

The Right to Peaceful Protest in Iraq: Towards Enactment of Legislative Framework

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ABSTRACT

The ability to organize and participate in protests, pickets, rallies, marches, and protests is crucial for democratic representation. Peaceful protest is an essential means of expressing opinions and pressuring governmental bodies to achieve specific demands. Though the constitution recognizes their rights, there are no adequate laws and policies to protect their rights in expressing an opinion. This paper highlights the liberty to demonstrate peacefully and the abuse against protesters. Therefore, this paper is advocacy for the timely formulation of policies and laws to protect the freedom to demonstrate peacefully. This study will be conducted through a doctrinal approach; data were collected through secondary sources by examining the contribution of scholars in this field. This research will help the governments suffering from this problem in general and the Iraqi legislator primarily to address the lack of legal texts.

KEYWORDS: Peaceful Protest- Iraq- Human rights- Legislative Support- Judicial Authority.

Introduction

Protests are the popular right to freedom of expression and the right to freedom of peaceful assembly and association, all guaranteed under the Universal Declaration of Human Rights, regional instruments on human rights, and the constitutions of many states. It is widely accepted that the expression of dissent through protests or public processions is an acceptable democratic practice, provided that the law exercises it. The right to protest is strongly associated with human rights activities, including demands for the recognition, protection, exercise of a request in many countries in the region. Protests have been a means to raise the threshold to guarantee fundamental freedoms at the national level and include many rights in the progressive development of international human rights law. The protest is also closely linked to the promotion and defense of democracy. In democratic societies, individuals and the general public organize and express their demands differently. Therefore, the protests are a legitimate form of expression, denunciation, demonstration, or support for various events through strategies that vary from condemnation to direct pressure. Protests are one of the most important ways for people to express their political and non-political ideas and a method for those in authority to understand people's genuine hardship. It's also one of the ways that people put pressure on rulers to make them adopt the option that the protestors desire and that they believe is in their country's best interests. Iraq after 2003 transitioned from a totalitarian state to a more open. However, the traces of the totalitarian regime's culture can still see in the politicians who emerged on the Iraqi political scene after the fall of the political system in 2003. Iraq's economic position has worsened, resulting in a drop in the quality of public services and an increase in unemployment. As a result, on October 1, 2019, demonstrators took to the streets to demand change, offer job opportunities,

and combat the corruption plaguing government institutions. The government had to deal with protests in Iraq, demanding that cultural, political, and social conditions change civilized. Also, the international conventions and constitutional provisions guarantee the right to peaceful protest without resorting to violence against unarmed protesters in several Iraqi governorates, which resulted in many casualties.

A peaceful protest is a fundamental and essential right, but it has not been properly organized. Until now, no legislation has been provided to organize a peaceful protest by the legislature. Moreover, the draft law on the freedom of expression, assembly, and demonstration contains several legal weaknesses that limit the right to demonstrate in Iraq. This article highlights the legal definition of protest and the role of the administrative and constitutional judiciary in protecting the right to peaceful protest while addressing the protest in Iraq in October and the abuses exercised by the authority in Iraq. Also, this study aims to focus the discussion on the right to a peaceful protest in the light of international treaties, the Iraqi Constitution of 2005, the position of the Iraqi legislator regarding the organization of the freedom of peaceful protest, global and regional human rights instruments that protected it. The doctrinal approach; data from secondary sources were collected by analyzing the contribution of scholars in this field by reviewing the texts of the international conventions organizing human rights and fundamental freedoms and the position of Iraqi law on the right to a peaceful protest to recognize the shortcomings and defects that have affected the law governing that right, and in a way that guarantees the protection of the rights of protesters from killing; forced detention and kidnapping under the absence of a law that organizes peaceful protest and guarantees the right to demonstrate without restrictions limiting its practice.

Definition of the term "protest."

A protest is a type of individual or collective action aimed at expressing opposition to, a rebuke of, or dismissal of ideas, opinions, or values, such as voicing political, financial, or cultural beliefs, views, or perspectives; vocalizing support or criticism about a group, faction, or the government itself; reaction to a policy or denunciation of a public problem; identity recognition or consciousness-raising about the situation of prejudice and social exclusion[1].

Protest often reflects the right of individuals to meet or organize peacefully in one of the public places. For a limited time to express legitimate opinions and demands peacefully, the most prominent are lectures, discussions, and speeches that motivate protesters to assert their legitimate rights[2].

Protest is also known as the assembly of many people on the road or any place to express a joint will or shared feelings, whatever those political, cultural, or religious feelings, through chanting, shouting, signs, etc[3]. The right to freedom of expression is inextricably related to freedom of assembly and the right to protest. Bodies are described as any purposeful and temporary assembly of a group of persons in a private or public space[4], play a vibrant role in mobilizing the community and formulating grievances and expectations, and, most importantly, influence public policy in the states. At the same time, the expression of individual and collective views is one of the goals of any protest[5].

The term "protest" can refer to various forms of collective expression, meetings, or assemblies held in public places such as protests, marches, or public rallies by individuals united by common interests. The demonstration may include verbal and non-verbal pamphlet distribution, music performance, dance or theater, satire, illustrations, posters, or slogans[6].

On the other hand, Waline defines the protest as temporarily collecting individuals by advertising them in public streets to protect views and ideas collectively[7]. Burdeau described the protest as a gathering of people to express their opinion through their community, signing, or interest[8]. The right to protest is a human right arising from several recognized human rights. While no international treaty or national constitution guarantees an absolute right to protest, such

a right can be a manifestation of the right to freedom of assembly, association, and expression and positive and crucial support for constitutional democratic institutions[9].

The Egyptian Administrative Court defines a protest as a gathering of multiple persons on a public road to express collective will or shared sentiments; in particular, it is an assembly by the Egyptian Administrative Court. It's termed a profession if it's roaming, and it's also known as marches when it comes to movement. "Protest" is not defined in international law, despite its widespread use in legal and non-legal contexts. And this term may include embracing a wide range of expressive behaviors characterized by the individual or collective expression of opposed or reaction to something in it. The term may refer to a range of expressive behaviors characterized by the individual or collective expression of opposing or reactionary viewpoints, values, or interests by some form of observable action[10].

The word protest is an emotional one too. For others, it provokes thoughts about movements for social justice and the excellent exercise of rights; for some, authoritarian governments and socially conservative movements. Also, this word refers to disorder, anarchy, conflict, and challenges or threats to authority; and the vocabulary used to characterize the exercise of human rights and the feelings evoked has implications for how conduct is controlled and interpreted by society at large in law and practice[11]. People are increasingly turning to mass protests to resolve grievances against unresponsive elites. Such protests also trigger significant shifts in the political agenda. Governments in various countries use coercive tactics, such as excessive force and criminal penalties, to dissuade people protesting. In undemocratic countries, they attempt to prevent upstream protests when planning activities[12].

In all societies, protests are relevant, as they provide a powerful platform for individuals and groups to have a say in public life by means other than the democratic process. But, rather than viewing protests as a legitimate and necessary part of a democratic society and an operation that guarantees good governance and transparency, however, states often also view protests as a threat, something both law and practice need to control, deter or eliminate[13].

The right to peaceful protest is one of the most fundamental human rights, protected by a range of international and regional human rights instruments. The right to organize and participate in strikes, pickets, meetings, marches, and protests is one key aspect of political engagement. Consequently, the right to protest peacefully is often synonymous with challenging the dominant ideas and values within society, presenting alternative ideas views, and defending minority groups and parts of the interests and values of the community. In addition, it provides opportunities for public expression by those with less power, wealth, and status. As such, general assemblies can be particularly significant at times of political tension or in the context of broader demands for social change. A protest is a peaceful assembly of people in public areas to express a particular viewpoint or demand a specific order. The section below will focus on Iraq's administrative and constitutional courts and other countries.

The Position of the Administrative and Constitutional Judiciary to Protect Freedom of Peaceful Protest

There has to be a body that supervises state officials' actions and limits their breaches of the law by paying for damages and punishing those who purposefully misuse power[14]. There is no better protection than a judicial body with all the guarantees of independence and dignity, and striking a balance between power and right necessitates judicial supervision[15]. Hence, it is essential to strike a balance between them. Moreover, it enables the state to perform its obligations to grant it the highest powers and strengthen individual freedoms such as the right to protest peacefully[16].

The judiciary in the field of the right to peaceful pretests has an essential impact in protecting it from abuses that the legislative and executive powers may issue because the legislature may violate the provisions of the constitution by publishing a law that restricts the right of individuals

to protest peacefully. In this case, the judiciary's role appears through judicial oversight of the constitutionality of laws. The executive authority may call for protest demonstrations against when unlawful decisions are issued, thereby granting the law individuals the right to file a lawsuit to demand the cancellation of decisions that violate the law through the administrative judiciary. The executive authority can also infringe the law governing peaceful protest when unconstitutional choices are made, thus giving individuals the right to file a lawsuit for canceling decisions that breach the law through the administrative judiciary; this is what we must discuss.

The Role of the Administrative Judiciary to Guarantee Freedom of Peaceful Protest

The executive branch is considered the most dangerous state authority to threaten public freedoms due to the nature of its function and its tremendous capacity, which can impact individuals in various aspects of their lives, including the right to peaceful protest. Where the executive branch may order to prevent the march and ban it, and it may also order the dispersal of the rally after beginning its practice, Administrative control powers in the sphere of liberties have claimed to be constantly limited.[17]

So, in terms of the right to peaceful protest, the administration has limited authority. The administrative judge oversees the appropriateness of the disciplinary action and its consistency with the evidence and the administration's determination of whether involvement or non-interference is appropriate[18]. It investigates the validity of the physical presence of the facts listed by the administration and a legal adaptation the administration applied to the facts by the administration, checked the extent of proportionality between the threat to public order and the control procedure adopted by the administration[19]. The administrative judge has formed a new rule by monitoring appropriateness because the appropriateness of administrative control decisions is an aspect of legitimacy; the validity of this process is relevant to all the facts that the administration must take and advocate[19].

The administrative judiciary also keeps track of all control procedures and goals to align with the administration's basic plans. It allows administrative authorities to clarify their policies. In any case, the judiciary has the power to judge the proportionality of actions taken in a situation where public safety is at risk.

The French administrative judiciary has a significant role to play in upholding the right to peaceful protest; the French Council went to the possibility of defining a specific itinerary for the demonstrations, for example, the protests organized by the Trade Unions Confederation in Paris, which led to a threat to public order. Consequently, the rally was declared illegal; in this case, the administrative court did not simplify his examination to determine the importance of the evidence and its link to the preventative judgment[20]. The council also refused to overturn a decision to ban a protest that one anti-inflation society wanted to hold in front of Notre Dame Cathedral in Paris. The protest would have contributed to the destabilization of public order and the difficulties in maintaining it. After determining that the rally would threaten the public system, the decision was made to prohibit the protest[20].

The protest does not imply danger to public order. On the other hand, a demonstration does base on viewpoints that endanger public order; in this case, authorities may prohibit the protest owing to the risk of reprisal. Consequently, respecting the right to protest does not conflict with the police's power to prohibit an activity if it prevents disrupting the country's public order.[21] Nevertheless, this supervision loses much more critical when issued far after the ban decisions were published or when the conditions have changed entirely when the judgments are issued than they were at the time of the ban decisions. Consequently, the late annulment of the ban decision does not force the organizers to suffer political and moral harm after the contested decision achieved all its effects, such that the decision, in this case, is treated as a moral fault for the authority that made that decision.

In the United States, the Supreme Court has addressed the question of fairness considerations in governing protests. The problem brought before the court is whether or not a regulation requires a permit to show the constitution's demands; the First Amendment refers to the freedom to assemble peacefully. The court has held that the freedom to create and protest is not absolute, as is the right to free expression. While the court emphasized the value of the free expression, it agreed that 'free expression' is not a touchstone in itself. The constitution does not neglect other essential things, such as public order. According to Justice Stewart, the court has noted that regulations requiring a protest permit will meet specific constitutional requirements. There are narrow, objective, and definite standards to guide the licensing authority[21].

In terms of the Egyptian judiciary, it does confirm that the public authority in the field of peaceful protest should allow people to exercise their rights and not waste them. The administration is responsible for keeping anything that could threaten public safety and tranquility away from marches or public rallies. For other court decisions, too, the Moroccan courts tried to defend the peaceful protest. According to an administrative court decision in Oujda, freedom of peaceful protest is fundamental freedom from individual liberties, such as freedom of expression and movement. Views and ideas on topics of broad interest cannot be communicated or contested without the space to assemble.

In Iraq, the Administrative Judiciary Court did not refer to the right to protest peacefully in its rulings. The explanation may be that the Administrative Judicial Court has specific powers represented in considering the validity of administrative decisions issued by the administrative authorities in the state.[22]

Furthermore, Article 7/Third of the draft law on freedom of expression, opinion, and peaceful protest shows if the head of an administrative unit refuses to allow a public meeting or peaceful protest. The organizing committee chairman can appeal to the competent court of the first instance, which must rule on the matter in a picture urgent. The bill did not refer to the Administrative Judicial Court directly, which is the authority to hear the appeal concerning the right to protest. However, as regards the law organizing protest in the Kurdistan Region 11 of 2010,[23] it specified that the right to object to the decision to reject the rally before the District Court of Appeal within three days from the date of notification and that the court will issue a judgment in the appeal within 48 hours and that it is a final decision. From the above, Iraq's administrative judiciary remained stuck in legislative texts that restrict its performance in protecting peaceful protest.

The Role of the Constitutional Judiciary in Protecting the Freedom of Peaceful Protest

The duty of monitoring the constitutionality of laws is either the judiciary or a political body. So, the constitutional tribunal plays an essential role in protecting peaceful protests by monitoring the regulations issued by the legislative branch governing the right to demonstrate peacefully.

The constitutional judiciary has a role to play in preventing the legislative branch from overriding the constitution provisions; because of this oversight, by abolishing or refraining from implementing it, the courts may be disqualified any legislation that violates the constitutional conditions relevant to peaceful protest.

It is remembered that, in many countries of the world, the constitutional judiciary did not apply to the right of a peaceful protest in its decisions, but the Spanish court touched on this in the *Amparo*[24] process implemented in Spain, where the Spanish constitutional judge expressed his opinion on his candid protest by Resolution No 86/43 on April 15 1986, when it was found that the issues discussed by the Supreme Court in terms of public safety and disrupting public order through the protests laid down in the old criminal law must be understood by means of the new constitutional provisions; these ancient texts, therefore, do not apply to them, just as the Spanish judiciary confirmed its above-mentioned opinion in another ruling on March 3 1990, in which it referred to the penal provisions placed on the protesters as being arbitrary, even if its purpose is

to protect another constitutional right laid down in Article 19 of the Constitution for the safety of transport, where the protesters did not pose a threat to people and properties, the Spanish judge sought to defend the right to peaceful protest and made it one of the rights that deserve constitutional protection unless it did not violate other constitutional rights.

In France, it prohibits courts from interfering with the protection of laws relating to the right to protest, such as Article 10 of Law No. 16 of August 24, 1790, and Article 6 of the 1789 Declaration of Rights and People[25].

In Article 175, the Egyptian Constitution of 2012 referred to the Supreme Constitutional Court's authority to adjudicate the constitutionality of laws and regulations and is also the court with authority to protect the right to demonstrate in the area of the Egyptian constitutional judiciary[26]. Although the Supreme Constitutional Court is old in its inception, no provision includes the right to display.

Nonetheless, this right is a means of freedom and expression of opinion. The court referred to freedom of assembly, one of the freedoms stipulated in Articles 54 55 of the constitution. This court also maintained the connection between freedom of assembly, freedom of expression, and peaceful protest, which united these rights because these rights overlapped with freedom of expression. They did not result in a mere gathering of individuals but rather a framework that incorporated them and stated their ideas and attitudes.

Regarding the supervision of the constitutional judiciary in Iraq, the Federal Supreme Court is responsible for safeguarding the right to peaceful protest. The court was created by Law No. 30 of 2005[27] referred to in Article 93 of the Iraqi Constitution 2005.[27] Throughout this regard, the debate arises on the constitutionality of Coalition Provisional Authority (CPA) Order 19 of 2003, which governs the freedom to assembly and contains several limitations that prohibit the space to the crowd, noting that the matter mentioned above was incompatible with Iraq's commitments on human rights issues. However, order 19 does issue before the Iraqi constitution of 2005, which declared the right to peaceful protest in Iraq constitutional. The Legislative Authority's reluctance to release draft legislation on peaceful protest until today affects the use of this right. The Iraqi Council of Representatives must pass the Law on Peaceful Protest to contribute to political and cultural awareness growth. But, on the contrary, it's meant to resolve the inequalities and imbalances that affect the state's public authority.

The Position of International Law on Freedom of Peaceful Protest

Most authors of common law think that general rights come from Western Europe; they see this as being closely linked to common law countries. The right to peaceful assembly, for example, was recognized in the British Bill of Rights 1689, expressed in the United States Constitution First Amendment, and included in other post-World War II constitutions such as the Constitution of Japan of 1947. Nevertheless, the right also originated in European countries of civil law. It is worth noting that, for example, the Japanese Meiji Era 1868-89 created a charter that was identical to the British Magna Carta to assume importance in Japan; this Japanese Charter recognized in a primitive form a right akin to the freedom of assembly.[28]

Several international treaties contain specific conceptions of the right to demonstrate, such as the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms and the 1966 International Covenant on Civil and Political Rights, which stated that states must respect freedom of opinion and information, which stipulates that:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or public order (ordre public), or public health or morals."

Accordingly, international laws affirm peoples' right to freedom of opinion because it was based on this right and considered a public order under international human rights law. One of the laws by which it is not acceptable to violate it is a general rule; therefore, the banning of protests constitutes a significant infringement of the rules of these laws.

The Universal Declaration of Human Rights, issued in 1948, also recognized the right to demonstrate in Article 19 thereof, which stipulates that:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The right to peaceful protest recognize in all international agreements as a sign of respect for human rights in its manifestation, according to Article 21 of the International Covenant on Civil and Political Rights. As the most important manifestation of appropriate policy exercise, this article stipulates that:

"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

International law also imposed its protection for every human being as stated in Article 3 of The Universal Declaration of Human Rights "Everyone has the right to life, liberty, and security of person."

The Inter-American Commission on Human Rights (IACHR) thinks social protesting should not be subject to state authorization. Legal conditions for the prohibition or limitation of a meeting or protest, such as the necessity of prior approval. This matter is incompatible with freedom of assembly and speech in the inter-American system[29].

The United Nations (UN) Special Rapporteur on the rights to freedom of peaceful assembly and association has been emphatic in stating that he believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others[30]. At the same time, the existence of mechanisms requiring demonstrators to notify the authorities in advance of the place, date, and time of the protest is only compatible with Article 13 of the ACHR when States require it to be able to take measures to protect demonstrators and thus facilitate social protest[31].

In 2010-2014, the UN Human Rights Council (HRC) adopted several resolutions expressly dealing with the defense of human rights in the context of peaceful protests. In addition, the FOAA Special Rapporteur showed in their reports; these have played an essential role in underlining the parts of States in protecting the human rights of protesters and laid down grounds for further guidance on how this safeguard has been operating[32].

Article 7 of the Rome Statute of the International Criminal Court stipulates that 'For this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder;'

About the abuses by the Iraqi government against the peaceful protesters by using excessive force to break up protests such as deliberate killings, these activities will live up to the ranks of

international crimes requiring a trial. However, Iraq has not yet ratified the Rome Statute. So, the Iraqi government must complete the procedures for joining the International Criminal Court as soon as possible, given the benefits of doing so in the country's best interests, to prosecute perpetrators of crimes against the Iraqi people, and apply the rule of law to all, rulers and governed.

Also, Article 27 stipulates that "1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative, or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence. 2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the court from exercising its jurisdiction over such a person.

Article 28 of the Basic Law also provides for the responsibility of commanders and other superiors "In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court: (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces. The crimes within the court's jurisdiction shall not be subject to any statute of limitations according to article 29. Hence, criminal liability exists and remains in effect due to these actions.

Furthermore, the use of less-lethal weapons to monitor crowds and protesters must comply with international provisions on the use of force on human rights, including the principles of precaution, necessity, and proportionality. Because of the potential of death or severe damage from impact trauma, it is illegal to discharge tear gas canisters directly on people to separate them, particularly on the head and face. Therefore, less-lethal force should be used against the demonstrators by Law Enforcement Officials. The government shall investigate all deaths caused by its use of force during protests.

The Position of Iraqi Law on Freedom of Peaceful Protest

In Iraq, freedom of protest regulate, and it's mentioned in successive constitutional documents. Iraqi Constitution 1970, for example; Article 26 stipulates that "The constitution guarantees freedom of opinion, publishing, assembly, peaceful protest and the establishment of political parties, unions and associations in compliance with the purposes of the constitution and within the limits of the law and the operation of the State to provide the necessary grounds for the exercise of those freedoms ..." because this constitutional provision was stalled during the era of the previous regime. The matter was limited to periodic protests organized by the ruling party to rally support for the social and regional issues it embraced. Even the right to demonstrate was a crime under Iraqi Penal Code No. (111) of 1969.

As mentioned in Article 220 of Iraqi Penal Code No. (111) of 1969, it is an offense for five people to gather in a public place. Suppose the authorities give an order for dispersal and non-compliance. In that case, the law punishes imprisonment for no more than one year and a fine for one of them. Article 221 also penalized imprisonment and a fine for anyone calling for assembly in a public place.

Two constitutional texts were issued following the political shift in Iraq in 2003; the first is the Transitional Administration Law 2004, which has a very exact phrase allowing Iraqi citizens to protest freely, Article 13/E "Each Iraqi has the right to demonstrate and strike peaceably under the law."

So, the constitutional legislature has taken a significant move forward, recognizing protest as a right and not merely a freedom. It is an interest secured by law and the constitution to be attached to the people, their expectations, and the future. This constitutional provision followed

the organization of the right to demonstrate according to Coalition Authority Order No. 19 of 2003 entitled Right of Assembly, which is still in effect today and issued by the Bremer-led Coalition Provisional Authority. Section 1 referred that the Iraqi Penal Code's ban on freedom of assembly is incompatible with Iraq's human rights commitments and was an instrument of repression under the former regime of the Iraqi Ba'ath Party. Also, section 3 mentioned that it is unlawful for any individual, group, or organization to carry out or participate in any march, assembly, meeting, or gathering on roads, public roads, or public places in more than one area or location in any municipality on any given day.

Unless this activity is carried out under authorization from the Iraqi government represented by the heads of the administrative units and the matter has been subject to strict conditions such as limited numbers, upon the determination of an Approving Authority, will not unreasonably obstruct pedestrian or vehicular traffic. In addition, it is unlawful for any march, assembly, meeting, or gathering held on roadways, public thoroughfares, or public places to continue for longer than four hours, any CPA or Coalition Force facility. Also, it is unlawful for any gathering or assembly during peak traffic periods unless authorized by an Approving Authority for the area in which the march, group, meeting or conference is to be held, from 7:30-9 a.m. and from 6:30 to 4 p.m., Saturday through Thursday except for national holidays. Such limitations are regarded as a violation of the right to demonstrate and assemble, so the Iraqi parliament must interfere in canceling Order No. 19 because it violates the most basic human rights standards. Still, it is noted that the order has been addressed with some good points, including the right to demonstrate and cancel articles 220 and 221 of the Iraqi Penal Code.

Order 19, issued by -the coalition authority- was drafted in English before being translated into Arabic with ambiguous meaning, particularly in articles relating to the penal provisions. As a result, these articles are incomprehensible, giving the judiciary broad discretionary power.

In this case, the legislative authority represented by the Iraqi parliament had to expedite the implementation of a law governing the right to peaceful assembly and demonstration, which included lifting all restrictions on the exercise of that right and allowing protesters to express their legitimate views and desires without restraint.

In 2005, Iraq issued its second constitutional document, the Constitution of the Republic of Iraq, which refers to the freedom to demonstrate in Article 38/C thereof, staples that: "Freedom of assembly and peaceful protest, and this shall be regulated by law." In 2014, the Iraqi government passed a draft law titled "Law on Freedom of Expression, Assembly, and Protest," which had its first reading in the Council of Representatives in June 2014. It contains "five chapters and 17 articles," with the first chapter containing "definitions and objectives," and Article 2 concerning the purposes of the law's objectives and the bodies responsible for organizing what does mentioned in it. Moreover, in its final wording, this draft is contrary to the provisions of the constitution. Therefore, it is considered a violation of rights and freedoms, and in it kills the essence of space, as this bill needs to be reformulated in the light of international law and the Iraqi constitution. There are a few comments on this project, namely:

1. According to the first article of the project, freedom of speech is a person's right to express their ideas through speaking, publishing, photographing, or other means, and proceeding in this legislative direction is risky. Moreover, the project only guarantees citizens' rights; what about residents' rights, whether Arabs or foreigners, or the rights of legal entities such as non-governmental organizations (NGOs)? (civil society organizations).

2. Article 10 reiterated its definition of the right to protest that it had previously referred to in the first Paragraph. This paragraph also stated that it is illegal to conduct or participate in any protest before 7 a.m. or after 10 p.m. unless authorized by the governor of the Administrative Unit; at least five days prior and including the topic of the objection, the purpose of the rally, the time, place of its launch, names and addresses of the organizers.

According to these complicated procedures, it would affect the freedom to protest, as the constitution has not limited freedoms unless it violates public order and public morality, and the

government with its bill wants to associate space with a decision from the Head of the Administrative Unit; which is an integral part of the Federal Government and implements its directions under Article 31 of the Provincial Governorate Law No. 21 of 2008, which stipulates that it falls within the powers of the governor to implement the Federal Government's general policy within the boundaries of the governorate. Why are these timings then? Why get a permit? What if the protest was against the governor himself? Will he grant her permission to exit? And why five days ago? Does the government mean street rage reduction during this time and false promises of fake change and temporary solutions made?

3. Article 7/Third of the bill included that if the head of the administrative unit rejects the protest request, the organizing committee can appeal the rejection decision before the competent court of the first instance, in this case. Also, this matter shows there is ignorance of the rules because the Administrative Court is a civil court, which is the competent authority to accept administrative decisions in Iraq, not the Court of First Instance.

Furthermore, the appeal will take a long time, so what good is a month or two of protesting the lack of services at the time the court is deciding on the case, and the court decides to dismiss it owing to the failure of the lawsuit's subject and the removal of the interest from it.

4. The bill also included the cancelation of Coalition Authority Order No. 19. However, the lawmaker did not mention the retention or cancelation of articles 220-221 of the Penal Code, which means that it enforce again. All protesters may be prosecuted under those articles which limit their freedom; instead, Article 14 stipulates specifically in the draft that the provisions of the Penal Code apply in all matters not specified in it.

Consequently, the draft bill on freedom of expression, assembly, and protest violated the constitutional provisions since Article 2 prohibited enacting any law that contradicts the rights and freedoms stipulated in the constitution.

In addition, Article 46 of the Constitution points out the restriction or limitation of any of the rights or freedoms laid down in this constitution shall be forbidden, except by law, and insofar as that limitation or condition does not violate the essence of the right or freedom. While the draft, as mentioned earlier, explicitly contradicts the freedom of expression and protest, Article 38 did not limit the right to demonstrate except by not countering public order and morality and did not set any unreasonable requirements as the government did with the draft law under research.

Also, the draft bill was significantly influenced by Order 19, which organized the right to peaceful assembly. There is a distinction between protest and peaceful assembly; the lawmaker remembered this while drafting a law. Also, the draft bill was significantly influenced by Order 19, which organized the right to peaceful assembly. There is a distinction between protest and peaceful assembly; the lawmaker remembered this while drafting a law. It noted that the CPA's orders were issued without consultation with Iraqis and did not represent Iraqi voices and how the law can suppress famous voices rather than reflect and support them.

In addition, the Iraqi Constitution in the Arabic language and its translation into the English language has been a discrepancy in a term as it has adopted the word protest. It has been translated it has adopted the word protest. Therefore, there is a disparity between the two worlds; the competent authority must consider this when putting the constitution.

Therefore, the Iraqi parliament must rethink the draft bill and draw it up in the light of international conventions in a manner that does not contradict the provisions of the Iraqi constitution and guarantees the protesters 'right to express their opinions and ideas peacefully.

In addition, Enabling the freedom to demonstrate to everyone at all times and places, the organizers shall also inform the security forces to provide the necessary protection for the protest and to take the required precautions to prevent the march from having an impact on the movement of other people, vehicles and to prevent the state institutions from being disrupted in their duties. Furthermore, it is necessary to stipulate that protests should be free from acts of violence, sabotage of public or private funds, or raising slogans that raise ethnic or other disputes, and, in

the event of a conflict, the security authorities should contact the organizers directly to end this by applying peaceful interference and the civil means.

There is a need to include a text that obliges the federal government's authorities, its different ministries, regional and governorate governments to form negotiating teams with full speed, meet with protest members, obtain their demands, and work hard to satisfy them.

Emphasizing the presence of parliament members in all governorates, receiving the requests of the protestors, and bringing it to the parliamentary presidency as quickly as feasible. In addition, explicitly stating that if acts of aggression or vandalism occur during or as a result of the demonstration, the appropriate authorities will attempt to identify the culprits and hold them responsible.[33]

It is important to stipulate that if the security services breach peaceful means of dispersing the protesters, they justify keeping their leaders accountable to the law. Also, the statute explicitly stipulates that workers of state agencies have the right to protest peacefully. However, this does not result in a complete cessation of work in the institution that compromises the life and welfare of at-risk persons and society. For example, suppose the Freedom of Expression, Meeting, and Peaceful protest be published in its current form. In that case, the Federal Court will assume its position in this field by abolishing it to preserve the freedom of individuals to demonstrate peace.

October protests in Iraq

On October 1, 2019, Iraqi protest erupted in protest against the miserable conditions in the country as a result of the spread of corruption, lack of infrastructure, the space of poverty, and a large number of unemployed people, as protests began via social media calling for Iraqis to take to the streets and peaceful protest in Baghdad and all the provinces.

The protests were characterized by peaceful and spontaneous without intervention from any political or religious group or party, and chants and slogans rolled up in the streets to express their demands in the form of rallies denouncing their restrictions on their rights, freedoms, and livelihoods; due to the unemployment, severe poverty, rising education and the country's lack of resources and privileges.

Where Ihsan al-Shammari, head of the Center for Political Thought, indicates in an interview with Al-Jazeera Net on November 9, 2019, that the protests in Iraq did not come from a vacuum, not even from recent events, but rather the accumulations of a decade and a half of the 2003 American invasion of Iraq left by successive governments, also, the economic factor is one of the most prominent reasons for this rebellion, given that the country is living in low living standards due to high unemployment, the shortage of public services and the degradation of infrastructure; in addition to the political errors of ongoing quotas, administrative and financial corruption, there is also a lack of political engagement in the democratic sphere, because there are no new faces in the political sphere, the situation was close to the rotation of the same characters[34]. The first wave of protest protests started on the first day of last October in Baghdad's Tahrir Square, where more than a thousand people took part, and the demonstrations spread the whole of Iraq on the second day. Some attempted to dismantle protests by escalating the disorder. In contrast, the police tried to disperse the crowd by deploying water hoses, tear gas, and rubber bullets, followed by lead.

These activities violate current international norms in this area and established guidelines-particularly the UN Basic Principles on the Use of Force and Weapons by Law Enforcement Officers[35]. To suppress these protests, riot police fired live bullets at the protesters[36] in each of Baghdad and the cities of Nasiriyah and Najaf, south of Baghdad, and the authorities placed a curfew in all the governorates where the protests were held, social networking sites have been blocked and Internet access across the country[37], except the Kurdistan Region, was cut off to mask the protest and violence against the crowds.

Protesters defied the decision to ban roaming, and protests escalated, leading to violent confrontations between police and protesters. The security forces used live ammunition and

machine guns installed on military vehicles and hunting rifles against protesters. As a result of the security escalation, more than 110 people were killed, including hundreds of dead youths by snipers posted on top of buildings in both Baghdad and some southern Iraqi cities. In addition, the number of attacks on journalists during the reporting of protests has risen, including verbal and physical assaults, confiscation or destruction of equipment, as well as killings around the world. Such cases have been reported in Iraq, Angola, Belarus, Egypt, Georgia, Kazakhstan, Libya, Malawi, Malaysia, Maldives, Sri Lanka, Sudan, Syrian Arab Republic, Tunisia, Yemen, Ukraine, and Brazil; despite being separated from protesters, many of these journalists were intentionally targeted.

Women's participation in the Tishreen protest has also diversified by coordinating financial contributions, first aid, charitable drives for cleaning up and cooking food for the protesters, faced with the dangers of repression, women's position in the rebellion has emerged, many of them being killed, kidnapped and injured.

Despite current international norms, especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), more guidance is needed on what steps are required to ensure women's security in protests^[38].

On October 8, the state authorities were given two weeks to respond to the protesters' demands. The crowds proceeded to arrive in safe places, assemble and assist the protesters from eating clothes ready to intensify the protests if their demands were not met, which are concentrated in the resignation of Mr. Adel Abdul Mahdi's government, the holding of new elections, and reform in the electoral law, and trial of all those responsible for the violence, improving the economic and social conditions of the country.

Although the Iraqi government set up a committee to investigate the killing of the protesters, they did not stop on October 25, due to the expiry of the deadline given to the government without meeting any of the demands of the protesters, as the movements began in Nasiriyah and Diwaniyah and hundreds of protesters took to the streets of Baghdad, the next day, the protesters gathered near the Green Zone in Baghdad, during which the security forces fired tear gas, killing two civilians and the protesters returned to the grounds of protests.

Below is a statistic of the number of people who died, were injured, detained in the protests' governorates. Table 1 shows statistics for 1 October-2 November, while Table 2 shows statistics between 3 November-15 December 2019.

Table 1

Statistics Covering the Period from October 1 to November 2, 2019^[39]

The period between October 26 and November 2				The period between October 1 and October 6				Governorate
Number of Released	Number of detainees	The death toll	Number of injured	Number of Released	Number of detainees	The death toll	Number of injured	
-	-	60	6525	551	554	111	3721	Baghdad
-	-	-	-	13	13	-	1	Diyala
-	-	12	119	131	131	9	300	Al-Qadisiyah
-	-	-	-	115	115	5	215	Al-Najaf
-	-	16	127	11	11	6	106	Maysan
-	-	-	10	115	115	4	284	Wasit
38	146	15	210	152	154	21	755	Dhi Qar
52	52	7	83	105	105	1	123	Babylon
167	169	7	421	72	72	-	7	Basra
140	140	1	541	11	11	-	-	Karbala
399	513	119	8359	1276	1281	157	5512	Total

Table 2

Statistics covering the period from November 3 to November 15, 2019[39]

The period between November 15 and December 15				The period between November 3 and November 15				Governorate
Number of Released	Number of detainees	The death toll	Number of injured	Number of Released	Number of detainees	The death toll	Number of injured	
12	449	98	611	20	79	35	7710	Baghdad
-	-	-	-	-	-	-	-	Diyala
-	1	2	2	-	-	-	-	Al-Qadisiyah
-	7	35	181	-	-	-	-	Al-Najaf
-	-	1	1	-	-	2	-	Maysan
-	-	-	-	-	-	-	-	Wasit
-	-	-	1	4	6	-	-	Muthanna
-	1	55	484	225	225	9	272	Dhi Qar
-	-	-	26	-	-	-	-	Babylon
-	2	11	135	21	24	15	516	Basra
-	8	6	91	148	177	6	438	Karbala
2	3	-	-	-	-	-	-	Anbar
-	1	-	-	-	-	-	-	Salahaddin
14	472	208	1523	418	511	67	8936	Total

According to the statistics above, armed groups' systematic use of lethal force against protesters in Iraqi governorates is a grave concern. However, the government bears the most significant responsibility for acts of violence against civilians by security forces and other armed elements acting with the permission or approval of the government; all authorities must be kept responsible at all levels for using deadly force against protesters.

Emphasizing the immediate investigation of all murders, kidnappings, and torture, maintaining impartiality and freedom from any influence of the ruling parties in the study, freeing the protesters accused of participating only in the protests; as long as no criminal crime has been proved against them. In addition, it emphasizes the need to reformulate the draft law on freedom of expression, assembly, and peaceful protests to respect the rights of protesters and restrict the use of excessive force against them.

United Nations Assistance Mission for Iraq (UNAMI) states that it is never lawful to shoot indiscriminately into a crowd, so the security men are forbidden from using potentially lethal force to protect property. The use of potentially deadly force, including firearms, is allowed only by law enforcement officers in self-defense or defense of others, as an extreme last resort action when there is an immediate threat to life or severe injury, by the principles of legality, necessity, and proportionality[40]. Where the use of force does not follow these principles and causes a fatality, death amounts to an arbitrary killing, and the state must investigate and prosecute. Moreover, the state must protect persons from reasonably foreseen acts of unlawful killing by criminals and organized crime or paramilitary organizations, including armed or terrorist groups[41].

The UN Secretary-General's Special Representative in Iraq has condemned the attacks on protesters in Tahrir Square and al-Khilani in central Baghdad. She also added that killing unarmed protesters by armed forces is a barbaric act against the Iraqi people and must immediately identify the militants and bring them to justice[42]. The United Nations Secretary-General, António Guterres, also pointed out that during the protests in Iraq, there were significant human rights abuses by the security forces, and they must be expressly condemned[43]. However, the demonstrations continue since the government has made no significant reforms other than Prime

Minister Adel Abdul Mahdi's resignation on November 30, 2019, further deaths and kidnappings of protestors, and Mr. Muhammad Allawi's nomination as next government's leader by political parties.[44] Simultaneously, protests continued in Iraqi cities until their legal demands were granted. Furthermore, Mr. Allawi apologized for creating a new government due to the Council of Representatives' failure to reach the quorum necessary to give his administration confidence.[45]

Conclusion

The Coalition Authority Order 19 of 2004, which regulated peaceful protest freedom, contained several limitations restricting the right to demonstrate openly. Also, the CPA's orders were issued without consultation with Iraqis and did not represent Iraqi voices, also how the law can be used to suppress famous voices rather than reflect and support them. The draft law was greatly affected by Order 19, which organizes the right to peaceful assembly, and there is a difference between protest and peaceful assembly. With a note that this order was given before the Iraqi Constitution of 2005, which recognizes the constitutionality of peaceful protest right in Iraq, this order has failed to define the body responsible for considering the appeal against protest decisions. The Iraqi Constitution is in Arabic, and there is a gap in the word protest as it is translated into English. The competent authority had to take this into account when putting the constitution.

According to the draft bill on freedom of expression, assembly and peaceful protest have been assigned to the Court of First Instance to consider challenging the administrative decisions relating to the protests, and this leads to the depriving of the Administrative Court to hear these appeals, as it is qualified to do it, in its present context, the draft bill above is contradictory to the provisions of the Iraqi Constitution of 2005, which is an overt infringement of fundamental rights and freedoms.

Also, several Iraqi governorates witnessed the October protest due to deteriorating economic, political, and social conditions increasing unemployment. In addition to security forces and armed groups using lethal force against protesters, increasing the number of dead and wounded and the inability to hold perpetrators and those responsible for such unlawful acts accountable due to the lack of a bill that protects protesters' rights and reduces the use of violence and excessive force against protesters who were demanding their most basic constitutional rights, international convents have expressed concern about the lack of a bill that protects protesters' rights and reduces the use of violence and excessive.

Concerning the repression of peaceful protesters by the Iraqi government by using disproportionate force to break up protests such as deliberate killings, these acts will be up to the ranks of international crimes requiring a trial. Furthermore, the high number of deaths and severe injuries from tear gas canisters suggests that security personnel may have shot tear gas canisters directly into protesters, or at least at an angle capable of producing substantial traumatic consequences, randomly and irresponsibly.

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