a bi-cameral system, which score over the features of a single legislature, has led certain States having a single house to switch over to the bi-cameral system during the last few years. Examples of this are Portugal, Spain and Morocco.

In order to benefit from the advantages of a bi-cameral system, the Charter adopted the people's preference for the bi-cameral system over the uni-cameral system. It provided for a nominated Council with members having expertise and competence so that their knowledgeable opinions could be sought. The other Council was to be constituted by directly and freely elected members in a manner that maintained balance between the two. The Constitutional Amendment designated the first Council as the Consultative Council and the second one as the Council of Deputies. The two together were named the National Assembly.

The Constitutional Amendments aimed at achieving parity in the composition of the Consultative Council and the Council of Deputies and fixed the number for each Council at forty for balance in composition as well as in the legislative functions of the two bodies as decreed in the Charter. As for the Supervisory Authority, it was basically vested in the Council of Deputies as it was composed of elected members.

The amendments also did not want to whittle down the legislative powers catered for in the old Constitution before its amendment. On the contrary, new paragraphs were added to the existing text outlining further guarantees for legislative functions and enabling both Councils to exercise their prerogatives in a manner better than they could have done prior to the amendments.

The essential matter, which the Constitutional Amendments addressed, was the revision of legislative powers as listed in the Constitution before its amendment within the framework of the Consultative Council and the Council of Deputies.  This led to changes in laws about the formation of the National Council in its original form so that the powers of the Consultative Council and the Council of Deputies were defined accurately to prevent differences cropping up in their interpretation in future. Thus, the proceedings of both Councils would run smoothly and without hindrance.

In order to achieve all that, the title of Chapter Three was changed so as to include the term National Council along with the term' Legislative Authority'. Article (51) Stated that the National Assembly would consist of two bodies: the Consultative Council and the Council of Deputies. This Chapter comprised of four Sections dealing consecutively with the Consultative Council, the Council of Deputies, and Common Regulations for Both Councils and the National Council, which meant a joint session of both the Consultative Council and the Council of Deputies.

**1- Articles (52-55) (The Consultative Council):**

These Articles were added to the Constitution and dealt with the composition of the Consultative Council from the point of view of its formation and the conditions, which its members must fulfill before their nomination to it, the Rules which govern its membership and functioning.

**Article 52:**

Article (52) Stated: "The Consultative Council will consist of Forty Members appointed by a Royal Decree".

**Article 53:**

This Article consists of the special rules required of Members of the Consultative Council in addition to the general conditions required to be fulfilled by all Members whether of the Consultative Council or the Council of Deputies. It stipulates that a Member of the Consultative Council should not be less than thirty- five years AD of completed age on the day of appointment whereas it was thirty years in respect of Members of the Council of Deputies. This was in keeping with the trend prevailing in the countries having a bi-cameral system. It also required of the Member of the Consultative Council to be experienced or has rendered distinguished service to the country. This is in conformity with the aim of having such a Council.

**Article 54:**

Paragraph (a) fixed the duration of membership of both Councils to four years. Thus it equalized the period of membership of both the Consultative Council and the Council of Deputies thus achieving parity between the two Councils. Paragraph (b) dealt with the vacancy arising from a member being relieved of his duties for any reason whatsoever and the apparatus for appointing his successor, which is the same process as for appointing members to the Council with the proviso that the term of the new member will be complementary to the term of his predecessor. Paragraph (c) dealt with the request of a member to be relieved of his post and accorded to the King the prerogative to do so as he is the appointing authority. Paragraph (d) dealt with the selection of the President of the Consultative Council and his two Deputies. Whereas the King selected and appointed the President of the Council, he accorded to the Council the right to elect two Deputies to the President.

**Article 55:**

Paragraph (a) of Article (55) stipulated that the date of convening of the Consultative Council will be the same as for the Council of Deputies and the term of their sessions will be the same. Paragraph (b) stipulated that in the case of the dissolution of the Council of Deputies the meetings of the Consultative Council would also be terminated. The paragraph aims at ensuring the participation of both Councils together in decision making so that anyone of them does not become independent in the absence of the other.

**Articles (56)-(69) (Council of Deputies):**

These Articles were formulated in respect of the Council of Deputies. Some of these Articles were retained in their old form as they were before amending the Constitution at the time of organizing the National Assembly. Some of them were altered to be in keeping with the bi-cameral system, particularly in laying down the powers of the Council of Deputies.

**Article 56:**

This Article fixed the number of the members of the Council to be forty and restricted its membership to elected members alone. It thus excluded Ministers from being its members by virtue of the posts they held.

**Article 57:**

This Article granted to every Bahraini the right to candidacy for membership of the Council of Deputies provided he fulfilled the condition of being an original citizen. A new condition has been added to the existing conditions which stipulate that he should not have had his membership suspended by the Council of which he was a member (Consultative or Council of Deputies) because of loss of confidence or credibility or default in the performance of his duties. The ban on his candidacy will be considered temporary as a candidate whose membership has lapsed may offer his candidacy again for the next legislative term in all cases and in the next session if the Council disqualifying him revokes its earlier decision.

**Article 58:**

After this Article laid down the term of the Council of Deputies as four years, it specified that the elections for the new Council should be held during the last four months whereas previously this period was two months. The purpose of this amendment was to avoid any delay in the election of the new Council because of the inadequacy of the time allotted. The Article also stipulated that it was permissible for a member to be re-elected when the term of his membership had expired thus emphasizing its legality so that the absence of such a specific clause could not be interpreted to the contrary. It also provided for the right of the King to extend the legislative term of the Council of Deputies, when necessary, not exceeding two years, so that there was no legislative vacuum because of any delay in the election to the new Council. By this provision it was ensured that people's participation continued without a break through the elected Council of Deputies even when the legislative term had ended and the new Council had not been elected due to unavoidable reasons.

**Article 60:**

The third paragraph of this Article provided for the first meeting of the Council of Deputies to be presided over by the oldest member in age, whereas formerly it was by the President of the Council of Ministers:

**Article 62:**

This Article stipulated that the Cassation Court is competent to settle election suits and this is in conformity with the existing judicial hierarchy in Bahrain. It achieves what was intended in Article (57) prior to the amendment for transferring this power from the Supreme Civil Appeal Court to any other civil Higher Court constituted by law.

**Article 63:**

This Article includes the phrase "The post will be considered vacant as from the date of acceptance of resignation." This was done so that there was no need for the Council to take a new decision to announce a vacancy when the resignation was accepted as any such announcement could be delayed for any reason. This rendered the Council complete so that all would participate in realizing public interest.

**Article 64:**

The right to dissolve the Council of Deputies before the due date of the end of the legislative term is considered the most important right conferred by the Constitution to the Executive Authority among the Parliamentary Rules when confronting Legislative Authority. This right represents the most serious type of control of the Executive over the Parliament since it is considered a counter weapon for ministerial responsibility laid down vis-a-vis the Council of Deputies.

Article (64) ensured a precise regulatory method in the case of the dissolution of the Council of Deputies so that Parliamentary life was not affected for a long time as a result of the dissolution, which is resorted to sometimes. It is a regulation, which establishes a balance between the legislative and the executive and provides for a rapid return to Parliamentary life as soon as possible.

While Article (42) (c) stipulated for the King to dissolve the Council by a Royal Decree stating therein the reasons for it, it also Stated its impropriety for the second time for the same reasons. Article (64) completed the regulation about this right. It stated in Paragraph (a) the necessity to conduct elections to the Council within a period not exceeding four months. Before the amendment, this paragraph required that the elections be held for the new Council within two months of the date of dissolution. This amendment aimed at making the maximum period to conduct elections to the Council in case of dissolution, to be the same as that stated in Article (58) for conducting elections in the case of the conclusion of the legislative term. This Article retained the paragraph, which was operative before that, which is the recall of the old Council if the new Council was not elected within the stipulated period of four months.

Paragraph (b) conferred on the King the right to postpone the elections to the New Council, if the period of four months mentioned in Paragraph (a) for a return to Parliamentary life was inadequate, in view of any compelling circumstances, which may develop which he along with the Council of Ministers may deem the holding of elections impossible.

In order to lessen the effects of such postponement, paragraph (c) empowered the King, based on the opinion of the Council of Ministers, to recall the old Council to complete its legal term and thus ensure the continuity of Parliamentary life.

**Article 65:**

In order that the right of questioning is exercised to realize the purpose for which it was intended, and in view of the consequences that it may entail in some cases in placing confidence in the Minister questioned, Article (65) stipulated that the questionnaire addressed to a Minister should be signed by at least five members of the Council of Deputies and should not relate to any personal interest of the questioner or of his relatives up to the fourth grade or of any of his clients.

**Article 66:**

This Article restricted the right of raising the issue of confidence in a Minister to only the Council of Deputies in its capacity as a Council elected by the people. It prescribed the required majority for deciding the withdrawal of confidence in a Minister as a two thirds majority. These accords with the majority required for dropping a member either of the Consultative Council or the Council of Deputies. The Article banned Ministers from participating in a vote of confidence ever since the Constitution by virtue of Article (56) which restricted the membership of the Council to elected members only.

**Article 67:**

This Article deals with a situation where there is no possibility of co-operation with the President of the Council of Ministers if so proposed by two third members of the Council of Deputies. However, it is for the National Assembly comprising of the Consultative Council and the Council of Deputies to take a decision on it in a combined meeting. It requires the concurrence of two third members of those who constitute this Council. This is in view of the seriousness of the matter and it's leading to a ministerial vacuum threatening public interest. The Article has retained the provision contained in Article (69) (b) as it was before the amendment, which stipulated that the resolution of the National Assembly will be raised to the King for a decision on relieving the President of the Council of Ministers, appointing a new ministry or dissolving the Council of Deputies.

**Article 68:**

This Article has stipulated that any requests that are made to the Government should be in writing to ensure that 'they are earnest and well-studied. It also required that the reply of the Government to the Council should be in writing in case of impracticability of acceptance of these requests, so that the Council could know the reasons very clearly as to why they could not be implemented.

**Article 69:**

This Article added a phrase making it incumbent on the Parliamentary Enquiry Committees or the Member appointed to investigate, to submit the result of the inquiry within a period not exceeding four months from the date of its commencement. The purpose of this addition was to ensure that matters stabilized quickly within a reasonable period as otherwise it could lead to queries and differences.

**3- Articles (70-100) (Common Regulations for Both Councils)**

In order to avoid the repetition of identical regulations separately laid down for the Consultative Council and the Council of Deputies, the Constitution was amended so as to include all such regulations under one head, viz., "Common Regulations for Both Councils". The amendment made that the regulations, which existed before it remained as they were, as long as they did not clash with the adoption of the bi-cameral system. The amendment was restricted to changing the text wherein the terms the Consultative Council and the Council of Deputies were used sometimes and the term the National Assembly in some other cases.  It is to be noted that the term National Assembly, in the context of the altered text meant the joint meeting of the Consultative Council and the Council of Deputies.

The Articles, which were amended, in order to harmonize the adoption of the bi-cameral system are as follows:

**Article 71:**

This Article defined the date of meeting of the National Assembly as the Second Saturday of the beginning of October whatever the date is, and accorded to the King the right to convene it before the abovementioned date.

**Article 72:**

This Article has provided for the term of the annual session not to be less than seven months and retained the other proviso that it will not be adjourned before the budget is passed.

**Article 73:**

This Article has fixed the date of the meeting of the National Assembly for the first time after the general elections are held; and this is to be the day following the end of the month of the date when the Consultative Council is appointed or the election of the Council of Deputies takes place whichever is later; that is, from the date of completion of the formation of the two Councils. It has conferred on the King the right to convene the meeting before this date and retained the second paragraph of the Article as it was.

**Article 74:**

This Article has amended the nomenclature of the Opening Address of the King at the annual session of the National Assembly to be in keeping with the adoption of the system of monarchy and called it the "Lofty Address"; and conferred on the King the right to deputize the Crown Prince or any deputy to open the inaugural session and deliver the Lofty Address.

**Article 80:**

This Article has amended the Regulation regarding parity of votes in either of the two houses while voting on a resolution, in which case the vote of the President will be considered a casting vote. It added a special clause in the case of voting on amending the Constitution in which case voting will be done by announcing the names of the Members. The Article has catered for dealing with the lack of quorum in either Council in two successive meetings; in which case the meeting will be considered valid if the number of members attending it is not less than one-fourth of the number of Council members. The aim is to goad the: members to attend the meetings of both Councils and actively participate in exercising their privilege and enabling the National Assembly (Consultative Council and the Council of Deputies) to perform their duties.

**Articles (81-85):**

These Articles have regulated the procedures for debating the draft laws by both the Consultative Council and the Council of Deputies and Stated that the draft law will be placed by the Government before the Council of Deputies in the first instance. If it agreed with the draft law, altered it, refused it or added to it new provisions, the President of the Council of Deputies will refer it to the President of the Consultative Council. If the Consultative Council agreed with the opinion of the Council of Deputies, the matter ends there. If the two agreed to accept the draft law the President of the Consultative Council will send it to the President of the Council of Ministers to raise it to the King.

If, however, the Consultative Council objected to the opinion of the Council of Deputies, the President of the Consultative Council will refer the objection to the President of the Council of Deputies. If the Council of Deputies agreed with the opinion of the Consultative Council, the matter of the draft law ends there in terms of the agreement so reached.

If the Council of Deputies did not agree with the objections raised by the Consultative Council, it will be referred by the President of the Council of Deputies to the President of the Consultative Council once again for its reconsideration. If the Consultative Council agreed with the draft law as received from the Council of Deputies, it will be sent by the President of the Consultative Council to the President of the Council of Ministers to be placed before the King. If the Consultative Council insisted on its previous decision, then the President of the Consultative Council will refer it to the National Assembly, which will meet under its President to consider the various Articles and take decisions regarding the Articles disagreed upon by the Consultative Council.

The draft law will be considered as agreed to, if the majority of members present have affirmed it. If, however, it did not receive such majority, it will be considered as rejected. The draft law will not be placed before the National Assembly during the same session again.

**Article 86:**

This Article specifies a single channel for referring the draft law after its approval, to the President of the Council of Ministers to raise it to the King. This authority was given to the President of the Consultative Council, regardless of where the agreement became effective, may it emanate from the Consultative Council or from the Council of Deputies or the National Assembly.

**Article 87:**

Article (87) has regulated the procedure for considering draft laws of economic or financial nature, which are referred by the Government for consideration on a priority basis. It has a fixed time limit of (fifteen days) for each of the Council of Deputies and the Consultative Council as well as the National Assembly for consideration when the matter is referred to them. If this period lapses without a decision on it, the King may issue a Decree having the force of law. Such a Decree, after its issue, will not be placed before the National Assembly. The wisdom behind this law lies in compensating for the harm caused to national interests through a delay in deciding on the law, particularly to economic interests, which in most cases require urgent action in laying down the regulations governing them. This Article has restricted itself to situations requiring urgency in the consideration of laws related to economic or financial issues so as to realize the intended goal.

**Article 89:**

Paragraph (b) of this Article was amended to lay down the necessary rules for the principle of not blaming the members of the Consultative Council or the Council of Deputies for expressing their opinions and views in the Council or its Committees in realizing the principle of respect for adhering to values and tenets, bases of faith, due respect for the King and protection for the sanctity of private life. Hence the Article Stated: "No member of the Consultative Council or the Council of Deputies will be blamed for expressing his opinion or thinking in the Council or its Committees unless the opinion expressed therein is offensive to the basis of faith, against national unity, does not show due respect to the King or constitutes slander against a person whoever he may be."

**Article 90:**

This Article provides for the postponement of the meeting of the National Assembly by a Royal Decree, so as to be in consonance with the convening of ordinary and extraordinary sessions, and their dissolution. It modifies the period of postponement to be two months and disallows its extension during the same term more than once.

**Article 91:**

In co-ordination with what has been stated regarding raising questions, the second paragraph of this Article has banned questions relating to the questioner's personal interest or the interests of his relatives up to grade four or of any of his clients. This Article has given the right of questioning to members of the Consultative Council and the Council of Deputies so the right is accorded to both Councils.

**Article 92:**

This Article has differentiated between the right of the members of the Consultative Council and the Council of Deputies to suggest amendments to the Constitution and their right to propose draft laws. With regard to amending the Constitution it has stipulated that the proposal should be mooted by at least fifteen members. It has given to every member the right to propose draft laws. The purpose of making this differentiation is to be in line with the contemporary Constitutional trends, which differentiate between the procedure for altering the Constitution and for changing ordinary laws. The Article added: "If the Council accepted the, proposal it will forward it to the Government to be put in the form of a draft amendment to the Constitution or a draft law and submit it to the Council of Deputies during the same or the next session."

**Article 93:**

As against the cancellation of the text, which provided for the President of the Council of Ministers and other Ministers to be members of the legislative authority, Article (93) was altered to give them the right to attend the meetings of the Consultative Council and the Council of Deputies.

**Article 99:**

This Article was added to regulate cases of lapse of membership of a member of the Consultative Council or of the Council of Deputies. The Article differentiated between the cases of lapse of membership because of lapse of any of the conditions laid down in the Constitution or the Laws of the Consultative Council and the Council of Deputies, and cases of lapse of membership as a consequence of loss of confidence, credibility or failure to perform as a member. In order to ensure fairness in having recourse to this provision, the Article has enjoined that the decision to suspend a member should be approved by two third members of the Council to which he belongs. As the appointment of the members of the Consultative Council is done by a Royal Decree, it became necessary to raise the Resolution of the Consultative Council suspending the membership, to the King for his approval. This is what this Article stipulates.

**4- Articles (101-103) (Convening the National Assembly):**

In view of the possibility of there being differences in the viewpoints of the Consultative Council and the Council of Deputies, leading sometimes in the failure to take decisions and thus hurting public interest, Articles (101 to 103) were added to amicably assist them in solving the differences which could arise between the two Councils through the intercession of the National Assembly between them.

**Article 101:**

While the amended Constitution laid down certain conditions as to when the meeting of the National Assembly had to be convened, there could be cases, which were not covered by them. Such cases required that the two Councils should meet together to find common solutions to them. Hence this Article provided for the King to convene the National Assembly whenever he considered it necessary, or upon the request of the President of the Council of Ministers.

**Article 102:**

Outlining the nature of the convening of the National Assembly, this Article specified that the President of the Consultative Council will preside over its meetings. In the case of his absence, the President of the Council of Deputies will preside over them. Thereafter the First Deputy to the President of the Consultative Council and then the First Deputy to the President of the Council of Deputies.

**Article 103:**

This Article has defined the majority required for the convening of the National Council. In cases other than where the Constitution requires a specific majority, it will be a majority of the members of each of the two Councils, so that it ensures the minimum representation required to take a decision in these circumstances which is the majority of members present excluding the President, it made the vote of the President as casting vote in case of equal voting. According to this provision the President does not vote except in the case of equal number of votes cast in respect of the resolution placed before them. In such an event his vote will be considered a casting vote for approval or disapproval.

**Thirdly - Other amendments contained in the Constitution:**

Apart from the major amendments described earlier imposed by the National Action Charter under the caption" Future Projections", this Constitution includes certain amendments which are in conformity with the aims described in the National Action Charter at different places.

**1- Amendments. Which aim at extending: the preservation of the basic infrastructure of Society, rights and public duties and realizing: a greater measure of democracy:**

In realization of a greater measure of democracy and in keeping with contemporary political trends as well as the demands made by the charters of the world for guaranteeing human rights, some of the Articles were amended in the following manner:

**Article 1:**

Paragraph (E) of this Article aimed at realizing equality between men and women in participating in public affairs and enjoying political rights including the right to election and nomination. "No citizen is to be denied the right to be elected or nominated except for as provided in law." The Article also stipulates that the legislator may legislate a law depriving some people of their right to election or nomination for reasons connected with the nature of their work, when such work prevents them from exercising both or either of their rights . It is a matter for the legislator to determine in the light of public interest.

**Article 5:**

Paragraph (b) was added to this Article to emphasize the concern of the State about women and enabling them to reconcile between their family obligations and their functioning in society within the framework of the Islamic Shari' a. Hence it said: "The State will reconcile the duties and obligations of women towards their families and their work in society; and ensure that they have equality with men politically, culturally and economically without prejudice to the rules of the Islamic Shari'a."

**Article 7:**

With the aim of promoting the national spirit, Paragraph (b) was amended and stipulated that the Government pay attention to national educational training of different types at various stages. In conformity with the demand of the Charter for encouraging the private sector in the educational field, Paragraph (c) permitted individuals and institutions to establish private universities in addition to private schools as provided for in the Constitution before its amendment.

**Article 9:**

The Charter gave particular attention to environmental protection and demanded that a National Strategy be devised for its preservation, and all steps and legal procedures be adopted to delimit pollution. Hence Paragraph (h) was added to Article (9), so that the State was committed to take all necessary measures for the protection of the environment and the preservation of flora and fauna.

**Article 10:**

Bahrain, in "its capacity as a member of the Arab Gulf Cooperation Council and of the League of Arab States, affirmed in Article (10), in implementation of a provision of the Charter, cooperation between the Kingdom of Bahrain and the Arab States in general, and the Gulf States in particular. Hence, Paragraph (b) stipulated: "The State will work towards achieving economic unity for the GCC States and the Arab League States and for that, promotes their getting together, their mutual co-operation, solidarity and collaboration."

**Article 13:**

Paragraph (b) of this Article was amended to read: "The State will provide opportunities for work to the citizens with just conditions" instead of "the State will provide work" to clarify the specific responsibility of the State.

**Article 17:**

In pursuance of ensuring equality between those enjoying Bahrain nationality, whether by virtue of their origin or naturalization, it has followed world trends in this respect in keeping with the spirit of the Charter. It emphasizes the guardianship of Bahrain of all its citizens without any discrimination between them. Hence the amendment of Paragraph (a) of this Article, which was limited to forbidding the cancellation of citizenship of only the original Bahraini, has extended the immunity to all Bahrainis who enjoyed its citizenship. Therefore, the Paragraph states: : "Bahraini citizenship will be defined by law and anyone enjoying it cannot be deprived of it except in case of high treason and other circumstances laid down by law."  In conformity with this trend, Paragraph (b) of this Article was deleted, which permitted the withdrawal of citizenship from a naturalized citizen. Thus the law was one and uniformly applicable to all citizens enjoying Bahraini citizenship.

**Articles (23, 24, 27):**

The Charter has stated that the world today had become a small village governed by a tremendous technological resurgence and a gigantic information revolution. The concepts emerging from this revolution perhaps contradict humanitarian considerations and moral values. In order to co-relate the horizons of progress, in this age of globalization, to religious and moral bases on which the Bahraini society is anchored, these Articles were amended so as to link freedom of opinion, scientific research, journalism, printing and publishing, forming societies and guilds, with the fundamental bases of the Islamic faith and national unity.

**Article 26:**

In the face of scientific progress which is overwhelmed by information revolution and modem electronic equipment in contemporary societies, and the risk it poses to the sanctity of personal lives of citizens, this Article was amended so as to include in the means of protection of privacy, impropriety of censoring electronic mail except as provided for in specific laws. It will be considered on par with postal, telegraphic and telephonic communications.

**Article 28:**

In implementing people's freedom to have their private meetings, Paragraph (a) of this Article affirmed that the holding of private meetings is a right of the citizens and there is no need for permission or prior intimation for it.

**Article 30:**

Emphasizing the importance of defending the security of the country, Paragraph (a) of this Article laid down that Defence is a sacred duty of every citizen.

**2- Constitutional Court:**

Article (103) of the Constitution, prior to its amendment had stipulated that the law will define the judicial authority having the power to decide disputes concerning the constitutionality of rules and regulations.  In regard to the importance of control over the constitutionality of laws, since they are important guarantees to ensure a faithful implementation of the Constitution and there is no breach of its laws, the Charter emphasized the need to lay down such authority.  Article (103) left the matter of defining the type of authority, which exercised supervisory control to the law. It gave the law the right to determine the type of such authority in its discretion. It will be observed perhaps that this authority could be merely a division of the Cassation Court or a Special Court constituted independently of other established judicial courts. Desiring a stable supervisory role in ensuring the constitutionality of legislation, the constitutional amendment preferred that the text of the Constitution itself should include as to who is this authority and what are the principles, which should govern its organization. It should be such that the regulation issued in this connection, should leave it to the law to lay down the details which will govern its functioning within the framework of the texts of the Constitution.  Hence Article (106) stipulated: "A Constitutional Court will be established with a President and six members under a Royal Decree for a period laid down in law, entrusted with the supervision of the constitutionality of rules and regulations."  The Article preferred that supervisory control should be given to a Constitutional Court especially constituted for this purpose as the position of the Constitutional Court lay outside the scope of normal judicial grades. It can dispose of many of the problems resulting from legislative action being placed before ordinary judicial authority. It is also permissible to include in this Court, in addition to the judges, some legal scholars to achieve the aim behind constituting such a Court and concur with its role.  In order to preserve the independence of the Court, the said Article has stipulated that its members cannot be removed during their term of membership, and hence the law of inception of the Court is restricted to laying down the necessary bases for activating this guarantee.

In view of the fact that the rule States:  'a challenge to the constitutionality of a law does not prevent its application until the Court decides that it is unconstitutional. The result of it is that the enforcement of the law, which violates the Constitution, continues to be valid for a period, which may be long or short - a criticism levelled against the subsequent review of the constitutionality of laws - and hence the text aims at compensating this deficiency. It gives to the King the right to refer to the Court any draft laws approved by both the Consultative Council and the Council of Deputies before their issue as regards their conformity with the Constitution. If the Court finds that the law does not conform to the Constitution, it prevents the King from issuing it. If, on the other hand, the Court finds it in tune with the Constitution, it will give to the King the right to issue it.  Such approval does not prevent the King from returning the draft law to the two Councils for its review for some other reasons apart from its conformity or nonconformity with the Constitution.  The text aims at clarifying that the report of the Court in this situation will be binding on all State organs and all others. This prevents an appeal against the law once again, after it is issued as it has already been decided.

In order that differences are not stirred up as a result of the order of the Constitutional Court declaring a law or regulation ultra-constitutional from the angle of passage of time since the issue of this order, the Article stipulates: "Any order passed about the unconstitutionality of rules and regulations will have immediate effect unless the Court lays down a subsequent date for it. If the order of unconstitutionality refers to the text of a criminal offence, then the incriminating orders issued in regard to that text would be null and void".

By virtue of this Article, any actions or decisions taken in implementation of the law, which is declared unconstitutional, will remain valid until the date of publication of this law in the official gazette or a subsequent date determined by the Court for its coming into effect. This does not affect the right of the one who challenged the constitutionality of the law to benefit from the verdict of unconstitutionality issued in his lawsuit filed objectively.

The Article has made an exception of the principle of the verdict taking immediate effect. The guilty verdicts in criminal cases based on the law, which is subsequently declared unconstitutional will be considered null and void and all consequences flowing from them will be automatically invalidated, if, however, the text is restricted to mentioning the criminal indictments issued, primarily the same decision will apply to all cases, which have not yet been decided at the time of issue of the decision by the Constitutional Court. These law- suits will be considered void.

**3- Financial Matters:**

If financial occupation were the historical reason for instituting the Parliamentary system, the contemporary constitutional trends have made a considerable impact on the powers of the Parliament over financial legislation. Whereas the Charter aimed at keeping pace with world trends, the Constitutional Amendments went along in harmony with these trends while keeping in view the special circumstances of the Kingdom of Bahrain. This is reflected in the following amendments:

**Article 109:**

In view of the complexity and accuracy involved in the preparation of a budget in the present times, the contemporary constitutional trends make it compulsory that the approval of the Government be obtained for any amendment proposed by the members of Parliament.  In keeping with these trends, Paragraph (b) of Article (109) added the words:" Any amendment may be made to the budget with the agreement of the Government."

In view of the magnitude of the projects undertaken by the State at present, an annual allocation of funds sometimes may be found to be inadequate for a project. Hence paragraph (c) was added, providing for budgeting for more than a financial year in agreement with the current procedure for preparing a budget.

The following phrase was deleted from the Article: "If the National Assembly approved some new heads of account, they will be acted upon." This was contained in paragraph (e) of Article (90) before its amendment and was found to be impracticable of application in the context of the bi-cameral system. The budget is first placed before the Council of Deputies, which in its turn refers it to the Consultative Council with its opinion on all its contents comprehensively, so that the Consultative Council may decide as it thinks proper. In view of this, it will not be proper to place before the Shura Council, only certain heads of account to the exclusion of others. This will not permit the Consultative Council and the Council of Deputies to agree only over a part of the budget enabling action on it independently.

The following phrase was deleted from Article (110): "Similarly, transference of any amount from one head of account to another" which was catered for in Article (91) before its amendment. That is because the classification of the budget has diversified these days and might develop further, making the very idea of classification of the budget redundant leading possibly to categorization on new bases altogether.

**Article 116:**

This Article was amended so as to ensure total independence for the Bureau of Financial Supervision; this was done by not attaching it to any department. This gave the law issued for its formation the choice to select the means by which this independence could be achieved. It could be achieved by attaching it to the Royal Court directly in its capacity as the pinnacle of State authority and an arbiter between its various organs. This is what leads to greater effectiveness of the Bureau and impart to its officials the authority to exercise active financial control in respect of different organs of State.

**4- General Rules and Conclusion:**

In addition to the amendments carried out within the ambit of these laws, the incorporation of the nomenclatures " the King" and "the Consultative Council" and "the Council of Deputies" was carried out by adding a new paragraph to Article (120) (c) Also Article (121) (b) was amended. Similarly Articles (123 and 125) were amended logically as per principles incorporated in the Charter.

**Article 120:**

Article (120) (c) added on the subjects, which are taboo to any alterations in the Constitution. These were mentioned in Article (104) (c) before its amendment. New subjects, who are mentioned in the National Action Charter, forbade any proposal to change the system of Monarchy and the bicameral system.

**Article 121:**

Usually, rules, decrees, regulations, orders and decisions are issued in the period between the adjournment of the Parliament and its recall, establishing legal entities and acquired rights of people, which need to be protected and preserved.  Hence Article (105) (b) of the 1973 Constitution provided for the continued validity of all laws, decrees, regulations, orders, decisions and notices in force in working this Constitution unless amended or cancelled according to the procedure laid down in law in this Constitution.

Even if the paragraph were to remain as it is, and the amended Constitution included the phrase " while acting according to this Constitution" as contained in its Article (125), this interpretation does not match practical reality where the Constitutional changes cannot be implemented unless certain laws are issued; such as special laws governing the formation of the Consultative Council and the Council of Deputies, the law for practicing political rights, the law of internal regulations for the Consultative Council and the Council of Deputies.  These are laws, which cannot be made constitutionally except after the Constitution sanctioning them is issued containing the rules forming their basis.

In view of this, it was necessary to change the phrase "while working the Constitution" to "as being acted upon, before the National Assembly held its first meeting" so as to include in this Article all legal provisions issued in the period between the publication of the Constitution and the meeting of the National Council, in addition to what was issued before the Constitution was amended.  It is established that the laws, which were issued before this period or are issued during this period, will be the ones, which are issued when Parliamentary life remains suspended as a matter of fact, because of the non-existence of the Consultative Council and the Council of Deputies. Consequently, their legal validity does not lapse when Parliamentary life is revived. The laws will be considered valid unless they are cancelled by the Parliament under other laws because they are not subject to the rule under Article (38) and they are not a priori applicable except when Parliamentary life is restored. This has been explained earlier while interpreting this Article.

Article (121) aimed at adding to what is contained in Article (105) (b) other forms like decrees of laws and declarations as part of the text, so that there is no controversy in their regard at the time of their application.  If the term decree has generally been used, it means as far as this Article is concerned, all the decrees whose texts have appeared in the Constitution whatever their description may be.

**Article 123:**

This Article was amended as a result of the alteration in Article (36) (b), which added the State of National Security to the State of Martial Law.

In order to achieve the purpose of this addition, Article (123) specified that no law of the Constitution would be suspended except when Martial Law is declared. It meant that when a State of National Security is declared, no provision of the Constitution whatever can be suspended, nor can the convening of the Consultative Council or the Council of Deputies be interrupted nor can the indemnity enjoyed by their members be compromised during the Declaration of Martial Law or of State of National Security.

**Article 125:**

This Article stipulated for the publication of the amended Constitution and specified the date for its implementation. The Article used the phrase "the Amended Constitution" to clarify that this Constitution which was issued by His Highness, the Amir, in implementation of the national will asserted through their approval of the Charter included the texts of the Constitution of 1973, which were not amended. Similarly, the texts, which were amended, were put together as one document formulating the Constitution of the Kingdom of Bahrain.

The Introduction preceding the texts of this amended Constitution is to be considered as integral part of it and subject to its rules and regulations, both legally and in respect of the method of amending it.

The elucidatory notes contained in this Explanatory Memorandum will be treated as reference material in interpreting the texts of this Constitution and the rules thereof in activating what has appeared in the introduction.

**GOD ALONE GRANTS SUCCESS**