

CONSTITUTIONAL GUARANTEES IN PROMOTING AND PROTECTING THE NATIONAL IDENTITY OF MINORITIES IN IRAQ

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Abstract

The constitutional guarantees are governed by subjecting the law issued by the legislative authority to a kind of oversight by an independent body to ensure the extent of conformity and agreement of this law with the principles contained in the constitution.

Therefore, we find that the guarantees in local international laws and documents came to take into account the protection of rights and freedoms of all kinds by certain texts and were included in the local or international constitutions as a document that everyone dispute if their freedoms are violated.

The oversight of respect for constitutional legitimacy is one of the important guarantees of rights and freedoms for minorities, and it is one of the pillars to prevent abuse of power. Therefore, the matter is entrusted to a body of a judicial nature to monitor the extent of respect for constitutional articles related to the rights of minorities, and this oversight is present in all countries of the world, including independent and what is different.

The importance of the constitutional articles appears qualitatively with the provisions of their formulations and their conformity with the conventions and norms of human rights and the protection of the rights of minorities. We mean by type here the extent of the ability of the constitutional article to express itself on the ground with the provisions of interpretations for each of the articles related to guaranteeing the rights of minorities and the criterion for measuring the effectiveness and importance of those articles.

Keywords: guarantees, the constitution, reinforcement, protection, National identity, Minorities

Introduction

National identity remained the preoccupation of many researchers, and constitution writers in the world were preoccupied with comparing constitutional legislation in its political and religious aspects to set rules that preserve the rights of minorities. Numerous projects were launched at different stages to place minorities constitutionally in the path that preserves their rights. The struggle between political and religious governance continued in Addressing the violations of their national rights that minorities are exposed to, and for that purpose, conferences were held to lay the foundations of that identity.

Toder to achieve this, the Arab and international newspapers were fussy about distinguishing between the national identity of minorities as a right guaranteed by international organizations and charters and thus applied to countries whose social fabric consists of different

customs and sects, such as Saudi society, Egyptian society, and Iraqi society, to ensure that minorities are not accused of violating authority, political rule, or religious rule.

Through researching the Iraqi national identity, we review the constitutional articles that guarantee the rights of minorities in the 2005 constitution, which guaranteed the rights of minorities that the Iraqi constitutions have not addressed since 1925 AD.

The first topic

Constitutional guarantees in strengthening the national identity of minorities in Iraq

Constitutions differ according to the ruling regimes. The constitution of totalitarian regimes puts into account what achieves its interests. As for democratic regimes that are based on the parliamentary system as one of the basic principles leading to a democratic system, the state seeks stability and adherence to the provisions of the constitution and the law and plays the role of the constitutional and legal authorities towards issues of minorities that blend within the social structure. to society.

Democratic regimes are often directed towards preserving the dignity of ethnic or religious minorities within their social fabric, especially what was included in the 2005 constitution, which included several articles focused in their contents on guaranteeing the rights of those minorities in a way that preserves their national identity and preserves their independence and dignity.

The constitutional guarantees in promoting national identity must be indicated in the constitution according to specific articles that explain the fabric of society and the national, religious and sectarian diversity in their contents.

Accordingly, the legal and constitutional factors within the state system in Iraq is a reflection of the political, economic and religious aspect, all of which have employed the issue of minorities in a way that guarantees their rights and preserves their independence.

The first requirement

Constitutional principles in promoting the national identity of minorities in Iraq

Most of the constitutional articles that strengthen the rights of minorities in the world refer to basic principles that guarantee the rights of minorities, whether ethnic, religious or linguistic. Religious or linguistic means that persons affiliated with the said minorities are deprived of the right to enjoy their own culture, to profess and practice their religion, or to use their language in association with other members of their group.

Therefore, we must address those principles at the international level in the first place and the local level secondly, and that these international instruments have focused on respect for political and civil rights, especially in the Hague Conference in 1899 on human rights and the Versailles Conference in 1871 and other conferences all started from principles and constants to deal with human rights Human first and the rights of minorities in particular, especially to promote national identity based on respect for rights, regardless of religious, ethnic, linguistic, colour, culture or race affiliation.

Where the principles of international minority rights are met by international conferences and covenants with the local codifications of the countries that signed what came in those conferences, the principles approved by the local constitutions are originally derived from those international covenants. And recent studies agreed on all the principles issued by those

conferences that paved the way for the protection, consolidation and promotion of the rights of minorities that were mentioned in international instruments and applied in local constitutions.

From the foregoing, it is clear that the successive constitutions in Iraq have taken into account the provisions of international agreements on guaranteeing and respecting the rights of civil and political minorities. Therefore, the constitutions mentioned in their contents those rights, referring to international covenants and including clear references to the rights of minorities in a way that guarantees the promotion of the national identity of each of the minorities and their equality before them. Laws regardless of ethnic, religious or other affiliations distinguish those minorities

The second requirement

Principles of reinforcement derived from successive constitutions in Iraq

The modern state of Iraq was established in 1920 with the launch of the first kingdom and King Faisal I taking over the affairs of Iraq, but under the British Mandate. He prepared the Iraqi authority to start writing the first constitution, which is the constitution of 1925 AD, which included in certain articles a reference to the rights of minorities, given that the Iraqi social fabric is multi-ethnic, sectarian and national.

The Iraqi constitution of 1925 AD was established with 125 articles. These articles included the type of government, citizenship rights, and other modifications that we are not going to mention. Rather, what concerns us are those constitutional articles related to strengthening the presence of minorities in Iraq, so we find that Article 6 of the Constitution of 1925 has stipulated that (no There is a difference between Iraqis in rights before the law, even if they differ in nationality, religion and language.

And the existence of this text in the constitution is to reinforce the existence of minorities. It simulates Universal Declaration No. 30 of 1932, which focuses its content on the rights of minorities, which appeared after the end of the British mandate over Iraq and Iraq's accession to the League of Nations on 10/3/1932. Entry to Iraq was dependent on the recognition of rights. Minorities and equality between Iraqis without discrimination is what Article 6 of the first Iraqi constitution of 1925 AD woven upon

The second article that strengthens the rights of minorities in the 1925 constitution, is Article 16, which stipulates that "different sects have the right to establish schools to teach their members in their languages and to maintain them, provided that this is by the general curricula that are determined by law."

This legal text is fully consistent with the content of Article 27 of the International Covenant on the Civil and Political Rights of Minorities

And a simple approach between the two articles, we find that they are similar to the International Covenant of 1966, which focused on guaranteeing and promoting the rights of minorities in local constitutions. The rest of the sub-identities, such as race, religion, sect, and principle appeared before the International Covenant of 1966

As for the constitution of 1958, which witnessed a change in the ruling regime in Iraq and the transition to the republican era by the revolution of July 14 of 1958, it strengthened the national identity through what was stipulated in its constitutional articles, including Article (3), which is a clear indication of strengthening the national identity through the operative part of the article that stipulated (The Iraqi entity is based on cooperation among all citizens, respecting

their rights and preserving their freedoms, and Arabs and Kurds are considered partners in this country)

What strengthened the position of minorities in this constitution is what is known about Article 9 of Part Two, which stipulates that “citizens are equal before the law in public rights and duties, and no discrimination should be made between them”.

As for the Constitution of 1963, which abolished some articles and affirmed and strengthened some of them, and which concerns us about the rights of minorities, which is stated in Article 19 of it, which stipulates that (Iraqis are equal before the law, and they are equal in public rights and duties, and there is no discrimination between them in this because of gender or the origin ..)

Article (4) of the 1968 Constitution and Article (21) were formed to reinforce national identity and guarantee the rights of minorities in Iraq. Article (21) stipulates that “Iraqis are equal in rights and duties without discrimination between them because of religion, sex, race or language”

Then came the interim constitution of 1970, which included the promotion and guarantee of the rights of minorities in its fifth article, which states (the Iraqi people consist of two main nationalities, the Arab and the Kurdish, and the constitution recognizes the rights of the Kurdish people...) ()

Then this constitution came to focus on the rights of minorities, but it is noticeable that it neglected to mention those minorities in the name while focusing on the Arab and Kurdish nationalities, and this constituted a legislative deficit in this constitution and a severe stinginess in the power of strengthening the position of the minority according to a clear constitutional article.

We do not say much about what was stated in the 2004 constitution regarding the administration of the state for the transitional period, but it mentioned in its fourth article the saying (the system of government in Iraq is republican, federal, federal, democratic...) and this article we do not find that it reinforces human rights.

Minorities because it mentioned the system of government and did not address its position on promoting the rights of minorities and included many articles that focused on the enumeration of nationalities, but it neglected to name those minorities or focus on their national identity.

The second topic

Constitutional guarantees in protecting the national identity of minorities in Iraq

The local constitutional procedures have taken into account the observance of international instruments in protecting the national identity of minorities in any country, especially in Iraq. Iraqi legislation has referred in most constitutions to international obligations to the existence of constitutional guarantees that strengthen and protect the national identity, which pushes towards preserving and promoting the national identity.

Guarantees differ in rank and importance from one country to another and from one political system to another. The value of constitutional rules, for example, differs from the United Kingdom to that of France, meaning that the constitutional article protecting the rights of minorities applies to the rest of the laws operating in the country, such as the labour law and

the law Penalties and administrative law, given that what is stated in the constitution arranges a legal effect on the rest of the laws in force in the country.

Accordingly, the process of making a constitutional amendment related to the rights of minorities requires amending the laws that we referred to.

The first requirement

Reasons for the constitutional protection of the national identity of minorities in Iraq

The principles of justice and equality refer to the foundations on which the constitution is based in preserving the national identity of minorities, as this term (national identity) appeared in the late twentieth century and aims to find a common one to preserve the principles of justice among the members of the same society, especially since the concept of a minority means the mixing of the part In all, we do not find a country in the world without a minority.

Perhaps the reasons that called for the achievement of the principle of justice came because of the violations minorities are subjected to within societies, the majority of which are from one group, and the rest of the groups are considered a minority within society. Those established have adopted the protection reasons, as this has been stated in the Charter of the United Nations and other international bodies that local constitutions guarantee the protection of the rights of minorities and non-discrimination in legal protection between one minority and another to preserve national identity.

It is useful to mention that the reason for protecting the national identity of minorities in Iraq is the belief of some that the minority is a weak being within society with a religious or ethnic character, and this is one of the big mistakes because the minority is part of the body of the social fabric of any society, but it is carried out by some of the violations Against minorities to achieve personal or political goals is a major violation of human rights.

We also find that among the reasons that can be addressed and that constitute a reason for the need for constitutional protection for minorities are the theories of collision and estrangement between civilizations and religions that aim to dissolve the minority and threaten its identity and abolish its privacy. Likewise, the parliaments of the West have put within their accounts the protection of the rights of minorities and their constitutions include this through clear texts. Guarantee the right of the minority within the society through the constitutional texts.

Based on the foregoing, it can be said that the reasons for the constitutional protection of the identity of minorities have branched out and multiplied. A civil right and another acquired right that the legislator puts within the structure of the constitutional clauses to protect the rights of minorities.

The second requirement

Rules for the constitutional protection of the national identity of minorities in Iraq

International covenants and the Universal Declaration of Human Rights refer to the protection of the rights of minorities by the principles of the International Covenant as well as by the Convention on the Genocide of Racial Discrimination. The International Covenant on Civil and Political Rights goes in Article 27 to the protection of ethnic, religious and linguistic minorities. The 1992 Convention came to consolidate these principles and was adopted by the General Assembly of the United Nations in its resolution 47/135 of 1992.

The provisions in the text of the Declaration, starting from Article 1 to Article 30, refer to this, and it deals in its concepts with the type of linguistic, religious or ethnic minority and its position in society.

The Iraqi legal legislation referred to how to mix the constitutional and legal rules for minorities and strengthen these rules in keeping with international human rights covenants which stipulated the protection of the rights of minorities and the promotion of legal rules supportive of the constitution by guaranteeing the rights of minorities in general according to Article 49 of the Iraqi constitution of 2005 which He pointed out the need to implement constitutional rules to ensure the participation of minorities in public life (political, economic, social and cultural).

Therefore, the process of legal reform and the regular compatibility of constitutional rules with the laws in force is the sure guarantee for the protection of the rights of minorities and the activation of the constitution to guarantee those rights.

There is no doubt that the civil, political or cultural right of any minority within the Iraqi fabric is one of the most important factors in preserving the national identity. Geneva Convention on Human Rights of 1949 AD

To consolidate the rules for protecting the Iraqi national identity, a system called the quota appeared in the Iraqi constitution for the year 2005, which constituted a solution to the problems of minorities that do not have political parliamentary representation and imposed the presence of certain seats in the House of Representatives for minorities

As long as national identity is the basic criterion for belonging to the homeland, the establishment of rules to protect these minorities resulted from repressive practices against minorities, especially the forced displacement of elephants from Iraq during the Iran-Iraq war, which exposed them to many problems upon their return to Iraq and caused them to disengage from the national identity, thus revoking their nationality Iraq, which required the creation of a constitutional base and organization by law that restores their national identity to those abandoned minorities and restores their stolen rights as a result of displacement

Conclusion

1- The importance of the constitutional articles appears qualitatively in terms of the provisions of their formulations and their conformity with the charters and customs of human rights and the protection of the rights of minorities. We mean by type here the extent of the ability of the constitutional article to express itself on the ground with the provisions of interpretations for each of the articles related to guaranteeing the rights of minorities and the criterion for measuring the effectiveness and importance of those Materials

2- The application of legal articles and the results of those applications and their repercussions on the security and stability of those minorities, and this can only be achieved through a careful examination of the interpretations and effects of those articles in strengthening national identity, given that the general constitutional articles that preserve the rights of minorities are effective

3- One of the examples that can be cited in this field is the right to education in the language of the minority, which is, as reality indicates, education, especially the education of women, and the inclusion of an article that guarantees education in the constitution, but minorities suffer from marginalization through the principle of majority rule, which we referred

to in the preamble to the 2005 constitution previously. Accordingly, we find that the education of women, especially within the ethnic or religious minorities, is lagging so far compared to the education of women among the majority

4- The sense of belonging to the national identity can be observed through that interdependence, while guarantees are mentioned in the articles of the constitution and it is applied on the ground, provided that guaranteeing rights qualitatively does not mean the fusion of the minority within the majority, but rather the harmony between them on national bases that make the minority unite. One of the qualitative problems that occurred within the fabric of Iraqi society is the deliberate targeting of Iraqi minorities after 2003, specifically in 2010, which witnessed the bombing of the Deliverance Church in Baghdad, which indicates the weakness of the content of the article on the protection of the rights of minorities mentioned in the constitution.

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