

The status of the right to privacy in the Iraqi legal system: challenges and solutions

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Abstract:

This research aims to clarify the concept of the right to privacy and its place within the Iraqi legal system, outlining the forms of protection enshrined in the constitution and applicable legislation. It also seeks to identify the most prominent legislative, judicial, and technical challenges facing the guarantee of this right, as well as to offer solutions and proposals that contribute to developing the legal framework governing it. The research's significance lies in the connection between the right to privacy and the protection of human dignity and fundamental freedoms. Furthermore, it represents a right whose importance has increased with the proliferation of modern communication technologies and the expansion of personal data collection and processing. This necessitates the provision of advanced legal protection that achieves a balance between individual rights and the requirements of security and the public interest. The research employs a descriptive-analytical approach, examining relevant Iraqi constitutional and legal texts and analyzing their effectiveness in protecting privacy. It presents the legal concepts and challenges associated with this right and utilizes a critical methodology to identify shortcomings and propose solutions. The research reached several conclusions, most notably that the 2005 Iraqi Constitution provides a significant foundation for protecting the right to privacy. However, legislative protections still require development due to the absence of a comprehensive law for the protection of personal data. Furthermore, digital advancements present a major challenge requiring legislative updates and enhanced judicial and institutional oversight. The research also emphasized the need for citizen engagement and increased legal and digital awareness to strengthen the effectiveness of privacy protection within the Iraqi legal system.

Keywords: Right, Privacy, Challenges, Solutions, Iraqi Law.

1. Introduction

Privacy is a fundamental human right, representing one of the most important guarantees of human dignity and individual freedom. In the modern era, it has become a right enjoying broad constitutional and legal protection at both the national and international levels. The importance of this right has increased with the rapid development of communication technologies, information technology, and artificial intelligence, and the resulting ease of collecting, processing, and exchanging personal data. This has created unprecedented challenges for legal systems in providing effective protection for individuals against violations of their privacy. The Iraqi legal system is among those that have given attention to the right to privacy through the constitution and some criminal and civil legislation. However, this regulation still faces numerous challenges stemming from technological and legislative developments, as well as the absence of a comprehensive law for the protection of personal data. This necessitates a review of the existing legal framework to align it with international standards and modern digital developments.

The research problem lies in questioning the adequacy of the Iraqi legal system in protecting the right to privacy in light of modern technological developments, and whether the existing constitutional and legislative texts provide effective legal guarantees to address the increasing violations of this right. It also seeks to identify the most prominent legislative and practical challenges hindering the achievement of comprehensive privacy protection, and to explore legal and institutional solutions capable of developing the Iraqi legislative system in a way that achieves a balance between protecting privacy and the requirements of public security and the public interest.

The importance of this research is further highlighted by the link between the right to privacy and the protection of human rights and fundamental freedoms, particularly in light of the digital transformation witnessed by state and societal institutions and the adoption of modern technologies in various fields. The study also gains significance from the need to assess the current state of legal protection provided by the Iraqi system and to reveal legislative and regulatory shortcomings, thereby contributing to supporting the

Iraqi legislature's efforts to create a more comprehensive and effective legal framework for the protection of personal data.

This research aims to clarify the concept of the right to privacy and its constitutional and legal basis within the Iraqi system. It analyzes the protections afforded to this right by Iraqi legislation, identifies the most significant challenges to its implementation in the digital environment, and assesses the adequacy of the current legislative framework in addressing these challenges. Ultimately, it proposes legislative and institutional solutions and suggestions to enhance the legal protection of privacy and achieve a balance between respecting individual rights and the requirements of security and the public interest.

The research employs a descriptive-analytical approach, examining and analyzing Iraqi constitutional and legislative texts regulating the right to privacy. It assesses their adequacy in achieving the desired legal protection, presents jurisprudential and legal concepts related to privacy and the technological developments affecting it, evaluates legislative and practical shortcomings, and proposes a set of solutions and suggestions that contribute to developing the Iraqi legal system in line with technological advancements and international standards for protecting the right to privacy.

Section One: The Right to Privacy in Iraqi Laws

The right to privacy is a fundamental right closely linked to human dignity and individual freedom. This right has gained increasing recognition in contemporary legal systems, whether in constitutions, legislation, or judicial precedents.

First Requirement: The Status of the Right to Privacy After 2003

Ruling regimes have used laws and security apparatuses in the areas of freedoms and private life, effectively restricting these rights. Furthermore, constitutional texts have witnessed relative development in protecting individual freedoms and private life, particularly in interim constitutions following coups or revolutions. There have been attempts to modernize constitutional laws and expand the scope of rights and freedoms in some constitutions, such as the draft constitution, but these have remained mere written concepts without practical application.

First: The 2004 State Administration Law: Through this constitution, the American occupation was handed over to the Iraqi Governing Council. This meant that Iraq became sovereign and independent, and during this period, Jalal Talabani was president, while the occupying power was represented by the civilian administrator, Paul Bremer. This handover followed an agreement between the two parties on November 15, 2003. The agreement consisted of five articles, the first of which stipulated that the Iraqi State Administration Law for the Transitional Period would be drafted by the Governing Council in close consultation with the Coalition Provisional Authority.

The 2004 State Administration Law addressed individual freedoms: The 2004 Iraqi State Administration Law for the Transitional Period (TAL) guaranteed fundamental freedoms for citizens. It emphasized human rights, including freedom of expression, freedom of the press, and freedom of assembly and peaceful demonstration. Article 12 of the law affirmed the protection of freedom of belief, worship, and the practice of religious rites.

In the realm of private life, the 2004 State Administration Law addressed this issue. Article 15 of the law emphasized the protection of the sanctity of homes and prohibited their search or entry except by judicial order.

The law stipulated the protection of individual privacy and prohibited unjustified interference in personal lives. This constitution comprised (62) articles contained within (9) chapters, preceded by a simple preamble. Chapter Two (Articles 10-23) included legal provisions pertaining to (fundamental rights). Second: The 2005 Constitution: The 2005 constitution was written under exceptional circumstances and in a tense atmosphere, as the American occupation exerted pressure on certain entities to include clauses that served the interests of the United States in Iraq and the region. This was achieved through individuals with ties to the American occupation. Some components of the Iraqi people participated in its drafting only to a limited extent, and it included

The second requirement: Protection in Iraqi law

The constitution of any country is the supreme legal document that establishes the general principles of rights and freedoms and defines the relationship between the state and the citizen. Therefore, including the right to privacy within constitutional texts is an indication of its official recognition as a fundamental right that may only be infringed upon in the narrowest possible circumstances and according to strict legal guarantees.

Although Iraq does not yet have a specific law for the protection of personal data, the amended Penal Code No. 111 of 1969, and other laws, contain articles that form a partial basis for privacy protection, including:

Article (438): Anyone who opens a letter or document addressed to another person, eavesdrops, or takes a photograph or captures private information without permission shall be punished with imprisonment and a fine.

Article (439): A penalty shall be imposed on anyone who discloses private secrets that they learned by virtue of their profession or job.

Article (243): The publication of matters that may harm the reputation of individuals or violate their privacy is criminalized. The Code of Criminal Procedure No. 23 of 1971 stipulates that individuals and residences may only be searched with a judicial warrant, thus providing legal protection for the sanctity of the home and private environment.

The draft Communications and Information Technology Law No. 65 of 2022 includes provisions for protecting the privacy of communications and data, but it has been criticized for its ambiguity and for potentially allowing for restrictions on freedoms.

The Iraqi legislative reality: Despite the existence of these provisions, there is a lack of a comprehensive and separate law for the protection of personal data and digital privacy. This makes it imperative for Iraq to update its legislation in light of current digital developments.

There must be a qualitative difference between human rights and public freedoms; however, many consider them to be synonymous and interchangeable. Human rights are inherent to human beings because they are natural rights that persist even if not recognized, even if violated by the authorities. Public freedoms, on the other hand, are always restricted by the prevailing social, political, and economic system in each country, and they cannot be conceived of except within a specific legal framework. Therefore, the 2005 Constitution enumerated, defined, and sometimes restricted freedoms in a separate chapter. Among the most important of these are the following:

- Personal and Physical Freedoms: The 2005 Iraqi Constitution affirmed personal and physical freedoms by stipulating: (a) Human freedom and dignity are inviolable; (b) No one may be arrested or interrogated except by judicial order; (c) All forms of psychological and physical torture and inhumane treatment are prohibited, and any confession obtained by coercion, threat, or torture is inadmissible. The victim has the right to claim compensation for material and moral damages suffered, in accordance with the law.) It also stipulated that: (The state guarantees the protection of the individual from intellectual, political, and religious coercion). Furthermore, it stipulated that: (Forced labor, slavery, the slave trade, trafficking in women and children, and sex trafficking are prohibited.)

Section Two: Challenges to the Right to Privacy in the Iraqi System

The right to privacy in the Iraqi legal system faces a number of legislative, technical, and practical challenges. These include the rapid development of digital communication methods and the expanding scope of personal data collection and processing, coupled with limited specialized legal regulation and weak oversight safeguards. This raises questions about the adequacy of legal protection in achieving a balance between the requirements of public security and the preservation of individual rights and freedoms.

First Requirement: Challenges to Guaranteeing Individual Freedoms and the Private Life of Citizens in Supreme Court Decisions

First: Balancing Privacy and National Security: With increasing security threats, the Supreme Court faces the challenge of balancing individuals' privacy rights with the requirements of national security. Security issues may necessitate imposing certain restrictions on individual freedoms, such as electronic surveillance or home searches, which may lead to debate regarding the limits of these rights.

Second: Dealing with Modern Technology: Rapid technological development increases the complexity of protecting individual freedoms, especially in cyberspace. The Supreme Court faces challenges in dealing with electronic privacy cases and cybercrimes, which may require continuous updates to laws and judicial procedures to ensure the protection of personal data. Third: Clashes with Cultural and Religious Values: Some individual rights and freedoms may clash with the cultural and religious values of Iraqi society. The Supreme Court faces the challenge of striking a balance between applying international human rights and preserving local traditions and values.

Fourth: Issues of Migrant Workers and Residents' Rights: Iraq hosts a large number of migrant

workers, which increases the judicial challenges in protecting their rights and privacy. The Supreme Court may encounter cases related to violations of the rights of foreign workers, requiring a precise interpretation of the laws that protect individual rights regardless of nationality.

Fifth: Challenges to Government Laws and Regulations: In some cases, government laws that may be perceived as violating individual freedoms are challenged. The Supreme Court must decide whether these laws are consistent with the Constitution or need amendment, posing a challenge in maintaining a balance between protecting individual rights and effectively enforcing the law. The Supreme Court works to ensure the protection of individual freedoms and the privacy of citizens by relying on the Constitution and local laws, such as data protection and cybercrime laws. However, the court faces significant challenges in balancing privacy protection with national security requirements, dealing with modern technology, and respecting cultural and religious values.

The second requirement: The nature of the restrictions placed on the principle of the right to privacy. Undoubtedly, emphasizing freedom and ensuring its respect and exercise does not, in any way, mean that it should be absolute and free from all restrictions or regulations. Absolute freedom does not exist within a society organized by the state, because its existence—assuming it were to occur—would mean the collapse of the state and the spread of chaos. The sphere of freedom is society, which necessitates imposing restrictions and conditions on its exercise to protect the freedoms of others and the public order of the community. In this regard, some jurists believe that freedom cannot exist without order, just as order has no value without freedom.

Therefore, some conclude that achieving a balance between public order and freedom comes through reconciling two things: First, acknowledging the necessity of authority and the need to support and strengthen it to the extent necessary to achieve collective security and peace.

Second, avoiding excessive support and strengthening of authority, lest it end up becoming an oppressive, tyrannical force that disregards sanctity and respects no one's rights. Therefore, it becomes necessary to recognize the principle of defining and limiting public authority to prevent it from becoming tyrannical and despotic.

However, regulating the exercise of freedom and placing restrictions on it does not mean infringing upon, violating, or wasting it. Rather, it means ensuring that the person exercising their freedom does not infringe upon the rights and freedoms of others, nor does it harm the public order of society. This regulation or restriction of freedom must be based on a law issued by an elected legislative authority. In light of the balance between public order and the necessity of protecting public freedoms, no other authority may impose restrictions on freedom unless it has a mandate to do so. Furthermore, this regulation and restriction must not amount to the complete confiscation of the right and freedom, and it must be within reasonable limits. Finally, it must be decided for the sake of the public interest and for compelling reasons and justifications that necessitate such a measure.

Accordingly, the nature of the restrictions placed on the principle of individual freedom can be examined from the following perspectives:

- First: Considering it as a tool for expressing the will of the people.

Unlawful exercise of the right to individual freedoms, under normal circumstances, may lead to some negative consequences within society. Governing authorities, through constitutional principles, strive to ensure that political goals and plans serve the majority, whether in normal or exceptional circumstances. Therefore, comparative law has established restrictions on the exercise of public and individual rights and freedoms in both situations. In normal circumstances, these restrictions stem from the primary powers vested in the state, as it is the entity that determines and guarantees rights, in order to ensure the security and stability of society. This led the jurist Dominique Rousseau to argue that constitutional oversight exists to establish a new constitutional relationship; it encompasses both the ruler and the ruled, by requiring state institutions to respect the rights of the governed.

Since these restrictions are necessary for the balance of society and the protection of public order, they generally consist of three elements: public security, public tranquility, and public safety.

Given that preserving public freedoms primarily serves these three elements; It is therefore necessary to establish a hierarchy of priorities in which some freedoms are relatively restricted in favor of other, more important freedoms. Protecting society requires preventing individuals or groups from reaching a point in exercising their fundamental freedoms that threatens this entity. However, an individual, while exercising their rights and freedoms, may clash with the freedoms of others. Therefore, it is incumbent upon the authority to establish restrictions to reconcile and harmonize freedom with public order. Thus, regulating

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and controlling public order plays a crucial role in protecting public rights and freedoms, provided that it does not infringe upon the guarantees provided by the constitution within the framework of constitutional protection of these rights and freedoms. The administration regulates and controls these freedoms for the public good, by following the means permitted by law, which are:

A- Regulations: These are the rules established by the competent administrative authority to maintain public order, public security, tranquility, and public health; These are restrictions imposed by this authority on individual freedoms, including penal sanctions for any violation. This is also known as the punitive system, considered the most suitable for the exercise of freedoms, as it allows human activity to flourish and develop, intervening only to prevent excesses that might result from exceeding the limits set by law.

The judiciary is granted the power to impose penalties in cases of abuse of guaranteed freedom, serving as a fundamental safeguard due to its integrity and independence, and the legal guarantees surrounding trials. Regulations must be as precise and consistent with the spirit of the constitution as possible, leaving no room for interpretation or ambiguity. B- Individual Administrative Decisions or Decisions of a Private Nature: These decisions are issued with the intention of applying them to a specific individual or group of individuals in particular cases. This makes them a means of maintaining public order, and is called the preventive system. It is another restriction aimed at preventing abuse, meaning it is a system of prior control over the exercise of freedoms. In other words, administrative authorities intervene under this system to permit or prohibit the exercise of freedoms on the basis of maintaining public order. This system takes the form of licensing, prohibition, or ordering. An example is licensing the prohibition of a meeting or demonstration, or the authority has the right to respond to, approve, or reject the practice of a specific activity. The powers of the administration vary according to the nature of the targeted activity; they are more restricted with regard to freedoms defined and embodied in the law, while its authority is broad with regard to undefined activities Such as marches, demonstrations, and the like; however, leaving administrative power without limits may lead to infringement on individual rights and freedoms. This is because administrative decisions oscillate between achieving the objectives and motivations of administrative action in maintaining public order, and the obligation to protect citizens' rights and freedoms. Therefore, the administration must adhere to the principle of legality on the one hand, and be subject to the judiciary, which is surrounded by guarantees and procedures that ensure the protection of public rights and freedoms on the other.

Secondly: Separation of the private sphere from society and government: Restrictions on the exercise of individual rights and freedoms in the case of separating the private sphere from society and government in exceptional circumstances are linked to the state of necessity, which a number of countries have adopted in their constitutions. Necessity means that the state, or one of its institutions, is exempt from respecting the constitution and applicable laws for reasons dictated by the supreme rights of the country, which find their expression in the Roman phrase: "The safety of the people is above the safety of the law."

Exceptional circumstances mean the existence of an internal or external threat to the existence, security, and independence of the state. Consequently, the state, represented by the administration, takes a series of measures commensurate with those exceptional circumstances. However, these measures must not disrupt the normal functioning of public authorities. This necessitates the state imposing certain restrictions on individuals' exercise of their freedoms, thereby transferring legislative power from the legislative branch to the executive branch, specifically the administration, to manage exceptional circumstances. These exceptional circumstances may even affect the jurisdiction of the judiciary and the principle of legality, as orders and decisions issued may exceed the law, and even the constitution. It is natural that administrative actions may conflict with legal norms in extraordinary situations. Public rights and freedoms often become victims of the state of necessity imposed by the need to maintain public order. This manifests itself in:

The expanded powers of the administrative authority responsible for public services.

The disregard for ordinary legal rules concerning powers, authorities, procedures, and the legality of actions taken by an authority deemed unqualified under normal circumstances.

The broad capacity of the administrative authority to decide on the application of measures restricting individual freedom, which are not within its purview, and to transform its violation of fundamental public freedoms into a mere routine administrative act. It is worth noting that most international conventions and constitutions have addressed exceptional circumstances and permitted the adoption of all measures to confront such situations, even at the expense of individual rights and freedoms. Comparative jurisprudence has raised several examples of exceptional circumstances, including states of emergency, sieges, and the

exceptional circumstances of war.

Third: The impossibility of formulating policies and legislation for these circumstances in the public sphere: The legal system in any country is fundamentally based on creating a balance between individual rights and freedoms on the one hand, and public rights on the other. This balance is achieved through the protection provided by the legal system to both. Public order necessitates restricting individual freedoms through policies of criminalization and punishment. This is achieved when social necessity dictates it, or more precisely, when the need to protect society as a public right arises.

The idea of a balance between public freedoms and the rights protected by law originates in the ideas that emerged in the nineteenth century as a reaction against the logical and abstract approach that had previously prevailed. These ideas played a significant role in shaping the concept of legally protected rights as a basis and justification for legal criminalization and punishment as a specific form of this criminalization. They emphasized that a legal rule does not arise from a vacuum, such that it could be said, "The rule created a legal or social situation that did not previously exist." Rather, a legal rule is established to resolve or regulate an existing conflict between contradictory social freedoms and rights. However, balance does not mean absolute equality between different rights. Rather, equality is achieved through the benefit that is realized for society. If the role played by two conflicting interests is the same or equal in achieving societal stability, then they are equal in terms of their worthiness of protection. For example, the role played by the right to criticize or freedom of expression, and the benefit that this right brings to society, which is manifested in ensuring public oversight of the performance of the administration and governmental institutions, is equal in value to the right to private life or the right to honor and reputation. This may necessitate the need for an equal balance between these two interests, such that the right to criticize and express opinions is limited by not infringing upon the right to private life, honor, or reputation, so that the balance is achieved equally. However, if the role of rights in achieving societal benefit varies, balance may be achieved by prioritizing these rights. For example, the right to self-defense derives its justification from the legislator's assessment that the victim's right to life is more important to society than the aggressor's right.

Fourth: Considering it a natural right separate from governmental powers: Individual freedom is based on the natural rights of humankind, but on the condition that these natural rights are separated from political authority and linked to the theory of the state of nature and the social contract. This is because what individuals have relinquished of their absolute individual freedom is merely a necessary component for the formation of the state, and what individuals have preserved of individual freedom is superior to the rights of the state because it predates them. The individual is the source of all rights, and the individuals who comprise political societies are responsible for their actions. They can perform these actions as long as they respect the rights of others. Since the purpose of political societies is to preserve the interests of individuals, these societies must respect these actions; otherwise, they would be exceeding the duty for which they were formed. Individual freedom has acquired particular importance in modern democratic systems, especially after the establishment of the principle of national sovereignty and the concentration of power in the hands of the majority, which can become tyrannical in legislative bodies. Therefore, the true guarantor of minorities must be the principle of individual liberties. These rights—including the various freedoms that protect the person, their property, beliefs, and ideas—guarantee the rights of citizens who are a minority, and their freedom to influence public opinion until they become the majority.

Individual rights can be traced back to two sources: civil equality and individual freedom. Civil equality originates from the social contract, which stipulates equality for all. However, 18th-century jurists based it on the principles of natural rights, positing its existence in the state of nature that preceded the emergence of civil societies. What they deduce from this is that every person was compelled to acknowledge the existence of a nature similar to their own in others, and that they were obligated to respect the dictates of natural law in others if they wished to be respected in return. Since this natural equality of people existed, civil society saw no alternative but to respect it. This did not mean equality in material things that could be acquired within society, but rather equality of rights. Individual freedom, then, means that a person exercises their natural rights without limitation other than that to which other members of society can enjoy the same rights. The law defines these limits. Civilization has given rise to applications of individual freedom, which can be divided into two categories:

- The first category pertains to personal material interests, and includes: individual freedom in its limited sense, manifested in the right to travel, the right to remain in or leave the country, the right not to be imprisoned or punished without legal justification, the protection of personal property from state infringement, the right not to trespass on one's residence except in cases stipulated by law, and the freedom of trade, work, and industry.

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The second section pertains to the individual's moral rights, namely: freedom of conscience and religious freedom. Freedom of conscience means that no one is forced to adopt a religion they do not believe in, nor to participate in its outward practices. Religious freedom means that a person has the right to practice the rituals that are the hallmark of their religion. Freedom of assembly and freedom of the press are based on the right of people to exchange ideas for the common good. Freedom of association and freedom of education are also included, within the bounds of the law.

Individual rights share a common characteristic: they define the rights of the state without obligating it to provide services that benefit the individual. For example, the state can refrain from intervening in certain matters, thus preserving the scope of individual freedom. Therefore, we do not consider the assistance, education, and employment that every individual may request from the state as individual rights. If the state provides such things, it is as a duty, not as fulfilling the individual's rights. Section Three: Solutions for Developing the Right to Privacy:

Strengthening the right to privacy in the Iraqi system requires adopting legislative, institutional, and technological solutions that keep pace with rapid digital developments. This will ensure effective legal protection for personal data and limit its violation. Therefore, this section addresses the most prominent mechanisms and proposals for developing the legal and regulatory framework for the right to privacy, achieving a balance between protecting rights and freedoms and the requirements of security and the public interest

The first requirement: The impact of citizens' will and consent on strengthening privacy protection in the Iraqi legal system.

Legitimizing law and policy through the will of the citizens requires a set of steps and procedures that guarantee citizens' participation in the political and legal process in effective and transparent ways. This is stipulated in Article (126) of the Iraqi Constitution, which states: "The fundamental principles contained in Chapter One, and the rights and freedoms contained in Chapter Two of the Constitution, may not be amended except after two consecutive electoral cycles, and only with the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a public referendum, and ratification by the President of the Republic within seven days."

Citizens' will and consent are among the essential foundations that legitimize law and policy in any democratic system. This can be seen in Article (126) of the Constitution, which stipulates that the fundamental principles contained in Chapter One, and the rights and freedoms contained in Chapter Two of the Constitution, may not be amended except after two consecutive electoral cycles, and only with the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a public referendum, and ratification by the President of the Republic within seven days. This text clarifies several important aspects: Maintaining the stability of the constitution: The text indicates that fundamental principles, rights, and freedoms cannot be easily amended. This reflects the importance of maintaining the stability of the constitution and protecting citizens' fundamental rights from rapid or arbitrary changes. Regarding citizen participation in the legislative process: The text requires the people's approval through a public referendum for any constitutional amendment, reflecting the importance of the citizens' will in legitimizing these amendments. No amendment can be considered legitimate without the people's consent, thus strengthening the role of citizens in the political process. Therefore, through representative democracy, in addition to the public referendum, the text requires the approval of two-thirds of the members of the House of Representatives for the amendment. This ensures that amendments receive broad support from the people's representatives, not just a simple majority. The text also addresses the timeframe for change, stipulating that amendments can only be made after two consecutive electoral cycles. This means that any change must be carefully considered over a sufficient period of time, preventing hasty amendments and allowing citizens ample opportunity for reflection and debate. The constitutional text thus underscores the importance of citizens' will and consent as a fundamental condition for legitimacy in law and policy, and establishes multiple mechanisms and safeguards to ensure that any constitutional amendments result from a comprehensive and stable democratic process. Raising awareness of the importance of political and legal participation, and understanding citizens' rights and responsibilities, can be achieved. Education plays a crucial role in empowering citizens to make informed decisions. Community partnership is also essential, encouraging citizens to participate in public discussions and in decision-making processes that affect their lives. This can include attending public meetings, participating in surveys, and engaging in civil society organizations. Fair elections are emphasized to ensure they accurately reflect the will of the people. This requires a transparent electoral system and clear procedures for monitoring elections and preventing fraud.

Furthermore, it necessitates strengthening the transparency of government and legal institutions, and holding officials accountable for their actions. This can be achieved through laws guaranteeing the right to information and implementing anti-corruption measures. Therefore, formulating laws and policies that respond to the needs and aspirations of citizens can be achieved through public consultations and hearings that allow citizens to express their opinions before laws are enacted. Through these and other procedures, the legitimacy of laws and policies can be strengthened by the will of the citizens, leading to a more democratic and just system. The role of citizens' will and consent in legitimizing laws and policies within the Iraqi legal system

The second requirement: Regulating legislation and formulating policies related to privacy and individual freedoms in Iraqi law.

Formulating policies in the area of privacy and individual freedoms requires a delicate balance between protecting individual rights and ensuring public order and the public interest. The constitution and fundamental laws often contain provisions protecting individual freedoms and rights to privacy, such as freedom of expression, freedom of movement, and freedom of belief. These provisions establish the legal framework within which legislative and executive authorities must operate. Parliaments or legislative councils are the bodies responsible for enacting laws that affect privacy and individual freedoms. Therefore, these laws must be consistent with the constitution and international human rights conventions to which the state is a party. Some restrictions on individual freedoms may be imposed to protect national security, public order, public health, public morals, and the rights of others. These restrictions must be necessary and proportionate to the intended objective and must be subject to judicial oversight to ensure they are not arbitrary. The courts play a crucial role in protecting individual rights and freedoms, as individuals can challenge laws or policies they deem to be infringing upon their rights. Therefore, the legislative and policymaking process concerning privacy and individual freedoms requires consideration of numerous factors and balances to guarantee the protection of individual rights while maintaining public order and the public interest.

Jurisdiction or Prohibition in Legislation and Policymaking Concerning Privacy and Individual Freedoms of Citizens in the Iraqi Legal System

The 2005 Iraqi Constitution, in Article 17, guarantees the protection of privacy, stating that "every individual has the right to personal privacy, including the inviolability of their home, property, and personal communications."

Article 17 of the 2005 Iraqi Constitution addresses the protection of privacy and individual freedoms of citizens. It explicitly states the right of every individual to personal privacy, including the inviolability of their home, property, and personal communications. This text reflects Iraq's commitment to protecting individual freedoms and human rights in accordance with international standards. Article 17 emphasizes several important points regarding the protection of privacy and individual freedoms. It affirms the right to personal privacy, which includes the protection of personal information, data pertaining to an individual, their home, property, and personal communications. It also prohibits any form of unlawful intrusion or surveillance. The article further emphasizes the inviolability of the home, property, and communications. It stipulates that home searches are only permissible under the law and with a judicial warrant. The protection of property means that any interference with an individual's assets must be lawful and justified. Similarly, the inviolability of personal communications means that monitoring or intercepting communications must be lawful and judicially justified.

The constitutional provisions stipulate that any interference with these rights must be in accordance with the law and based on a judicial decision, thus ensuring that authorities do not use their powers arbitrarily. These limitations aim to protect individuals from unlawful interference and uphold the rule of law. From a legal and constitutional perspective, this article of the constitution is a fundamental guarantee for the protection of individual freedoms in Iraq, reflecting a commitment to providing a legal framework that safeguards human rights. It also requires authorities to respect individuals' privacy rights. It provides individuals with a legal means to challenge any potential violations of these rights. Among the applications of Article 17 of the 2005 Iraqi Constitution:

- Iraqi courts play a crucial role in interpreting and applying this article, as individuals can resort to the judiciary if they feel their privacy rights have been violated.
- Legislative and executive authorities must ensure that laws and policies are consistent with these constitutional principles.

In short, Article 17 of the 2005 Iraqi Constitution is a cornerstone in protecting the privacy and individual freedoms of citizens, emphasizing the necessity of legal and judicial safeguards to prevent interference with these rights. Regarding the scope of legislation and policy-making in the area of privacy

and individual freedoms, Article 38 of the 2005 Iraqi Constitution guarantees freedom of expression by all means, and freedom of the press, printing, media, and publication. The powers of legislation and prohibition in the Iraqi legal system are defined in the areas of private life and individual freedoms through constitutional texts and secondary legislation. Article 38 of the Iraqi Constitution of 2005 affirms that the state guarantees, without prejudice to public order and morals.:

1. "Freedom of expression by all means."
2. "Freedom of the press, printing, advertising, media, and publishing."
3. "Freedom of assembly and peaceful demonstration, regulated by law."

Regarding constitutional rights, the Iraqi Constitution guarantees the protection of individual freedoms and personal privacy under the articles mentioned above. These rights include freedom of expression, the inviolability of private life, freedom of the press, and peaceful demonstration. Since the Iraqi Parliament is the body responsible for enacting laws that regulate the exercise of these rights, these laws must be consistent with constitutional principles and respect the limits of the rights and freedoms stipulated in the Constitution. Restrictions on personal freedoms and freedom of expression may be imposed if these restrictions are legally justified and necessary to protect national security, public order, public health, or the rights of others. Furthermore, any restrictions must be stipulated in the law and subject to judicial review to ensure they are not arbitrary. In practice, legal and executive institutions work to implement the laws and regulate private life and individual freedoms in accordance with the Constitution. It is essential to raise citizens' awareness of their constitutional rights, how to protect them, and how to resort to the judiciary in case of violation.

Therefore, we can say that the 2005 Iraqi Constitution emphasizes the protection of citizens' privacy and individual freedoms, and regulates legislative and prohibitive powers through clear constitutional provisions, while imposing legal and judicial controls to guarantee the protection of these rights and prevent their unlawful infringement.

Conclusion

A study of the status of the right to privacy in the Iraqi legal system reveals that the constitutional legislator has given this right significant importance through provisions that enshrine the protection of privacy, the sanctity of the home, and the confidentiality of communications. However, this protection still faces legislative, technical, and practical challenges, particularly in light of digital development and the absence of a comprehensive law for the protection of personal data. Therefore, strengthening the right to privacy requires developing the legislative and institutional framework, activating judicial oversight, and increasing public awareness in a way that achieves a balance between protecting individual freedoms and the requirements of security and the public interest, and ensures the building of an Iraqi legal system more capable of meeting the challenges of the digital age.

First: Findings

1. The research showed that the right to privacy has become a fundamental right constitutionally protected in the Iraqi legal system, particularly after the 2005 Constitution, which explicitly stipulated the protection of personal privacy, the inviolability of the home, and the confidentiality of communications. This reflects the shift in Iraqi legislation towards recognizing the importance of this right within the human rights framework.

2. It was found that the legal protection of the right to privacy in Iraq still suffers from fragmentation and a lack of integration. It relies on a set of scattered constitutional, penal, and procedural provisions, without a specific and comprehensive law regulating the protection of personal data and digital privacy. This limits the effectiveness of protection against modern attacks.

3. The research revealed that technological developments and digital transformation represent one of the most prominent challenges facing privacy protection in Iraq, due to the emergence of new forms of violations such as the hacking of personal data, the monitoring of electronic communications, and the misuse of digital information. These are areas that require specialized legislative regulation that is appropriate to the nature of the digital environment.

4. The research concluded that striking a balance between protecting the right to privacy and the requirements of public security presents a fundamental challenge for Iraqi public authorities and the judiciary. Addressing security risks should not justify the unlawful expansion of restrictions on individual freedoms; rather, any restrictions must be subject to the principles of legality, necessity, proportionality, and

judicial review.

5. The research demonstrated the crucial role of the Supreme Court and other judicial bodies in protecting privacy through the interpretation of constitutional texts and oversight of the legality of laws and government procedures. However, the effectiveness of this role depends on the existence of clear legislation that defines the scope of legitimate intervention in private life and provides effective judicial safeguards for individuals.

6. The research showed that citizens' will and awareness of their rights are important factors in strengthening privacy protection. Community participation and legal and digital literacy contribute to the development of legislation and public policies and enhance individuals' ability to confront violations of their privacy or personal data.

7. The research concluded that developing the right to privacy within the Iraqi legal system requires the adoption of comprehensive legislative and institutional reforms. These reforms include enacting a law for the protection of personal data, strengthening the independence of regulatory bodies, and developing mechanisms for cooperation between legal and technical institutions. This will ensure effective privacy protection that aligns with international standards while simultaneously safeguarding security requirements and the public interest.

Second: Recommendations:

1. The research recommends that the Iraqi legislature enact a comprehensive and independent law for the protection of personal data and digital privacy. This law should define the concept of personal data, regulate the methods of its collection, processing, and storage, and outline the rights of individuals and the obligations of entities handling this data, in accordance with technological advancements and international standards in the field of privacy protection.

2. The research recommends strengthening judicial and oversight safeguards for any procedures that may infringe upon the right to privacy, particularly in the areas of communications monitoring, electronic surveillance, and information collection. This can be achieved by subjecting these procedures to effective judicial oversight and ensuring their adherence to the principles of necessity and proportionality, and preventing them from exceeding the limits prescribed by law. 3. The research recommends developing government policies related to digital transformation that guarantee the protection of individuals' rights. This can be achieved by establishing binding security and technical standards for governmental and private institutions that collect or process personal data, and by creating a specialized body to oversee privacy protection and monitor cases of violations.

4. Raising awareness among citizens about the importance of the right to privacy and the means of protecting it, by introducing the concepts of data protection and digital rights into educational and awareness programs, and encouraging community participation in discussing legislation and policies related to individual freedoms, in order to promote a culture of respect for privacy in Iraqi society. The research recommends increasing legal and digital awareness.

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