Role of Relevant Legislation and its Impact on the “Modern” Higher Education System : (Kuwait as a Model)

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Abstract

The research discusses legislation according to recent guidelines of the “modern” higher education system within Kuwait as a model. This topic is especially important at this time in view of what the education sector is facing in all areas. In general, reforming higher education institutions and keeping up with the immense developments that we see enables us to build competencies and leaders to create a better future for society and the state.

Sound legislation addressing all issues relevant to higher education institutions will lead to ensuring legal security. This is the main pillar for entrenching the principle of university independence and is a cornerstone for the modern state based on rule of law.

Higher education institutions were established a long time ago in Kuwait, which is a milestone for higher education in the Arabic World. We need this legislation to regulate work in general, while allowing each educational institution to draft its own instructions and regulations as part of the governance principle at these institutions to fulfill the greater objectives and purposes of higher education institutions. It is noteworthy that Kuwait was impacted by the unanticipated changes represented by the COVID-19 pandemic, which was alleviated by the legal principles entrenched
in the Kuwaiti constitution, allowing for the recognition of distance learning to protect students.

We will follow the analytical descriptive approach for the legislation regulating higher education institutions, analyzing the reality and foreseeing the future.

Key words: Higher education, distance education, Kuwaiti constitution, COVID-19 pandemic
Introduction

Higher education has become very important in view of the information revolution in the world, because education is the investment with the most returns as a development program. It is important to identify the legislative requirements so that the quality of education is fulfilled. Education is an effective tool to develop society socially, politically and economically, by creating the laws that fulfill society’s needs.

In view of the legislative need for a law that regulates universities and ensures it fulfills the quality standards required in higher education, and as higher education styles are diverse in Kuwait, the universities, research institutes and other centers, worked to fulfill the country’s requirements and study all possibilities and benefit from other experiences, so that they are utilized in Kuwait¹.

Education aims to develop people and their lives. The legal aspect is the main and the most noble objective, which is human project, and this is central for any decision or executive action. The COVID-19 crisis led to expanding the fundamental questions on resolving the controversial issues relevant to all aspects of the law, both public and private².

Research Importance

¹Mohammad Saeed Abdul Majeed, Legislative Requirements for Quality University Education, field study, Kuwait University, 2013.
²Nadeen Riziq, Public Authority’s Responsibility Resulting from the COVID-19 Pandemic, series of articles on times of crisis, for example the legal questions posed by a large group of judges and legal experts, 2020.

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Higher education is the main feature of development in any society and plays a significant role in legislation and drafting it in a manner that protects the rights of persons in society and fulfills their needs. As a result of the openness and evolution, it was impacted by all variables in society, most notably the COVID-19 pandemic. It was therefore necessary to promulgate a law to regulate universities and keep up with variables and developments.

**Research objectives**

The research aims to identify the main legal requirements according to recent trends in higher education. Its main objective to identify the quality of higher education, the legislative requirements to ensure higher education development in Kuwait, and the effects of emergency changes, such as COVID-19, on education and the legal aspect of using distance learning in higher education.

**Research problem**

The problem of research lies in the fact that higher education always needs to develop its curricula, methods and mechanisms. Thus, it was important to focus on higher education because the university is the catalyst for society’s development and represents the advancement and strength of the nation. As the legislative aspect is a main requirement for ensuring quality higher education, quality education cannot be attained in higher education without legislation that guarantees high quality.

**Research plan**
In view of the above, the research will be divided as follows:

**Introductory chapter: Concept and quality of higher education and legislative requirements**

**First chapter: Higher education in Kuwait**

**Second chapter: Legislation according to higher education trends in view of the COVID-19 pandemic**

**Introductory Chapter**

**Concept and Quality of Higher Education and Legislative Requirements**

Education prepares individuals for establishing private life and supplies it with all social, religious and moral aspects. It is a right for individuals and as such it is the state’s responsibility to develop it. As higher education is the final stage in the education system, it supplies the labor market with human capital in various areas. Therefore, individuals should be qualified to adapt to any changes that may arise in the education system.

Higher education requires a general quality that makes it suitable in terms of role and standing in society as well as its educational, service, and research functions. It is relevant to the state and thus must be activated at all levels, as we need graduates who are able to develop their knowledge continuously³.

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Higher education is at the top of the educational pyramid because it helps individuals secure jobs and gain an elevated social status.

It is noteworthy that legislation is an expression of the society’s will, as the law reflects society’s needs. It also translates the principles of supreme justice because it is an essential component for achieving comprehensive development. As legislation is the highest ranking among all sources of the law, it is the most important source of legal rules in most modern laws⁴.

Therefore, there are legislative requirements for university education quality, namely a group of legislative rules and procedures and laws relevant to higher education, as well as the ability to keep up with changes in the social reality, such as the COVID-19 pandemic.

First Chapter

Higher Education in Kuwait

Education is one of the priorities of individuals. It is a consumer service, and as such, an educational system must be designed that primarily works on fighting illiteracy and achieving justice and equal educational opportunities. The establishment of universities in Kuwait must be explored, as well as higher education and its importance, and the quality of education.

First requirement: Establishment of Kuwait University

Higher education is the last stage of formal education, which aims to ensure individuals acquire knowledge and abilities to serve society. Consequently, Kuwait established Kuwait University in 1960 after the Kuwaiti Ministry of Education studied the possibility of establishing Kuwait University and found that it is necessary to establish two facilities to fulfill the needs of the Kuwaiti society: faculties of science and arts and education⁵.

The university was official inaugurated on 27 November 1966, by His Highness the late Emir of Kuwait Sheikh Sabah Al Salem Al Sabah. In its early days, the University was a small education institution, and now encompasses sixteen faculties⁶.

**First item: What is higher education?**

Education is part of the educational process and is the last stage of education that the individual goes through. It is through this process that skills and qualifications are acquired.

**First: Definition of education**

Education in language: It is derived in the Arabic language from the verb knowing: becoming acquainted with it and realizing it, learning it through education, and also means “mastery”, learning about the matter: mastering it, I learned about something means I learned it and experienced it⁷.

Education as a term: It is the encyclopedia of educational knowledge, and it is the “arrangement and organization of

⁵Editorial Board, Arab Organization for Entities in Charge of Acceptance and Registration at Arab Country Universities, Kuwait University, the University’s Establishment, 1978.
⁶Kuwait University, university specializations manual, 2021.
information to produce learning, and this requires transferring knowledge from the source to a recipient. This process is called communication\textsuperscript{8}.

Education: As known as some\textsuperscript{9} (the host of what the individual acquires in terms of facts through means available for education).

**Second: Higher education definition**

Higher education refers to the education inside university faculties or colleges after securing the school diploma. The duration of higher education differs from one university to the next and is considered the last stage in education\textsuperscript{10}.

It was defined by some as “all types of education following the secondary stage or its equivalent, offered by specialized institutions, and the stage of academic specialization of all types and levels, it looks after qualified individuals, develops their talents and fulfills the various needs of society, both in the present and future, which facilitates useful development that fulfills the objectives of the nation and its noble purposes”\textsuperscript{11}.

Educational institutions have different names, and they are all called higher education institutions. There are: universities, colleges and academies. It must be noted that the university is the highest known institution in higher education. The other name

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\textsuperscript{8}Educational Knowledge Encyclopedia, first edition, World of Books, Cairo, 2007, p. 1082.
\textsuperscript{9}Educational Knowledge Encyclopedia, first edition, World of Books, ibid.
\textsuperscript{10}International Arab Encyclopedia, second print, 6, 7, 8, Encyclopedia Works Institution for Publication and Distribution, Al Riyadh, Kingdom of Saudi Arabia, 1999, page 25.
may cause confusion in understanding because they have different meanings from one country to the next.

**Second item: Importance of Higher Education**

**First: Function of Education**

The basic higher education function is to qualify the human workforce for the labor market, through academic research and applying what was researched, then developing society economically or socially, because education has a comprehensive mission for all areas.

**Second: Higher Education Importance**

Higher education is important in qualifying individuals and ensuring their adaptability with society’s needs, so that there is a response to the ongoing and demanding changes, whether they are local or global. Higher education has multiple functions, namely academic research, because it has become one of the main functions of higher education. The appearance of the modern university led to combining education with research because it is an organized academic approach that must be followed, and a main pillar for producing inventions and ideas in society\(^\text{12}\).

Higher education helps individuals in society acquire the capacities and skills that are understood through their training and education. As education itself is an investment process, the best

type of capital is the capital that is spend by the state on developing individual talents.

Higher education is the main social force because through it the aspired for changes are achieved promptly. It is also important as the main source for qualifying and preparing the youth for the labor market in modern times\textsuperscript{13}.

Higher education outlines the features of the future for individuals and draws their required paths necessary for the new life after graduation. Variables and developments affect education all around the world, including in the Arab World, and therefore strategies were outlined for higher education so that it can identify its objectives\textsuperscript{14}.

**Second requirement: Higher education quality**

Quality is a number of strategies, concepts, beliefs and tools that help improve the quality of inputs and outputs so that costs and losses are reduced. The quality of higher education is represented by the organization’s understanding of matching society and its educational, service, productive and service needs with its relationship with the state, world, and public funding.

**First item: Definition of high-quality education**

**First: Quality in language and in terminology**

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\textsuperscript{13}Ali Al Sayyed Tanshi, Education its Relationship with Work and Human Development in the Arab Countries, Fourth Annual Conference of the Egyptian Society for Comparative Education and Educational Management, Cairo, 1996, p. 41.

Quality in language: The work quality in the Arabic language refers to good: the opposite of bad. It means it has become good\textsuperscript{15}.

Definition of quality as a term: It is different from one organization to the next, and the definitions varied between institutions and bodies. It was defined according to the ISO 9000 standard of the year 2000 as\textsuperscript{16} “Group of distinctive characteristics of the product (or activity or process or institution or person) which makes it fulfill the declared and expected needs or able to fulfill them”, and to the extent that the product fulfills the needs and expectations, it is classified as good or high quality or bad, and fulfills the needs declared in the purchase or sale contract at specific specifications for the product to be purchased or sold.

Second: Concept of quality in education

Quality in higher education relates to all specifications and characteristics relevant to the educational field, indicating the level of excellence and achievement to be achieved. It is considered a translation of student expectations for the specific characteristics. Thus, they are an original foundation to roll out education services and offer them to the students according to their future needs\textsuperscript{17}.

It was defined by some as the “group of activities and skills undertaken by the officials to facilitate their educational affairs

\textsuperscript{15}Ibn Manthour, Lisan Al Arab, p. 1494.
\textsuperscript{16}Referenced by Abdullah bin Ahmad Al Zahrani, Concept of Comprehensive Quality, 2016, p. 2.
\textsuperscript{17}Fouad Al Ajez and Jamil Nashwan, Developing University Education to Develop the Palestinian Society in light of Total Quality Management, Quality in Higher Education, volume 1, issue 1, 2005, p. 105.
that include planning and their implementation, assessment and improvement in all practical and educational areas”18.

**Second item: Higher education quality standards**

**First: Higher education quality standards**

There are multiple education quality standards, relevant to faculty quality, student quality, curricula and the relationship between the educational institution and society.

Education programs quality standards: These are characterized by comprehensive and flexible programs so that developments in all areas are promptly reflected.

Curricula quality standards: These center around the heart of the educational process, as curricula quality helps students in guiding their studies and research and assist in forming their personality.

Student quality standards: These help students in academic, cultural and social qualification so that they can absorb the intricate aspects of knowledge19.

**Second: Reasons adopted by the educational institutions for quality standards**

Education institutions adopt quality to fulfill their objectives at better and more advanced levels. Consequently, local community institutions and local community members improved their processes and these standards were enthusiastically received by

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18Khlaif Al Tarawneh, Quality Assurance in Higher Education and its Relationship with Development, Academic Program for the Jordanian Academic Week, Fifteenth, Higher Education Accreditation
19Mohammad bin Rashed Al Zahrani, Proposed Vision on Developing Tools to Measure Student Achievement according to Total Quality Standards at the Ministry of Education, unpublished PhD thesis in psychology, Um Al Qura University, Saudi Arabia, p. 215.
the institutions. With the adoption of the global higher education term, dealing with quality become global rather than local.

Second Chapter

Legislation According to Higher Education Directives in View of COVID-19

Early last year, the world faced an unseen and unknown enemy penetrating the countries of the world at lightening speed, not bound by traditional battles. It was sufficient for touching or handshaking to lead to large numbers of victims. This enemy could not be outwitted, and so the whole world was forced to respond and move by taking appropriate measures to eradicate it. Education was impacted, which affected legislation as the priority at that time was health, taking care of the people, and ensure they are not faced with risks\(^{20}\).

First requirement: Legal principles that govern unexpected events in Kuwait

Kuwait prioritized maintaining the health of students inside and outside Kuwait and suspended studies at local institutions. It is noteworthy that the government of Kuwait does not recognize the qualifications of distant learning. However, it broke these legal principles for the sake of healthcare, and passed legislation that allows students to pursue distance learning.


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First item: Legislation according to higher education modern trends

First: Main objective of any legislative text

The main objective of any legislative text, decision or measure taken is to protect and serve humans. The COVID-19 pandemic raised before the whole world fundamental questions relevant to the pandemic from a legal standpoint, both public and private, and regional and international, as human beings have a right to healthcare at all times from their societies21.

Therefore, when unexpected events arise from a general ordeal, emergency circumstances, sudden event, natural disaster, force majeure, they must be addressed. The events posed a shock to the legal world that was unprecedented in thought, analysis and description, and there was an immediate need for deviating from known legal principles.

Kuwait resorted to legislative control in Law No. 8 of 1969 to address COVID-19 and prevent the disease, and health authorities were granted to the right to isolate affected individuals or individuals suspected of being affected by a contagious disease on a mandatory basis.

Second: Legal foundations

There is not doubt that the unexpected events had a number of principles that are resorted to in the constitution and the laws, to be followed in thought and analysis, thus creating clear standards

21Ibrahim Taha Al Fayyadh, Administrative Law, Activity and Work of the Administrative Authority between the Kuwaiti Law and Coparative Law

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and visions. With the appearance of COVID-19, the legal terms cannot be applied verbatim as the jurisprudence and law are hesitant because of the special adaptation to the pandemic\textsuperscript{22}.

Kuwait took important and necessary measures and precautions to address the pandemic by resorting to the various legal foundations, namely\textsuperscript{23}:

1- A main reason for enforcing the Civil Defense Law is to ensure the continued regular work at the public facility. Thus, the state resorts to the law to ensure the continued work of public facilities.

2- COVID-19 is classified as a global pandemic by the WHO, which means it falls under the umbrella of the first article of the Decree by Law No. 21 of 1979 on Civil Defense.

**Second item: Impact on Higher Education in View of COVID-19 Pandemic**

**First: Impact on Higher Education in Kuwait**

Higher education was impacted by the COVID-19 pandemic in all countries around the world, which led to the closure of the universities and students resorting to online learning. A main constitutional tool that the state can resort to in the face of the pandemic is administrative control regulations which restrict the rights and freedoms of individuals to protect and maintain public order\textsuperscript{24}.

\textsuperscript{22}Jihad Fahmi, Planning to Address Crises, Crises Risk Management, Publishing House at the arab Center for Security Studies, Fifth Academic Seminar in Tunisia Research, 1986.

\textsuperscript{23}Yehya Al Jamal, Constitutional Regime in Kuwait, Dar Al Nahda Al Arabia, Beirut, 1971.

\textsuperscript{24}Suleiman Al Tamaqi, Brief in Administrative Law, Dar Al Fikr Al Arabi, Cairo, 1984, p. 596.
The Kuwaiti Ministry of Education prioritized maintaining the safety of students inside and outside Kuwait. It suspended lessons in local institutions, noting that the government of Kuwait does not recognize distance learning qualifications. It broke this principle for the sake of healthcare, and Kuwait promulgated a law that allows students to undertake online learning, i.e. e-learning25.

It is noteworthy that higher education institutions in Kuwait developed distance learning and registered and taught students online. They implemented the second term curriculum of the past academic year, to date. The Ministry adopted distance learning in autumn of 202026.

In the event of crises and disasters, the state has the right to take whatever action it deems appropriate to maintain society’s security and safety. The point here is not the promulgation of laws but rather implementing them. Education in Kuwait was impacted clearly and in an unprecedented manner by the pandemic. The Kuwaiti constitution described it as an ordeal to reflect in the Kuwaiti constitution on drafting the necessary provisions and legislation for times of crisis and great ordeals. This is at the internal level and not just within Kuwait27.

It is noteworthy that the term pandemic in its direct linguistic and religious meaning refers to the prevalent pandemic as well as


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destruction. Any widespread illness is called a pandemic. This was classified by the World Health Organization, which declared in March 2020 that “regarding the concerning spread of the novel coronavirus and its levels of risk and movement around the world, it was necessary to declare COVID-19 a pandemic”\textsuperscript{28}.

**Second Requirement: Legislative Control Laws in View of the COVID Pandemic**

**First: Legislative Control Laws**

There is no doubt that the COVID-19 pandemic is unprecedented in its repercussions and spread. The Kuwaiti legal system does not have legal terminology that appeared in the Kuwaiti Civil Law issued in the decree law no. 67 of 1960, nor do the local laws relevant to the civil defense system. Article 1 of the decree law no. 21 of 1979 on civil defense stipulates “The purpose of civil defense is to protect civilians, secure the safety of transportation, protect public buildings, enterprises, establishments, and projects and private property, maintenance of artefacts and national heritage from the risks of air raids and the effects of other acts of war and sabotage, if they occur, and in general guarantee the continued progress of work in public facilities, in times of war, peace, martial law, emergency or general disasters, while guaranteeing national security in these circumstances”.

**Second: Kuwait Constitution in View the COVID-19 Pandemic**

\textsuperscript{28}Science Revival Series, COVID-19, research published in a group publication, The State and the Law During the COVID Pandemic, Al Rabat, Issue May 2020, Arab Center for Health Sciences Publications and Translation, Kuwait, 2020, p. 19.
No doubt the Kuwaitis, whether in exceptional or ordinary circumstances, or in states of prosperity or crises, cannot change the constitution easily, as it was published as a document to regular the affairs of the people and the state after struggles by the people of Kuwait for their right to manage the state and legislation. It is the ideal method for them to deal with the COVID-19 pandemic as the constitution has foundations and principles that enable them to address it by all legitimate means available, namely resorting to the Kuwaiti Constitutional Court.

In Article 25, the Kuwaiti Constitution stipulates “The State shall ensure the solidarity of society in shouldering burdens resulting from public disasters and calamities, and provide compensation for war damages or injuries received by any person as a result of the discharge of his military duties”. In reality, this constitutional article necessitates a close examination of the necessary constitutional description of the COVID-19 pandemic and it reflects on handling it legally and procedurally. This unprecedented crisis prompts a consideration of its constitutional description under the classification of “general calamity” as indicated in the aforementioned article. The pandemic constitutes a “calamity” in terms of considering it and handling it in the legal sense and controlling terminology and drafting the necessary provisions and legislation for times of major disasters, crises, and calamities, not just at the local Kuwaiti level but also at the international level.
Conclusion

At the conclusion of our research we find that higher education institutions always seek to qualify their individuals to benefit and develop society. The university is considered bound to keep up with the global developments and changes to benefit society, because it is the last stage in the stages of education, where individuals specialize to quality for the labor market.

As legislation is affected by education trends and the changes to it recently, higher education was affected by the COVID-19 pandemic as an unexpected change in the world at large.

Results:

1. Higher education is the last stage in formal education, the objective of which is to ensure individuals acquire knowledge that enables them to serve society.

2. The necessary academic description by the WHO is according to academic standards that are taken into account in the announcement and the repercussions, and falls within the constitutional description “general calamity” as addressed in Article 25 of the Kuwaiti Constitution.

3. Despite the effective role of the legislation and its impact on the modern higher education system, the level of student academic achievement is not satisfactory.
Recommendations:

1. It is necessary to promulgate legislation by parliament to establish a special administration to manage crises and disasters. The COVID-19 crisis is an incentive to expedite this and this reflects positively on the modern higher education system.

2. It is necessary to establish a legal administration to act as a reference on the legitimate of decisions taken in times of crises and disasters, especially those that relate to distance learning.
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