

Restrictions That Employed to Protect Human Rights in Iraq

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ABSTRACT

The unprecedented transformations and developments that have occurred in the new political system have left realistic repercussions on the Iraqi people. The process of transition from an individual dictatorial system to a pluralistic democratic system in which the people are the source of authorities and their legitimacy cannot be easy and not be faced with major difficulties and challenges by those in charge. On the political process, especially after the process of writing the constitution and the political conflicts and tensions that followed, as well as the large scale of corruption in its various manifestations that Iraq inherited from the previous regime, and its volume increased after the occupation, continuing to erode the structure of society and the state to prevent the growth of any of its sectors, which paved the way for Due to the possibility of a setback or some kind of decline in the new democratic system. Despite the success of the constitutional legislator in stipulating human rights and basic freedoms in the effective Iraqi constitution and establishing mechanisms to guarantee human rights, he failed to stipulate a number of rights affirmed by international instruments, and left many rights and freedoms at the mercy of the parliament's authority. Guarantees by some laws enacted during the time of the previous regime that violate human rights and fundamental freedoms. Individuals have faced challenges and restrictions while exercising their rights.

Keywords : *human rights; Iraq; pluralistic democratic system*

INTRODUCTION

Human rights are among the basic and important topics. Because it is the basis of human existence, and directly affects the essence of human dignity, the concepts of justice, equality, and prosperity, and the life and development of all peoples and countries, regardless of their civilizations, geographical locations, and political, economic, and social systems. They are universal rights established for all human beings, regardless of their nationality, place of residence, or gender. Their national or ethnic origin, colour, religion, language or other status.

Iraq has gone through exceptional circumstances that are rarely different from other countries and nations. It is the country that is considered the cradle of human civilizations and the most prominent of them is its interest in human rights. It was the first to know writing and reading, and the first to know written laws in the history of humanity at all since the law of Urunmu, the law of Ishtar, Balalama, and Hammurabi. Passing through the heavenly religions, the prophets, the imams, and the righteous.

Despite this history full of achievements, it has turned into a toy in the hands of tyrants, arrogant powers, and state interference. Political chaos, human tragedy, and economic crises have increased as a result of repeated coups, militarization of the state, reckless policies, senseless wars, political adolescence, and ignorance in state administration.

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Research Importance

Due to the great importance of this topic, we decided in this study to shed light on the restrictions on the protection of human rights in Iraq that hinder the reform process and correct the errors that accompanied the political process, by explaining the most important restrictions that mar the effective constitution, as well as the laws that the current political regime inherited from Before the dictatorial regime, it was marred by many violations of the rights and freedoms affirmed by the effective Constitution, in addition to a large set of realistic restrictions that the oppressed people suffer from. This is done by analyzing everything related to the rights of the Iraqi citizen in an attempt to reach the best solutions to the problems at hand.

Research Methodology

It was important to search for a solution to these restrictions. We will follow the descriptive approach in depicting the restrictions, based on extrapolation of the details of research and analysis through a plan that takes into account the principles of academic scientific research to identify the restrictions that exist on human rights in Iraq and the practical problems that they raise.

Research structure

In light of the above, the research requires that we divide the subject of the study into three sections. We devote the first section to constitutional restrictions by dividing it into four demands. We focus in the first demand on the contradiction in the principle of equality, and we highlight the contradiction in restricting the exercise of rights and freedoms in the second demand, and we touch on Ambiguity in defining public order and public morals in the third requirement. In the fourth requirement, we examine the ambiguity in defining the protection of rights stipulated in the effective constitution. We show in the fifth requirement that there is no explicit provision for the right to development. In the second section, we shed light on the legal restrictions by dividing it into four demands. In the first section, we will focus on the Penal Code, in the second section, we will discuss the Code of Criminal Procedure, and in the third section, we will address the Personal Status Law, and in the section we will explain the Juvenile Welfare Law. In the third section, we will show the realistic restrictions, which we will divide into five demands. In the first, we address terrorism, in the second, we focus on torture, we devote the third to quotas, in the fourth, we show administrative and financial corruption, and in the fifth, we discuss the lack of services.

In the end, we discuss the most important results and recommendations that we believe will enrich the idea in the field of abolishing restrictions on the protection of human rights in Iraq and how to reform and evaluate the law as a conclusion to the study.

THE FIRST TOPIC: CONSTITUTIONAL RESTRICTIONS

The Iraqi Constitution of 2005 in force is the first legal document since the founding of the Iraqi state to be drafted by a constituent committee elected by the people and who voted for the citizens in a popular referendum. It is considered completely ahead of other constitutions of Arab countries, as it recognizes civil, political, economic, cultural and social rights. Decentralization, democratic governance, federalism, and public freedoms without significant discrimination, and he expressed widespread interest in minorities.

Despite this, it lacks standards for protecting rights and freedoms. It also neglected many rights and contained contradictory and ambiguous articles regarding the principle of equality, and restrictions on the exercise of rights and freedoms. In addition, the constitution is based on more than 60 laws that have not yet been enacted. It also depends on many judicial and legislative institutions that will be established later by law.

In order to investigate the constitutional restrictions that the legislator failed to implement in the effective Iraqi constitution, we will divide this topic into four demands. We focus in the first demand on the contradiction in the principle of equality, and highlight the contradiction in restricting the exercise of rights and freedoms in the second demand, and we address the ambiguity in defining public order. Public morals are in the third requirement, and in the fourth requirement we examine the ambiguity in determining the protection of rights stipulated in the effective constitution.

The first requirement: The contradiction in the principle of equality

The Iraqi Constitution affirmed the principle of equality in Chapter One and considered it one of the basic principles that may not be amended except after two electoral cycles have passed, which confirms the Iraqi constitutional legislator's keenness to give this principle an important and fundamental position.

Despite this, we find that the constitutional legislator fell into a flawed contradiction when he approved the quota system, which means "a share or share." He used this term to a large extent to refer to the allocation of a percentage, or a specific number of seats in elected bodies such as: parliaments and municipal councils. For women, in order to ensure that women are placed in positions of legislation and decision-making, given that the quota represents one of the solutions that countries and societies resort to to enhance women's participation in public life. In general, this term has been historically associated with what is called "positive discrimination", which was first applied in the United States of America to the policy of compensation for disadvantaged groups (the black minority) in the sixties of the last century, where a "quota" system was applied, according to which educational institutions were obligated to By allocating a certain percentage of students accepted to ethnic (black) minorities, as it spread in other countries where minorities felt deprived .

Iraq is one of the few countries that implements a quota system for women in its parliamentary and local councils. It has allocated a percentage of no less than (a quarter) of the number of members to the House of Representatives and the provincial councils, meaning it can exceed this percentage. This means that the representation of Iraqi women in the House of Representatives is double the percentage. Representation of American women in the US Congress.

The effective Iraqi Constitution stipulated the quota system in Paragraph (Fourth) of Article (49) when it stipulated: "The election law aims to achieve a representation rate for women that is not less than a quarter of the number of members of the House of Representatives." The text of this article contradicts an important and main constitutional principle, which is The principle of "equality" is affirmed by the effective Iraqi Constitution in Article 14, which stipulates that "Iraqis are equal before the law without discrimination based on gender, race, nationality, origin, color, religion, sect, belief, or economic or social status."

The quota system also contradicts the principle of equal opportunities in occupying public positions stipulated in Article (16) of the effective Iraqi Constitution (equality of opportunities is a right guaranteed to all Iraqis, and the state guarantees taking the necessary measures to achieve this), as well as contradicting the principle of equality in nomination and voting in elections. Which is stipulated in Article (20) (Citizens, men and women, have the right to participate in public affairs and enjoy political rights, including the right to vote, elect, and be nominated).

Thus, it can be said that the quota system is a type of discrimination and a violation of the principle of equality between men and women, by giving preference to women over men in the work of membership in the House of Representatives and local councils. Therefore, its image cannot be improved and beautified in any way, even if it is called discrimination. Positive.

The second requirement: The contradiction in restricting the exercise of rights and freedoms

Constitutions include a set of basic rules and principles that determine the form of the state, the form of government, the system of government, and public authorities in the state. It explains what public authorities are and how they are formed, the powers of each authority and their limits, the relationship between authorities, the powers of each authority, its relationship with citizens, and the basic rights and freedoms of individuals and groups, and their duties and freedoms. This is to ensure respect for it, achieve guarantees for its practice, and set restrictions that limit its restriction by public authorities.

In order for the authority not to exceed these rights and freedoms, it was necessary to have a check on that authority, represented by the Constitution's stipulation that those rights and freedoms be respected, and that the main principles that regulate public freedoms be included in the core of the constitutional document, and that it should not be left to the executive authority to regulate them through Regulations or decrees interfere with these freedoms and make their exercise an exception to the prohibition.

The Iraqi constitutional legislator has tried to introduce something new in the field of rights and freedoms and to stipulate that they should not be violated. He stated in paragraph (c) of Article (2) of the effective Iraqi Constitution: "It is not permissible to enact a law that conflicts with the basic rights and freedoms contained in this Constitution."

The text of this article contradicts what is stated in Article (46), as it states: “The exercise of any of the rights and freedoms mentioned in this Constitution may not be restricted or limited except by or based on a law, provided that such limitation and restriction does not affect the essence of the right or freedom.”

Based on Article 46, we find that the constitutional legislator has demolished all protection of the rights and public freedoms of the Iraqi individual by granting the legislative authority the power to restrict public freedoms. Indeed, he went further than that, as he made public freedoms a tool in the hands of the executive authority that can, at any time, And the location of its sources whenever it exists. Its practice poses a danger to those in power. This, of course, contradicts the foundations of the democratic state, which is a means of achieving public freedoms.

Thus, it can be said that the Iraqi constitutional legislator committed a contradiction and a serious error, as he placed the basic principles in the section on rights and freedoms at the mercy of the legislative authority and the executive authority. This means that these rights and freedoms are concerned and subject to change, as they are not basic, but rather secondary, given that the procedures for amending them are easy. It depends on the will of the political blocs and government decisions.

The third requirement: Ambiguity in defining public order and public morals

Public order means a set of basic rules or principles that achieve a public social, economic, political, or moral interest, aiming to protect society and the fundamental foundations on which it is based, whatever the legal branch in which it is used and whatever the nature of the legal relationship.

The phrase “public morals” appears side by side in the language of law with the phrase “public order,” which means a set of religious, moral, and social principles, authentic customs and traditions, and the principles of general decency and public taste that govern and regulate various actions in a society, and at a specific time, and which are considered a departure from them. A deviation that society does not allow.

The principle of public order and morals is an idea that is inherently difficult to define. It is an idea that differs according to times and groups, as it is difficult to define its concept precisely due to its susceptibility to change according to temporal and spatial circumstances. What is contrary to public order in a specific place or time may not be so in that time. And in the place of others, it differs from one society to another, and even within one society it differs from time to time. Slavery that was permitted in a time not long ago was considered a violation of the law.

It is common at the present time, and polygamy is permitted in Islamic countries and is not considered the same in other countries. Public morals also differ from one city to another, as it is not possible to compare public morals in the noble society of Najaf and Baghdad, Sulaymaniyah, or Maysan.

So how can the law regulate both cases? Moreover, the phrases (public morals, public interest, and public order) are not compatible with democratic systems that rely on granting rights and freedoms, but rather they are the legacy of dictatorial systems.

The effective Iraqi Constitution stipulates in Article (38) the freedom to express opinion by all means, freedom of the press, printing, advertising, media and publishing, and freedom of assembly and peaceful demonstration, but this freedom is restricted (in a manner that does not violate public order and morals).

The phrase “public order and public morals” is vague and restricts freedoms, and its survival until now without explanation makes it a means of oppression exploited by executive and security authorities to achieve whatever restriction of freedoms they want. Its existence is completely inconsistent with Chapter Two of the Constitution, which gave broad freedoms to the citizen and clarified the type of rights. Maintaining public order and public morals is a civilized matter that requires all of us to stand by it. But taking public order as a pretext upon which the administration’s authority rests to curb freedoms is unacceptable in accordance with the principles of democracy, and the authority must adhere to these principles in order to maintain its legitimacy ().

Saddam’s dictatorial regime used the term public order as a legal weapon to suppress all freedoms. Therefore, this phrase must be defined precisely and clearly, as is the case in all democratic countries that have explained the meaning of public order and public morals, especially since Iraq has chosen the path of democracy, which requires enlightening the path for everyone wishing to exercise the freedoms guaranteed by the supreme law of the country.

Fourth requirement: Ambiguity in determining the protection of rights stipulated in the effective constitution

The provision of public rights and freedoms in international instruments and national constitutions is not sufficient to guarantee the basic rights and freedoms of individuals. Rather, they must be followed by national legislation that sets the executive rules for the constitutional texts establishing the right or freedom. Therefore, the domestic laws of most countries today express global standards and rules. For human rights.

We find in many systems that they are limited to the formal declaration of the existence of individual rights and freedoms for the citizen, which requires that legislation undertake the implementation of this constitutional declaration of guaranteeing freedom. The problem in the context of this issue arises when Parliament exercises its legislative authority to establish legal rules that implement the will of the authority that drafted the constitution, and that complement it. According to the constitutional texts, it does not agree with the will of that authority and contradicts these texts, since if the constitution recognizes a freedom and then the legislator issues a law that restricts the exercise of freedom and prevents the enjoyment of it, then we are faced with a law that is not compatible with the constitution that ranks above it, according to the principle of gradualism on which the principle is based. Legitimacy in its formal aspect.

The problem also arises when the constitution regulates a freedom or a public right, and gives the legislator (Parliament) the discretion to intervene by regulating how it is exercised, since if Parliament deviates from the constitutional limits, it imposes restrictions on the right and freedom, between regulating freedom and introducing restrictions. It must prevent the enjoyment of it, or at least make its practice difficult for citizens, and from here the constitutional text becomes merely ink on paper, nothing more and nothing less, with no guarantee to be expected from it and no right to shine through it ().

The effective Iraqi constitution stipulated a set of rights and freedoms, but it failed to clarify how to protect and preserve them, and this is surprising. Because the drafters of the Iraqi constitution were individuals who suffered from the absence of freedoms in previous eras and were victims of the previous regime that did not show any respect for human rights. During the writing of the constitution, they were subjected to international pressure and internal political tensions, which led to the postponement of the clarification of rights and freedoms and their referral to Parliament. Some basic freedoms were left to the ordinary legislator to regulate them. The Iraqi constitutional legislator used various phrases in the effective 2005 Constitution, including (...this shall be regulated by law), (this shall be regulated by law), or (the law shall be regulated), and he may also have used the phrase... (Within the limits of the law) and that the principle of referring the rights and freedoms stipulated in the Constitution to the law to regulate them leads to the demolition of the idea of freedom guarantees from their foundations, as freedoms are restrictions imposed on the authority of the legislator that cannot be absolved from or made permissible.

Thus, these constitutional rights are at the mercy of the ordinary legislator who belongs to political blocs and parties that have long been affected by political and sectarian tensions. In light of this climate, legislation is issued that includes infringement and derogation of public freedoms, and then laws against rights and freedoms are issued.

THE SECOND TOPIC: LEGAL RESTRICTIONS

The constitution is the highest legal and political document in the state, which is superior to all other legal rules. Therefore, any change or change that occurs in the political, social, or economic structure of the state must amend or alter its constitution to suit the new situations and circumstances, and this should be accompanied by amending all legislation in the state in a way that It agrees with the new constitution and regime.

Although Iraq is a party to many international instruments related to human rights and fundamental freedoms, the new democratic system still operates with many of the arbitrary laws of the previous regime, and under the effective Iraqi constitution, all previous laws are still in effect, as stated in Article (130) From the Constitution, the legislation in force remains in force, unless it is repealed or amended in accordance with the provisions of this Constitution. Thus, a large basket of laws that violate the provisions of the Constitution in force are still available, which leads to the confiscation of rights and restrictions on I have freedoms.

In order to shed light on these laws that violate international instruments and the applicable Constitution, we will divide this topic into four demands. In the first demand, we will focus on the Penal Code, in the second requirement we will discuss the Code of Criminal Procedure, and in the third requirement we will address the Personal Status Law, and in the requirement we will explain the Welfare Law. Events.

The first requirement: Penal Code

The Iraqi Penal Code (111) of 1966 included extremely dangerous provisions on human rights and basic freedoms, ignoring international instruments, and disdaining all human and civilizational values and concepts, as it is marred by contradiction, inequality, deficiency, and gaps in some of its provisions.

The law has been subjected to the setback of tyranny, after it was mixed with the person of the ruler, so the ruler's actions, his emotional decisions, and his tribal and partisan favoritism become the law, and thus the law loses its meaning and its mission to rescue the oppressed from the oppression of his oppressor, and this is what happened in particular in Iraq, during the era of the authoritarian dictatorial regime, When the Iraqi Penal Code was hit in an amendment campaign.

He criminalized a number of acts because they conflicted with the whims of the ruler, without them being characterized by any seriousness that would require criminalization, and set the harshest penalties for them, while tightening the penalties for a large number of crimes contrary to all standards considered in this regard. He replaced the penalty of imprisonment with the penalty of a fine wherever it was mentioned in the law, and he introduced the penalty of confinement and authorized The leaders of the Arab Socialist Baath Party imposed on the perpetrators of the crimes he introduced. He also introduced the punishment of amputation of the hand, the punishment of amputation of the leg, and the cutting off of the ear flaps. These punishments were implemented on a large number of convicts, and then their application was suspended ().

The seriousness and seriousness of the Iraqi Penal Code increased day after day with the advent of the Baath Party and its dictatorial Shivonian regime. (44) crimes were introduced, most of which were not based on a sound standard for criminalization, including a crime punishable by death, in addition to a strict tightening of the penalties for (49) crimes, making the penalty for (21) crimes. Including death penalty. By adding these new death penalties to (35) death penalties for crimes originally stipulated in the law, the number of crimes punishable by death in the Penal Code reaches (70) crimes.

The legislator placed aggravating circumstances on the crime of premeditated murder, making its punishment death if the condition of premeditated murder is met, and this is what Article (406) stipulates. However, there is a clear contradiction with Article (407) of the Penal Code, which stipulates (punishment with imprisonment). A period not exceeding ten years, or imprisonment for a period not less than one year. A mother who kills her newborn child out of fear of shame if she has become pregnant with an incestuous person.) Despite the availability of the elements of the crime of murder, the Iraqi legislator, Najda, distinguishes between killing a newborn child who is helpless and an adult.

Article (41) of the Penal Code in force permitted the husband's right to beat his wife and children, and the right of teachers to beat children in school, and considered that a reason for permissibility, and stipulated that beating be within the limits prescribed by Sharia, law, and custom. The text of this article contains a clear and clear violation of the right of women and children to physical integrity and a waste of human dignity.

The effective Iraqi Penal Code did not include a text acknowledging that there is no legal immunity or judicial immunity for persons when committing crimes under international law, whether through issuing amnesty decisions, intervention by executive authorities, the statute of limitations, or restricting jurisdiction. Nor did it explicitly stipulate in the effective Iraqi Penal Code that the principles be adopted. The seven basic principles that the International Law Commission extracted in 1950 from the rulings issued by the Nuremberg Tribunal did not explicitly criminalize and punish all forms of actions that aim to infringe on the sanctity of private life as a result of ideas, convictions and ideologies that nullify the rights of others to private life and to freedom of opinion, expression, belief and conscience. ..etc. These are constitutional principles that were explicitly stipulated in the Iraqi Constitution of 2005 in force. Therefore, it is the duty of the Iraqi legislator to establish appropriate legal texts to confront these serious violations ().

The second requirement: Code of Criminal Procedure

The Code of Criminal Procedure No. (23) of 1971 in force is a remnant of the previous regime, designed and enacted to serve its purposes, in addition to representing outdated legal ideas that are extremely dangerous to the public rights and freedoms brought by the new constitutional system in Iraq.

The applicable Code of Criminal Procedure included provisions that contradict human rights and fundamental freedoms. The law did not know the stage of suspicion stipulated in the laws of democratic countries, which is a stage prior to accusation that requires conducting investigations before taking any measures that affect the freedom of the individual, while the accusation in the Iraqi Code of Procedure begins as soon as the complaint is registered. Even if it was malicious, how many, and according to it, in the first paper, the citizen could be summoned under the name (the accused...) and the victims of this were many innocent citizens, male and female, who were detained for long periods based on malicious complaints. Their innocence was later proven after their reputation and social status were tarnished. There are many stories about this and a recurring tragedy to this day.

The applicable Code of Criminal Procedure does not stipulate the interrogation of the accused before issuing the order to arrest him. The arrest order must be issued after the interrogation so that the accused can express his defence. After the interrogation, it may be proven that the accusation has collapsed and the justification for the arrest is no longer available. This is what is confirmed by the Universal Declaration of Human Rights in Article (3). 10) which states: "Every person accused of a crime shall be considered innocent until proven guilty by law in a public trial in which he has been provided with all the necessary guarantees for his defense."

The secret informant played a negative role in framing many people with malicious charges based on personal motives, cheap individual grudges, or party or sectarian loyalties, as human freedom and dignity became a threat. The secret informant, whose motives or identity are unknown, has become an arena for settling political, sectarian and tribal scores.

Among the legal texts in which the effective Code of Criminal Procedure violates human rights and fundamental freedoms, Article (216) stipulates (the court may accept the victim's statement under fear of death) as evidence on the basis that at this stage he is closer to his Lord and tells the truth, and that it contradicts The principle of innocence is with the principles of human rights and is not supported by facts and incidents. We notice, for example, that someone who is being burned tries to grab others to burn them with him, and drowning people cling to those who try to save him to drown him, especially since the penalties resulting from that are often severe ().

Given the above, it can be said: Laws, especially criminal laws, change and develop and do not know stagnation. They change according to the political system, the constitution in force, and international obligations through international instruments organized and ratified by Iraq. Thus, the Iraqi legislator is required to reconsider these laws that are contrary to human rights and fundamental freedoms.

The third requirement: Personal Status Law

The personal status law came into effect after the republic replaced the monarchy in the revolution of July 14, 1958. One of the revolutionaries' first concerns at that time was issuing unified legislation in the personal status law to replace the multiple Sharia courts according to the religions and sects of the Iraqi people that were included in the Iraqi Basic Law of 1925.

This law is criticized for its speed in drafting, the short size of the law's articles and paragraphs, the referral to other laws and legislation, the inaccuracy of classification, the overlap with other laws, and the failure to classify each topic in a special chapter (). In addition, the Personal Status Law in force has permitted the marriage of minors under the age of eighteen in Paragraph (1) of Article (8), which states: "If someone who has completed fifteen years of age requests marriage, the judge may authorize him, if his eligibility and physical ability are proven, after The approval of his guardian), and this means the permissibility of the marriage of someone who has completed fifteen years (completed fifteen years by a day or more), and the marriage of minors under the age of fifteen is permitted in Paragraph (2) of Article (8) which states (The judge may authorize the marriage of someone who has reached the age of fifteen If there is an extreme need to do so, and it is required to grant permission, legal maturity and physical ability must be achieved), and this means that the applicable law has permitted the marriage of someone who has reached the age of five and not someone who has completed (i.e. fourteen full years and a day or more).

The law has punished, under Paragraph (5) of Article (10), a man who concludes his marriage outside the court with imprisonment for a period of up to three years or a fine without the legislator appreciating or realizing the seriousness of what the text of the deprivation of liberty punishment will generate, as it contributes to the dispersion of the family, the destruction of its foundation, the imprisonment of its breadwinner, and the interruption of Her source of livelihood and the loss of her children's future.

It is taken into account that the Personal Status Law in force legitimizes coercion in marriage after consummation. Paragraph (1) of Article (9) is considered (a forced marriage contract is invalid if consummation is not consummated). This text is clear and explicit, only restricting coercion only before consummation, and after that it is considered permissible. Thus, this text is considered a violation of human rights and fundamental freedoms affirmed by international instruments and the applicable Constitution.

It is criticized that the Personal Status Law in force did not equal the right to custody, but rather gave custody to the mother alone, whether in the presence of marriage or after separation. This is a matter that is criticized, as the two parents must take care of their child together, whether male or female, and that neither of them is alone in managing his affairs or his upbringing, preservation, and custody. Because the child needs the father just as he needs the mother without interruption for long periods, and the applicable law permits the father to watch his children, but after a long period, sometimes reaching months, if the meeting or viewing takes place, it is for a few minutes and in a small room inside the court in which the father feels humiliated and humiliated as if he were a convicted person. By committing a felony, which leads to the father reducing or refraining from watching.

The personal status law in force is generally considered contradictory to the principle of equality affirmed by international instruments and the effective constitution. Because the law allowed some religions and sects to apply their conditions according to their religion and sects, and at the same time it did not allow some sects to follow their personal conditions according to their sect, and thus the law is considered contrary to the effective constitution, which placed the components, religions and sects in their most honorable position and their nominal position, and this appears clearly in many texts, including The text of Article (41) of the effective Constitution: "Iraqis are free to adhere to their personal status according to their religions, sects, beliefs, or choice, and this is regulated by law."

Fourth requirement: Juvenile Welfare Law

The amended Juvenile Welfare Law No. (76) of 1983 is among the most important laws concerned with addressing the phenomenon of juvenile delinquency by preventing the juvenile from delinquency, treating the delinquent, and adapting him socially. It is assumed that treatment is through creating a system based on studied and concrete scientific foundations, but it has not kept pace. The development taking place in Iraqi society, and the negative and positive results that seek to protect the juvenile delinquent from delinquency and include him in subsequent care after the end of the measure imposed on him has not been reviewed, and the results have not been evaluated since the issuance of the law in the year 1983 until today ().

Among the legal texts in which the applicable juvenile law is in violation of human rights and fundamental freedoms is Article (47) of the Juvenile Welfare Law, which sets the age of legal accountability in Iraq at nine years of age. This contradicts Article (40) of the Convention on the Rights of the Child, which emphasized the issue of determining the minimum age of responsibility. Criminal law in juvenile laws and the necessity of raising the age of criminal responsibility due to the proven weakness of the child's ability to discriminate at an early age.

The Juvenile Welfare Law in force is criticized for making it possible for someone other than the competent juvenile investigation judge to undertake the investigation of the juvenile. Paragraph (1) of Article (49) stipulates: "He shall undertake the investigation."

In juvenile cases, the juvenile investigating judge, and in the event that he is not present, the investigating judge or investigator is responsible for this. The text of this article is clear and explicit in that it excludes legal guarantees for the juvenile, or does not provide the required protection for the juvenile.

It also forms the court that tries juveniles within Article (54) of the law, headed by a judge of no less than the third category and two members, one of whom is a jurist and the other is a specialist in sciences related to juvenile affairs, with no less than five years of experience. In practice, the courts for juveniles lack such examples. These formations, especially the two members' lack of expertise and special experience in scrutinizing investigative cases and rulings issued based on the presence or absence of evidence and evidence, as the law does not address how to issue a decision and address differences in opinion, and the matter becomes based on the Code of Criminal Procedure in this aspect (). Thus, the juvenile court includes in its composition a social researcher, which makes it lack the legal character that requires that it be composed of judges specialized in juvenile affairs.

With regard to Paragraphs (2) and (3) of Article (52), which stipulates that "a juvenile accused of a felony punishable by death shall be suspended if he is over fourteen years of age." Provided that this is implemented in all cases in the

(observation home) designated for this purpose, but in places where there is no (observation home), necessary measures must be taken to prevent the juvenile from mixing with detainees who have reached the age of majority.

What is noted from the text is that the legislator concluded the juvenile arrest warrant by stipulating certain matters as mentioned, but he did not specify the penalty for his plea. Also, as is known, the role of observation has not been generalized in most places. In application, reality reverted to the text becoming formal or broken within many limits. Evidence indicates that there are many cases, especially if the juvenile accused is accompanied by another accused who has reached the age of majority, where the juvenile is arrested in police stations with adults. It is no secret that this poses serious risks or damage to the juvenile's personality that may prevent him from being socially rehabilitated.

Also among the shortcomings of the applicable Juvenile Welfare Law is that it gives the right to defend the juvenile through his father, a relative, or his school principal, and that exercising this right by someone who is not legally competent may harm the interest of the juvenile, even if that conforms to the international standard.

THE THIRD TOPIC: REALISTIC CONSTRAINTS

The winds of change that blew on Iraq after 2003 carried with them many issues that had not been witnessed in the multi-religious, sectarian, and nationalistic society that had suffered for decades from injustice, tyranny, and political, social, economic, and cultural tyranny. The situation changed dramatically, and it knew democracy, the multiplicity and separation of powers, elections, and legislated its constitution. This was accompanied by economic development, explosive budgets, unprecedented cultural and media openness, and other developments.

Despite this, the human rights situation is still far from the picture that the Iraqi state and its authority committed to achieving specifically in Chapter Two of the 2005 Iraqi Constitution, "Rights and Freedoms." Members of the Iraqi people have been exposed to serious real-life violations that have cast a shadow over the violation of human rights and basic freedoms.

In order to shed light on realistic restrictions or violations, this topic can be divided into five demands. In the first, we address terrorism, in the second, we focus on torture, we devote the third to quotas, in the fourth, we show administrative and financial corruption, and in the fifth, we discuss the lack of services.

The first requirement: Terrorism

After the fall of the dictatorial regime, Iraq witnessed widespread terrorist operations that resulted in serious violations of human dignity and humanity, and constituted one of the main factors in the violation of human rights and basic freedoms, as a result of the entry of terrorist organizations, after the implantation of extremist thought through the window of the faith campaign, and before the occupation of Iraq, the formation of Terrorist organizations that included thousands of Iraqi, Arab, and foreign extremists under many names, most notably "Army of Muhammad" and "Saddam's Fedayeen," have practiced various types of violations of human rights and basic freedoms against the Iraqi people before and after the occupation.

Human suffering has increased as a result of the results of these actions, which were characterized by their criminal consequences and their dire impact on people's lives, and the area in which extremist organizations and terrorist groups practice their actions in committing unspecified and reckless killings, kidnappings, bombings and slaughter operations that have affected innocent human beings and civilians has expanded, and what has increased The effectiveness of these terrorist acts is the presence of countries, organisations, institutions and personalities that support, openly, covertly or indirectly, the actions issued by these organisations, given the intersection of international interests and the exploitation of such organizations for the purpose of confusing the opponent, and considering them as cards to be dealt with within the international game and the war of political and economic interests. And personal qualifiers ().

In addition, terrorist organizations found sectarian discourse in Iraq an important and nourishing source for carrying out further terrorist operations against the defenseless Iraqi people, state security and service institutions, markets, schools, kindergartens, public places, social gatherings, religious rituals, mosques, Husseinis, churches, and minorities. It was one of the most severe types of discourse that It is issued by some extremist clerics, tribes and politicians and is broadcast through poisonous media supported by some Arab and foreign countries.

The effects of terrorism are not limited to violating civil and political rights only, but rather it has caused great suffering and enormous damage beyond the loss of life, extending to the destruction of state property and

infrastructure, the defeat of foreign capital, and the creation of distortions in the allocation of internal resources, in addition to the indirect costs resulting from the intensification of procedures. security, obstructing investment, destroying means of production, and reducing the level of saving, and this was reflected in the enjoyment of economic, social, and cultural rights. We can sense this effect through violating the right to economic and social development in general. Security and political stability are considered a basic gateway to economic and social development, and one of the self-evident components. she has().

Thus, it can be said that terrorism constitutes a clear violation of human rights and fundamental freedoms. Because it affects all rights, most notably the right to life and physical integrity, the Iraqi government must pay attention to protecting its citizens from terrorist operations in various ways, provided that human rights are not affected by the measures used to combat terrorism.

The second requirement: Torture

Despite the progress achieved after the regime change in Iraq in 2003 and the accession and ratification of many international instruments in the field of protection and respect for human rights and fundamental freedoms, including the accession and ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The prohibition of torture is stipulated in Article (37) of the effective Constitution, which stipulates: "All types of psychological and physical torture and inhumane treatment are prohibited, and any confession extracted by coercion, threat, or torture does not matter. The injured person has the right to demand compensation for the material and moral damage he suffered in accordance with the law."

The Penal Code in force also stipulates in Article (333) the imposition of penal penalties for anyone who uses harsh methods to extract a confession through torture. The Discipline of State and Public Sector Employees Law No. (14) of 1991 also stipulates the formation of an investigative committee against any employee or person charged with serving... In general, if he commits the crime of assault or exceeds the limits of his position by using any act of torture.

However, the Iraqi authorities are still practicing serious violations of human rights and fundamental freedoms through torture, and in this context, the High Commission for Human Rights continues to receive allegations of torture and ill-treatment practiced in prisons, detention and detention centers, with minimal efforts being made to reduce or prevent these violations. Or punish those responsible for committing it.

Thus, it can be said that the authorities who practice torture against individuals lead to a violation of the human right to life and physical integrity, which are rights The basic principles that must not be violated even in cases of declaration of emergency, and also lead to a violation of the right to personal privacy. He also has the right to be treated if he is accused as innocent until proven guilty in a fair legal trial, and to be treated fairly in judicial and administrative procedures. He has freedom of opinion and the right not to be forced to testify against himself or admit that he is guilty. This procedure is not compatible with Iraq's international obligations and is a clear violation of the applicable constitution and national laws.

The third requirement: Quotas

It is one of the methods followed by the American administration after its occupation of Iraq and imposing its control over it. It is the first building block that was placed in Iraq after the fall of the Baath regime, which was represented by the Transitional Governing Council, which was built on a religious, sectarian, national and partisan basis. This term made the citizen chained to a place without moving. He left aside creativity, competence, testimony, and consciences, and linked appointments and important positions to quotas, which led to the emergence of major problems.

The effects of quotas affected all aspects of life in the country, starting with state administration, the formation of parliament, the presidency, the sharing of powers on the basis of quotas, ministries, general directors, ambassadors, so-called independent bodies...etc. This was reflected in all of the state's political, economic, social, educational, and cultural facilities, and even health services. Those affected by this system are the country with its complex crises, as well as the masses of people, the working people, and the poor among them ().

The quota system transformed Iraq into a union of partisan and sectarian interests, led by leaders who put their interests above the interests of the people and the nation. These leaders are united in sharing national wealth and privileges, and not building a state of citizenship, and they are united in depriving the people of a decent life, and making the contradictions and conflicts between them take on an abhorrent sectarian character. It hinders the work of

the authority, obstructs the building of the state of law and institutions, constitutes a threat to national unity, and incites violence and hatred.

Thus, it can be said that the quota system in Iraq leads to clear and explicit violations of the most important human rights stipulated in international instruments and national constitutions, including the effective Iraqi constitution. These rights include: the right to equality, the right to hold public jobs, and the right to participate in the management of public affairs in The state, the right to equal opportunities, the right to an adequate standard of living, the right to social security, the right to work, and the right to education.

Fourth requirement: Administrative and financial corruption

Corruption is a societal scourge that is not recent, but has been known to all societies, whether dictatorial or democratic, poor or rich, ignorant or educated. Corruption is considered one of the most dangerous and severe types of scourges on society, and its danger lies in that it spreads like cancer and spreads throughout the administrative environment if it encounters land. Fertile for its growth, as it is closely linked to the political and social system.

The phenomenon of corruption has been widespread in the societal structure and in state institutions since successive regimes in Iraq. This phenomenon worsened in a qualitative manner during the previous regime, as multiple outlets for corruption were opened on a large scale. After the fall of the previous regime in 2003 and before the formation of the first Iraqi government, various manifestations of administrative and financial corruption spread to all aspects of the new state.

Among the factors that helped spread corruption in Iraq is the spread of nepotism, favoritism, and mediation in government appointments, such as some officials appointing people to public positions on the basis of kinship or political, partisan, sectarian, and national loyalty, far from competence and equality of opportunities, and the presence of additional titles and jobs with unclear tasks and responsibilities, including More than five thousand positions of Under-Secretary, Director-General and Advisor, most of them without a specific job, due to the absence of a correct description of work, responsibilities and positions, social benefits allocations for senior officials and ministers, and the inflation of unjustified and unnecessary expenses, such as allocations for delegations, furniture and hospitality.

Administrative and financial corruption affects the extent to which the regime enjoys democracy and its ability to respect citizens' basic rights, most notably the right to equality and equal opportunities. It also limits the regime's transparency and openness, creates an atmosphere of political hypocrisy as a result of buying political loyalties, and weakens political participation as a result of the lack of trust in public institutions and bodies. Oversight and accountability, and an increase in poverty, a decline in social justice, and a decline in the standard of living for many classes in society as a result of the concentration of wealth and power in the hands of the minority group that has money and power at the expense of the majority group, who are the general public.

Fifth requirement: Lack of services

Iraq is considered one of the agricultural, oil, economic, commercial, tourism, scientific, and cultural countries, but the repeated coups, reckless policies, and absurd wars have greatly affected Iraq's economic, political, and cultural status. It is one of the countries characterized by the abundance of water and vast areas of arable land, as it had a policy of self-sufficiency in Production is in addition to the spread of Iraqi agricultural goods in global markets. It is also characterized by huge resources in natural resources, especially oil and natural gas, which is considered one of the leading countries in production and reserves. It is also characterized by many tourist areas in northern, central and southern Iraq, and a large number of scientific and cultural energies from Men and women, the opening of the Iraqi economy to the whole world, and the explosive budgets after the demise of the individual dictatorial regime.

Despite this, Iraq still suffers from a clear deficiency in providing public services to citizens, including electricity and weak municipal services, in addition to the housing crisis and the spread of random housing that lacks the most basic elements of decent living. These rights and services are guaranteed rights. Nationally and internationally, which led to the emergence of large waves of dissatisfaction among the general public at the inability to deal with these crises and provide basic services to citizens, which seem to have become intractable, at least in the near future. Despite the slight improvement, it is not commensurate with the huge and explosive budget estimated at hundreds of trillions of dinars or billions of dollars that are allocated annually to this service ().

Thus, it can be said that the lack of services and the spread of poverty and unemployment lead to serious violations of human rights, including: the right to an adequate standard of living, the right to social security, the right to work, and the right to education. Thus, successive and current governments have violated the rules and principles affirmed by the instruments. International standards, which Iraq joined and ratified, and adopted in national laws.

CONCLUSION

Thus, we conclude our topic titled “Restrictions on the Protection of Human Rights in Iraq.” This conclusion can be divided into two parts. In the first part, we show the most important findings that we have reached, and in the second section, we present the recommendations that we have reached, as follows:

1. The issue of respect for human rights is one of the fundamental and important topics of our current era, given the profound transformations, humanitarian atrocities, and successive dictatorships that ruled Iraq, which committed the most heinous forms of crimes and violations of human rights.
2. Although the constitutional and legal system in Iraq is the best in the history of Iraq, it is marred by some shortcomings and shortcomings with regard to the issue of rights and freedoms.
3. The new democratic regime is still operating with many of the arbitrary laws, standards, regulations and controls of the previous regime until now, and Iraqis are still being punished for violating those laws that conflict with the principles of the effective Iraqi constitution.
4. The human rights situation is still far from the picture to which the Iraqi state and its constitutional authorities adhered.
5. The quota system, administrative and financial corruption, and lack of services each kill and torture the citizen in their own way, so the effects of quotas affected all public positions in the state, which was reflected in all of the state's political, economic, social, educational, and cultural facilities.

RECOMMENDATIONS:

1. We recommend that the Iraqi legislator remove the contradiction and ambiguity in the effective constitution, specifically in the rights and freedoms that fell under the mercy of the legislative authority and the executive authority. This means that these rights and freedoms are subject to change and are not essential, but rather secondary, given that the procedures for amending them are easy and dependent on the will of the blocs. Political and government decisions.
2. We see the need to alleviate the restrictions imposed on citizens' rights by establishing explicit legal controls that protect these rights from abuses by legislative and executive authorities, in addition to defining what is meant by public order and public morals to prevent the violation of these rights under the pretext of preserving public order and public morals.
3. We recommend that the legislative authority change laws that conflict with the effective constitution and with the directions of the new democratic system. Although Iraq is a party to many international instruments related to human rights and fundamental freedoms, the new democratic system still operates with many of the laws, standards, regulations and controls of the previous system. Until now, Iraqis are still being punished for their violations of these laws, which contradict the principles of the effective Iraqi constitution and international human rights instruments.
4. The necessity of activating the role of the public prosecutor because of the important role he represents in achieving justice, preserving public money, and defending the rights of citizens.
5. The necessity of eliminating all forms of sectarian and partisan quotas, ending nepotism, clientelism, administrative and financial corruption, and lack of services, raising the standard of living for the classes of society, and providing public services to citizens, as well as solving the housing crisis.
6. The need for the competent authorities to protect human rights, especially the High Commission for Human Rights and the Ministry of Human Rights and their affiliated offices, to hold legal awareness sessions to consolidate the concept of human rights and their guarantees.

7. Contributing with the judiciary and competent authorities to quickly uncover criminal acts, work to quickly resolve cases, and avoid postponing trials without justification.

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