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LEGAL AND CONSTITUTIONAL ORGANIZATION FOR THE POLITICAL ROLE OF IRAQI WOMEN

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ABSTRACT

The political role of Iraqi women, despite the adoption of the quota and its involvement in political work and the assumption of public office in the Iraqi State, faces many difficulties, mainly concerning the social and cultural aspects, the culture of society and the nature of the prevailing religious regimes, as well as the economic and political aspects, therefore, Iraqi women must be empowered politically, economically and socially to develop their effective political role as an integral and inseparable part of society.

Introduction

The problem of this study revolves around the fact that women are the foundation and the half of society, so they must be actively involved in making important and crucial decisions. However, this important part of society faces many difficulties in the enjoyment of fundamental human rights and greater difficulties in exercising an effective political role, especially when it comes to political decision-making". According to this, the researcher tries to answer the following questions: Did the constitutional legislator follow the international declarations and international charters to organize the rights of Iraqi women in the permanent constitution of 2005? If this Constitution includes, what are

the main difficulties and obstacles to women's effective political role? What are the mechanisms for their political and legal empowerment? The research hypothesis focuses on the assumption that (although there are sufficient content and guarantees at all levels necessary for women in general and Iraqi women in particular to enjoy all their rights, most important of which are political rights, however, the enjoyment of these rights are hindered by many obstacles).

1. Contents and guarantees of women's rights in Islamic law

There are three trends in women's political rights in Islamic law:

- The first militant trend: it is represented by most of the Islamic jurisprudence who considers the enjoyment and exercise of political rights by women is a subject imported from Western thought and does not reflect the nature on which Islamic society is based. (Hashem, 2008).
- The second moderate trend: There is no legitimate objection to women's political work, and the issue of equality in the Holy Quran is absolute, and the unconditional status shall apply unless otherwise a restriction is stated. (Saad, 2017)
- The third traditional trend: This opinion tries to merge the two trends, it distinguishes whether the country is taking the Islamic regime or the democratic regime, stating that the women's role in a country whose political system is based on the principle of religious control of the ruling power, only the judiciary and Fatwa are the reference for the problems of the jurists. (Anaam, 2011)

Muslim women have a leading political role over the centuries since the beginning of the call, they have endured abuse, martyred for the sake of Allah and their religion, migrated, fought, helped and healed the wounded, and had an important role in society politically, economically and socially (Magda, 2006)

2. The contents of women's rights in international conventions

The concept of human rights is all the necessary rights, regardless of gender, color, language, race, origin, or belief (Al-Habib, 2008), this was confirmed by the Universal Declaration of Human Rights of the United Nations General Assembly In 1948, in article 1, it states (all human beings are born free and equal in dignity and rights and have given reason and conscience and have to treat each other in the spirit of the fraternity). It also affirms in the article (21), paragraph (18), which states (the right of everyone to run the public affairs of his country, either directly or through freely chosen representatives), and also affirms (that the will of the people is the prerogative of rulers; this must be manifested through fair and periodic elections by universal and equal suffrage either through secret vote or equivalent action to ensure freedom).

Concerning the International Covenant on Civil and Political Rights in article 7, it emphasized voting in all elections and public referendums and elect all bodies whose members are elected by universal suffrage, as well as participation in the formulation and implementation of government policies, occupying public offices at various levels of government, participation in any association or non-governmental organization concerned with the public and political life of the country, as political participation is a human right and this right is: (Khamis, 2006), the right to address public authorities, the right to stand for political offices, the right to hold official office and the right to vote is a national duty imposed by citizenship, which means belonging to the homeland and equality of rights and duties among its citizens. (Isam, 2011)

Many international conventions concerned with women and their rights have been adopted, including:

1. Convention on the Political Rights of Women 1952: This Convention was implemented in 1954, and, by ensuring women's right to vote in all elections in accordance with the conditions of equality of women and men without any discrimination, women also enjoy the same status as men in public, administrative and public office as men under national legislation.

2. The United Nations Convention on the nationality of married Women, promulgated in 1997, entered into force one year later, according to it, it is prohibited for the state to affect the wife's nationality in any case of marriage or separation, or if the husband changes his nationality during marital life, the said convention also authorized the wife to retain her nationality if her husband acquired the nationality of another State or renounced his original nationality, and included the wife's right to acquire the nationality of her husband through a special naturalization procedure.

3. The 1967 United Nations Declaration on the Elimination of Discrimination against Women, as it was stated in the preamble of this declaration: (Discrimination is incompatible with the dignity of the human person, the well-being of the family and society and prevents the full and consistent participation of women in the political, economic, social and cultural life of their country, and constitutes an obstacle to the capacity of women to serve their country and to serve humanity). Article (2) provides that States shall repeal laws, customs, and practices that constitute discrimination against women and promote legal protection of women's equality with men and that the Constitution of States should provide for this principle.

4. Convention on the Elimination of All Forms of Discrimination against Women, 1979. It affirms that discrimination against women constitutes a violation of the principles of equal rights and respect for human dignity and constitutes an obstacle to women's equal participation

in the political, economic, social, and cultural life of their countries and impedes the growth and prosperity of society and family. This Convention emphasizes that the full development of a country, the interest of the world as a whole, and the cause of peace require the full participation of women and men in all spheres of life. The Convention discussed the impact of cultures and traditions on the interpretation of women's enjoyment of their rights and the need to eliminate stereotypical roles in political and public life, as well as women and their children's right to citizenship. Women and children should not remain stateless, and it also stressed the importance of equal education for women. Finally, the Convention dealt with the right to equality in terms of marriage and family law, such as the right to divorce and choose the appropriate spouse, equally with men, without discrimination ((Mohsen, 2002).

5. As for the (CEDAW) agreement, for which Iraq was organized in 1986 and had ratified, despite some reservations to articles 2, 9, and 19, however, this reservation does not drain the treaty out of its content or impede the achievement of its objectives.

6. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000, which is considered complementary to the United Nations Convention against Transnational Organized Crime, under which the Contracting States must prevent and combat trafficking in persons, give importance to women and children and respect their rights.

3. The political rights of Iraqi women in the pre-2003 period

The feminist movement in Iraq in the context of achieving itself and its equal vision, as one researcher states, has been characterized by two overlapping phases: (Aqeel, 2016).

The stage of development and formation: These signs have emerged since the beginning of the twentieth century, despite the hardness of the circumstances and the prevalence of underdevelopment, as figures with a position in the social and cultural milieu have championed the natural right of women to equality. The need to defend women and their natural rights have taken the lead, expanded and increased in pace after the end of the First World War, specifically since 1919. Then, after the establishment of the contemporary Iraqi state in 1921. The first women's society was formed in 1923, and the expansion of higher education and the invasion of Iraqi women opened the doors for educated women to rise to the level of equal demand, and this contributed to the emergence of social and cultural women's associations, concerned with women's social and cultural affairs. The first activity was the Women's Caucus, founded in 1923 by the daughters of former Ottoman officials and officers, some of whom belong to prestigious urban families, and the Kurdish Women's Association, which was founded in 1928. The Iraqi Red Crescent was founded in the mid-1930s. (Haifa, 2008)

Crystallization and upgrading phase: by returning to the constitutional organization of Iraqi women's political rights and their political applications in the first Iraqi establishment of the modern Iraqi state, which was called the Iraqi Basic Law, issued in 1925, according to which women were deprived of political work, article (6) of it stipulates: "There is no difference between Iraqis in rights by law despite their difference in nationalism, religion, and language". However, the text of article 42, stipulates that "every Iraqi man over 30 years who did not have any inhibits provided for in article 30 shall be elected to the Chamber of Deputies." This article was explicit in depriving women of their political right by excluding them from nomination and membership of the Chamber of Deputies, which is a clear indication that the Constitutional legislature did not intend to include women in the text contained in the article (6). In the third Amendment 10/5/1958 to the 1925 Iraqi Basic Law, an interim article in its second paragraph referred to the following text: "The Basic Law may be amended within one year of the date of the implementation of this Law, including granting of political rights to educated women. If the two councils approve the amendment mentioned in the previous paragraph, it should be submitted for ratification without the need to dissolve the Chamber of Deputies because of this amendment, for one time." this article gives the right of educated women to political participation."

1963's Constitution, article 19 stipulates that "Iraqis shall have equal rights and duties in law, without distinction as to race, origin, language or religion, and all citizens shall cooperate in preserving the entity of this nation, including Arabs and Kurds. The constitution recognizes their national rights within Iraqi unity. The Constitution of 1968, article (21) stipulates that "Iraqis are equal in rights and duties by law, without distinction as to race, origin, language or religion, and all citizens shall cooperate in preserving the entity of this nation, including Arabs and Kurds. This constitution recognizes their national rights within Iraqi unity". Finally, in the 1970 Constitution, article 19 stipulates that "citizens are equal by law, without distinction as to sex, race, language, social origin or religion".

4. Political rights for Iraqi women after 2003

After the fall of the political regime in Iraq on 9/4/2003, under the transitional stage, the Iraqi Administrative Law for the transitional phase was issued by the US ambassador in Iraq Paul Bremer in 2004 and the political Parties Law, and the election law aims at achieving a representation rate of women at least quarter of the National Assembly members". According to this, article 30, paragraph (c), of the Transitional Administration Law which stipulates that "the National Assembly shall be elected according to the election law. Act No. 16 of 2005, article 11 of which focused on "at least one woman should be

among the first three candidates on the list, and at least two women should be among the first six candidates on the list, and thus until the end of the list". This is called the (quota) principle (Zia, 2018) in the Iraqi Constitution, which has brought women a high percentage of the National Assembly's membership, especially after the elections held on 30/10/2005,(87) deputies were elected representing all the members of the National Assembly, i.e. 25% of the total seats in the National Assembly, and it has six ministerial seats, whereas the percentage of French women inside the French parliament did not exceed 21%, and in the House of Commons it was 19%, after it started its participation since 1948 by 1%, whereas the participation of women in Egypt and Jordan did not exceed 3%. In some countries, it still suffers and even prevents the right to run and sometimes the right to vote. (Masoud, 2005)

Does this principle give women fair political representation? this law did not justice women, as women became imposed on election lists, as their selection may be subject to many considerations, and they are away from efficiency considerations, especially the talk of the Iraqi Minister of Human Rights (Zuhair Al-Jalabi) who confirmed that there are many problems in the Iraqi political process, the most prominent of which is the participation of women in the election lists, saying "The participation of women was just to fill the blanks, confirming that the allocation of a certain percentage of seats for women does not mean that Iraqi women should be allowed to enter the parliament, but only half of Iraqi society would be involved in the self-determination of Iraq, however, what is happening in Iraq is the nomination of women who is far from what is going on inside the parliament." (Qasim, 2015). Parliament is the arena for political action by highly competent and active people in diagnosing and finding the best solutions to problems.

Besides, the constitutional legislator did not overlook women's political status based on the ideology of the political system that believes in democracy and makes it the basis and criterion for the peaceful rotation of power, according to which the right of all, including women, must be guaranteed, or by reading the history and struggle of women and what active role they can play. In the new constitution, there is a clear reference to the right of women to political participation, as stated in article 20: "Citizens shall have the right to participate in public affairs and to enjoy political rights, including the right to vote, elect and stand for election."

5. Reasons that hinder Iraqi women from playing an effective political role

Under the prevailing political, economic and social situation in Iraq, women found themselves in a social environment in which women were perceived as incompetent, unhelpful, and under-qualified, these ideas were devoted in various ways to restrict women and society and thus

showing the situation as a struggle between men and women by indicating that women's work is the main reason behind the increasing unemployment among men and the basis of all social, economic and even moral crises. (Kazem, 2019)

In a field study conducted in Iraq by UNICEF in 2005 that included (311) research sample, (60.1%) of the sample showed that obstacles facing Iraqi women in their political role are due to political conditions, and according to the opinion of (52.7%) who considered the nature of society, they have indicated that society needs political and social awareness and capacity-building. Then (48.3%) indicated that religious beliefs are also an important factor in women's obstruction of their political role in Iraq, while (38.3%) indicated that the reason is the women's preoccupation with child-rearing, (33.8%) said that the reason is managing household matters, (31.2%) women's lack of self-confidence, and (28.9%) confirmed that the cause was legislative constraints. (Bushra, 2020)

Many reasons and factors hinder women's participation in political work, including (Badriya, 2015)

First: the prevalence of anti-women's rights concepts and the non-acceptance by the society of women's work, on the one hand, and the lack of awareness among women of the importance of their participation in political work, on the other.

Second: The primacy of male power over the administration of the state, its institutions, the labor market, the economy even in developed countries, the monopoly of top positions by men, and the retention of women's employment in traditional service work such as social and family matters, as women always bear the brunt of child-rearing and family care. This has weakened their job and economic position, which is a major obstacle to the empowerment of women.

Third: Partisan action is the most prominent aspect of individuals' access to political gains, especially as its main objective is to reach and stay in power, and because Iraqi women tend to be more conservative than men, they are far from political association with parties, despite providing opportunities such as quota. Political parties establish women's committees aiming at passing their policies, marketing their programs, and gaining feminine personnel and staff.

Fourth: The lack of effective and autonomous women's organizations to defend women without their affiliation with political parties that oppose women's rights, as many women have been threatened and killed, affecting the size and effectiveness of their political participation.

Fifth: The increased terrorism against women's rights and their right to political participation, and the emergence of militant political Islam forces, which forces women to be deprived of any political role.

Sixth: The prevalence of poverty and illiteracy lead to the enslavement and perhaps trafficking of women, which impedes efforts to improve women's political representation.

Seventh: The weak political role of Iraqi women is due to the nature of social, cultural, and psychological beliefs, which means that the inherited beliefs, norms, customs, and traditions that affect women's social life.

The (CEDAW) Committee affirms that that cultural traditions and religious convictions in all countries have played a role in restricting women's participating in public life, even in countries where women participate in politics, women's role has been confined to issues including the environment, children and health and have not been encouraged to participate in issues such as conflict resolution, besides, women working in politics and government usually do not assume responsibilities related to financial matters or the State budget. (Bushra, 2020)

In summary, many factors hinder Iraqi women from their effective political work, including political and constitutional factors, although they provided an environment and appropriate measures to increase the effective political work of the Iraqi women.

6. Mechanisms for the political and legal empowerment of women

What the Iraqi woman needs is empowerment, which is defined according to the United Nations Development Fund for Women as: (Collective action in oppressed groups to overcome or confront obstacles and distinction that reduces their status or take away their rights), Whereas, the Economic Commission for West Asia (ESCWA) indicates that empowerment is (The process by which women become individually and collectively aware of how power relationships affect their lives, gaining self-confidence and the ability to address inequality between women and men).

The political empowerment of women is defined as the process of effective participation of women in decision-making by expanding the available opportunities and alternatives. It requires effective participation of women's capabilities to enable them to bring about change in society. The sources of this force lie in knowledge and self-confidence, ability, and teamwork (Wasim, 2016). This cannot be achieved without a political system based on democratic and participatory democracy, especially since an important part of empowerment means participation.

Women's political, economic, and social empowerment was therefore needed, particularly as the World Bank had stated that the empowerment of women was a key element in the development process and the fight against poverty, and had issued a report that saw the empowerment of women as a development goal for two reasons, first, social justice was an end in itself and second, the empowerment of women was the means to achieve other goals, such as combating poverty. (Schuler, 2002)

Women's empowerment is therefore aimed at achieving full equality of opportunities for the employment of human capacities between men and women, ensuring the citizenship rights of all women on equal terms with men, recognizing and respecting gender differences, and try to eliminate gender discrimination. Therefore, a set of mechanisms must be provided to raise the political role of women that will be discussed as follows:

First: Women's political empowerment and promotion of leadership roles, including:

1. Granting the quota for women to practice certain political activities is important and essential, as it guarantees the right to remain in the parliamentary councils and to undertake the ministerial tasks. Iraqi women may depend on it and thus their future political activity will not expand in society. Or, it is devoted to the survival or the aggravations of the obstacles facing them, particularly social ones. It is assumed that this percentage will not be a stumbling block in increasing the proportion of women in the event of the availability of efficiency and capacity, which can be increased in the future in accordance with the proportion and size of educated women who are also aware of their role in society.
2. Increase women's access to leadership positions in the executive organs of the State and strengthen women's performance through the development of integrated programs for young women leaders to prepare them for executive positions and to train them carrying out their functions.
3. Increase women's opportunities of assuming leadership positions in judicial bodies and enhance their functioning in all judicial bodies, establish standards based on efficiency and avoid discrimination and train women judges intensively to support them in judicial offices.
4. Obliging political and party forces to include women in order to achieve gender equality, as well as the positive impact of such representation on the internal life of political parties and movements themselves, in terms of the breadth of popular bases they have lost at present; these forces find themselves obliged to address women and engage in political life, which is an important gain for women.

It can be measured by the extent to which Iraqi women participate in leadership positions, committees, and public sites, their participation in political decision-making, influence the decision-making and implementation of State policies, the availability of training, learning and

education, and the degree to which they have acquired organizational skills and capacities to establish groups to claim their rights.

Second: Legal and constitutional empowerment

1. promote the principles, treaties, conventions, and protocols of the United Nations that concern human rights, including the Convention on the Rights of Women, the Convention against Discrimination against Women, the Convention on the Rights of the Child, and the prohibition of torture, achieve a common awareness of equal rights between women and men.
2. Reflect the principle of equality between men and women through the adoption of measures to implement article 5 of the (CEDAW) Convention by the Iraqi government which is related to changing the social and cultural patterns of men and women behavior to achieve the elimination of racial prejudices and customs, and all other practices based on the belief that either sex is lower or higher than the other, or on stereotypical roles for men and women.

Conclusions

1. Islam emphasizes absolute equality between men and women, the unconditional status shall apply unless otherwise a restriction is stated. However, there are some opinions and interpretations that attempt to prevent and prohibit any political role for women, using some texts that focused on controlling and regulating the role of women in Islamic society. Islam did not favor men over women but gave them human and civil rights, women represented half of society, integrated with men, guaranteed inheritance, the order of virtue, the prevention of vice, and Islam focused on the right to citizenship and seek social justice.
2. The inclusion of international, domestic, constitutional, and legal norms is important for women to exercise political work, and the effectiveness and quality of such work remain the task of women themselves, especially since many legal norms may be inapplicable due to certain variables so that women's role is to demand and activate them.
3. Women's political role and full enjoyment of all economic and social rights are at the disposal of society itself. Perhaps the cultural structure encourages the exercise of women's political role or it may be restricting her not only politically but at all levels.
4. Gaining these political rights is subject to the nature of the political regime, whether it believes in these rights or what is provided for in the Constitution is merely a form devoid of content and effectiveness.
5. Protect women from certain male-based customs, traditions, and behavior by developing national legislation that guarantees their rights, and by taking advantage of international treaties, conventions, protocols, and decisions.

6. Address all obstacles and constraints identified in the research, which impede women from exercising political work effectively and attempt to empower women economically and socially as a basis for their political empowerment in building and developing society.

7. Finally, the pessimism of women toward themselves regarding their present and future must be changed. Most women have the absolute conviction that their decision must be in one's hands and that they are subject to the other, which is normal life behavior.

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