

Legal protection of the right to human dignity

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Abstract

Islamic law, international declarations of human rights, the United Nations Charter and the overwhelming majority of constitutions concede the right to human dignity, and it is adopted through the constitution and thus, this right has gained admission as a constitutional principle that cannot be violated, as it is the highest constitutional value. The right to dignity is one of the human rights that might be under violation. The protection and respect of this right is based on constitutional guarantees and constitutional approval.

Key words: Legal protection , human right ,dignity, Islamic law.

Introduction:

Democratic countries are looking forward to include the recognition of the right to dignity in their constitutions, the issue of identifying this right is not a problem, but the problem about practical reality lies in the violation of this right, which requires looking for constitutional guarantees and means to protect the right to respect human dignity and ensure, in the same time, that it is not violated. Each protection has a basis on which to achieve its aims, as this protection derives its value from the constitution attributed to it.

First: The importance of the research topic:

The importance of the topic concerning with discussing the constitutional protection of the right to human dignity comes by shedding light on the constitution in which there is an item that promotes hope among citizens that their dignity is inviolable and untouchable.

What increases the importance of this research and the reasons for choosing it is the lack of academic research that has dealt in this regard, despite the gross violations of human dignity.

Second: The Research Problem:

Because the citizen in the state has the right to dignity in terms of the will and desire of the constitutional legislator, item (37) of the 2005 constitution in force, states that “the freedom and dignity of the human being is protected” Therefore, the state authorities must ensure that the right to dignity is respected and secured.

Accordingly, the research problem is determined by the gross and continuous violation of the right to human dignity, so that people's lives have become hard and difficult, despite the constitution's endorsement of this right.

Third: Research methodology:

It depended on the descriptive approach with the help of the analytical method by stating the position of jurisprudence on the regard specified, and as it is required by the study of the research.

Fourth: Research Structure:

The first topic: the right to dignity and its constitutional basis.

The second topic: the means of constitutional protection of the right to human dignity.

The first topic

The right to dignity and its constitutional basis

Many constitutional documents take into consideration human dignity in their texts, and the extent to which it relates to human rights, so, the right to human dignity, its protection and respect, all this is one of the most important human rights. This is because all human beings have the same human dignity, **and accordingly, the research requires us to clarify the definition of the right to dignity, and then, the constitutional basis for it in two requirements:**

The first requirement: the definition of the right to human dignity.

The second requirement: the constitutional basis for the right to human dignity.

The first requirement

Defining the right to human dignity

The origin of the word (Dignity-‘karama’ in Arabic) comes from generosity and honour, and it is the right of a person to receive a dignified treatment that keeps his/her humanity away from offense, frustration or insult, also, dignity is a value that is born with the birth of a person, so the human being is honoured, and the honour of everyone came in the Book of Allah ((and He formed you and formed you so well...))¹, (thus, human is dignified for himself/herself.

Dignity is the value of the human being himself/herself, and this value includes all human rights which are conceded², and to respect human dignity, it is necessary to prevent any inhuman action that denies a person or human being the character of the humanity, and as a result, dignity is a source of other rights for the person, such as the right to life, where different values and other principles branch out from.

Dignity- in its widespread meaning - focuses on the inherent value of each individual, and such dignity exists as soon as a person has humanity, and does not depend on

morals, social status or intelligence, for every person is born having the same status of dignity.³

The dignity of the human being means respecting oneself and it is a feeling of honour and personal value that causes him/her to be painful and to suffer if his/her value is lessened, and a moral principle which states that a person should be treated as an aim in himself/herself, not a means, and his/her dignity in which s/he is a human being above all considerations⁴.

Human dignity "is a supreme value that is executed through the freedom of a human and his/her ability to decide his/her own destiny; this is through the establishment of laws and systems to which s/he freely follows, provided that human freedom is a goal kept by laws and systems, and it deals with the human being as an aim, not just a means to achieve any goal.", However, that human dignity is a value that the consequences of achieving it are neither diminished nor increased⁵.

Thus, human dignity is related to the essence of the human being and is intrinsic to it, because it is a principle everyone instinctively feels with its truth and power. Human dignity requires that a person should not be treated as a thing or as a means, but rather must be recognized as a right holder.⁶

The philosopher Emmanuel Kant defines human dignity as (the value that inherits the human person the right to have a treatment which makes him/her an aim in itself, not just a means to others⁷).

According to the definition mentioned above, the concept of dignity is that any person is treated as an aim in itself and not as a means, so it is necessary to differentiate between the concept of the person and the concept of the thing, as persons have dignity, and everyone is not valued by a price, while things are valued by a price and can be replaced with something else equal in value, and that is why the concept of human dignity requires not to materialize the human being and make him/her as a tool which can be traded.

There is no doubt that moral humiliation, torture, oppression, exploitation, injustice, contempt, and damage of body is a violation of dignity, in addition to racial discrimination and forcing minors to marry, which represents a violation of human rights, human trafficking, and women and children are often forced into prostitution, forced marriage, or joining an organized group of the beggars, this behaviour is contrary to human dignity⁸.

The opposite is the right of a person to receive decent treatment, such as living freely, to be able to act in his/her own affairs, to keep his/her dignity and existence, not to be a subject of insults in himself/herself or his/her feelings, and to have physical freedom, and his/her freedom to move within and outside the state and return to it on his/her own, in addition to his/her right to protection in the sense that it is not allowed to arrest him/her, punish him/her psychologically, or imprison him/her, because personal freedom relates to the soul of a person and the core of his/her dignity, the source of

his/her value as a human being, and the reason for his/her progress towards the ideals of humanity⁹.

The second requirement

The constitutional basis for the right to human dignity

In order to search the constitutional basis for the right to human dignity, we find that some constitutions and the introductions of declarations of rights and international covenants have conceded the right to human dignity, and effective protection has been put in favour of it. The provisions of the declaration were concerned with protecting human rights before the state, because the goal of the declaration was to protect freedom, equality, resist injustice and tyranny.

And human dignity as a term that was introduced into the constitution in 1937, according to the text of the first paragraph of item (1) of the German constitution states that: (human dignity is an untouchable matter, it must be respected, protected and it is the duty of all state authorities); this is how the Germans put in their constitution the principle of dignity as the highest principle. It is constitutional, and every legal text opposing this principle is canceled.¹⁰

In the sense that the Germans have made human dignity as a citizen's right, and a state's duty towards everyone must not be violated, and in a more detailed sense, the constitutions see that dignity is the protection of the soul, body and money of a person, from abuse or contempt, theft or torture, and the like.

Then, came the draft constitution of France on April 19, 1946, and explicitly stated for the first time, the principle of human dignity in item (22) thereof, but the draft was rejected by the French people, and then, the October Constitution of 1946 was issued which merely referred to the principle of human dignity in the preamble only.¹¹

As for the Constitution of France in force of 1958, it did not include any reference to the right to dignity, but rather it was satisfied with a reference to what was stated in the preamble of the 1946 constitution, and accordingly, the French Constitutional Council conceded the principle of human dignity. Because of the status of the human being, a judgment was issued by the French Council of State on October 27, 1995, depended upon this principle, and stipulating the legitimacy of banning celebrations in which the public "hurls dwarves" and such action is a violation on human dignity.

Because allowing the public to hurl the dwarf, reduces a person to the level of something and then, degrades his/her dignity, and the French State Council concluded in its ruling that (respect for human dignity is one of the components of the public order).

This ruling is a new development in the unprecedented French State Council, as it added human dignity to the elements of public order, public security, public health and public safety.¹²

In spite of this, the French Council of State neglected the reference to the constitutional value of the principle of human dignity that was mentioned in the preamble to the 1946 constitution, to which the preamble of the 1958¹³ constitution refers in the above ruling, which considered human dignity as one of the elements of public order.

The matter did not stop at this point. Rather, the ruling issued by the Constitutional Council on July 27, 1994 ruled that keeping human dignity against any kind of humiliation and slavery is a principle of constitutional value, and then, the Constitutional Council referred to the guarantees concerning with the protection of human dignity, including respect in favour of the human being from the beginning of one's life, the sanctity and integrity of one's body, the prohibition of financial dealings in the human body, the safety of the human race, and the supremacy of the human person¹⁴.

In the same context, the preamble to the Egyptian constitution promulgated on September 11, 1971 was an indication of the need to respect human dignity. Not only that, but item 40 came to stipulate equality and the prohibition of discrimination spread, or racial discrimination, and item 42 affirms the necessity of respecting human dignity too.

Hence, item 51 of the Egyptian Constitution of 2014 states that “dignity is a right for every human being ...”¹⁵, it means respect for the same person, and it is a feeling of honour and personal value that makes the individual affected and suffer if one's worth is diminished.

The truth is that human dignity as a constitutional value is not only clear through its incorporation into a constitutional text, but also from the way that human rights become non-violating, and there is no law prescribed to restrict them¹⁶.

We will study some Iraqi constitutions, such as the Basic Law of 1925, the constitution of the first monarchy, and the last constitution of the constitutions of the republican era, which is the Constitution of 1970, and then, the constitution in force, from the constitutions after the Anglo-American occupation of Iraq, it is the constitution of the year 2005.

On the humanitarian side, item (7) of the Basic Law of 1925 implicitly referred to the principle of the right to respect human dignity by protecting the personal freedom of all Iraqis from being subjected to and interfering by preventing torture or deportation outside the Kingdom, arresting, or stopping anyone for investigation, or making him/her under restrictions¹⁷.

What is wrong with the above constitutional item is that it did not prohibit or prevent the issuance of a decree in 1928 that imposed a preliminary punishment of "twenty-five lashes" that was cruel to school students under the age of eighteen, in case of s/he participated in any illegal meeting, or tried to disturb the public peace in another way¹⁸. As this measure constitutes an infringement and aggression on the personal freedom of the citizen, so s/he must be treated humanely in a way that keeps her/his dignity.

As far as the 1970 constitution is concerned, item 22 stated that "human dignity is inviolable," meaning protecting it from everything that defiles it, therefore, dignity is a right for every human being, meaning respect for the individual himself/herself, and this is an ethical principle which states that a person should be treated as an aim in himself/herself, there is no means, in addition, his dignity as a human being above all consideration, the prohibition of torture practice of all kinds, physical or psychological, and the prohibition of entering houses for inspection, and no one may be arrested, detained, imprisoned or inspected, except in accordance with the legal law¹⁹.

As for the constitution of 2005 in force, item 37 of it stipulates a guarantee: First: A. Human freedom and dignity are inviolable, B. No one may be arrested or questioned except by a judicial decision, which prohibits all types of psychological and physical torture ... A confession obtained by coercion, threat, or torture ... Second: The state guarantees the protection of the individual from intellectual, political and religious coercion, third: Forced labour (making someone works forcibly and reluctantly), slavery are prohibited ...trafficking in women and children, and trafficking and sex are prohibited.²⁰ "

One can conclude from the text of item (37), the expressions included in it need to be interpreted so that they are not just a slogan, that the Iraqis can sing without obtaining human rights benefits. Moreover, it is noticed that the constitutional text spoke about human beings in the absolute, and for example, Iraqis or citizens were not concerned with this right based on the Qur'an. When Al-Bari, may He be glorified and exalted, mentioned His Honouring of man over all creatures by saying (We have honoured Adam's sons and have carried them on land and sea, and We Have Provided them with good deeds).²¹

The constitutional text did not pay attention to the fact that most of the crimes of insulting and violating the dignity of citizens in addition to wasting their protection come from governments! Human dignity is undermined in police stations, prisons, security services and government sites²², and practices that are detrimental to human dignity are repeated in the government's

negligence to rebuild some of the affected governorates, failure to fight corruption, the elimination of unemployment and poverty.

The constitution forbids all types and forms of torture, trafficking in women, ill-treatment and attacks on human dignity, and with our acceptance of the great humanitarian text expressed in the above constitutional text with all its items, the failure of successive governments to deal with the sources and causes of violating the dignity of citizens is a loss to the constitutional text that we witness daily.

Nevertheless, the text of item (37) of the Constitution did not specify the necessary punishments for those who underestimate human dignity, nor those who violate that dignity, nor did it specify what would happen if the state did not commit itself to respect and protect human dignity!

The second topic

Means of constitutional protection for the right to human dignity

This protection is established against every violation of the right to dignity, whether it is the abuse of the authorities or individuals, and on that the constitutional means intended are constitutional approval and constitutional oversight. **This is what we will study in two requirements:**

The first requirement Constitutional approval

The constitution comes at the top of the legal organization in any country, and the constitution organizes the state as the basic institution as to all ones within the state, in terms of how it is formed, its competencies, how it undertakes these specializations, the relationship of the state's authorities to each other and their relationship with citizens, so the constitution must be concerned with the rights of citizens in front of the authorities.²³

The constitutions see that dignity is the protection of a person's soul, money, and body from violation, contempt, theft, torture, etc., and thus, the violation of the right to human dignity itself cannot be accepted, because the violation or restriction of this right would limit it of its character as a rooted right as to basic rights to the human being.

The question may arise about the nature of this right, is it a right or is it just a value for which the state is obligated to secure the necessary respect for it? The content of this right is broad in sense and cannot be precisely defined, and the reason for that is that it touches the deep nature of the human being, as dignity is the most important characteristic of the human personality, because it is inherent in the human being²⁴.

Constitutional approval is the basis from which to start, because the constitution is what protects individuals against aggression by the authorities, so respect for the constitution is its implementation, and the lack of security or efficiency of its achievement or failure to achieve the desired result of its existence causes harm to citizens or some of them. Therefore, trust might be lost of the constitution and there is no benefit from a text that is not applied or having ambiguous text.

On this basis, constitutional texts cannot be merely texts issued for ideal values, but rather binding rules that may not be connected to their effects by altering their purposes, breaching their requirements, or turning away from their requirements²⁵.

As a result, the text of the constitution should not be interpreted in a way that deviates from its purposes, and state legislation does not prejudice before rights and freedoms which are a basic security for keeping human dignity.

The protection of the right to respect for dignity is based on the constitutions. Item (37) of the Iraqi constitution in force of 2005 states that the freedom and dignity of human beings are safeguarded, and therefore, the constitutional protection of the right to dignity is part of its constitutional value, and this protection is only achieved by constitutional approval. It makes that protection guarantee of this acknowledgment is respected.

The aforementioned Iraqi constitutions, such as the Basic Law of 1925, the Constitution of 1970 and the Constitution in force of 2005, have not neglected the reference to the dignity of the human being and one's full rights, except what we are witnessing today many forms of violation of rights, freedoms, and a violation of human dignity, such as the moral humiliation of citizens represented by insulting, bitching up, beating or torture or threats of indecent assault, inhuman treatment of the accused upon being questioned and subjected to violent practices by officials of the authority, arbitrary detention, forcibly displacement, and the presence of several thousand detainees in prisons without cause and without trial.

Likewise, the violation of the right to dignity is identified by ignoring the demands of peaceful demonstrators, as well as ignoring and slowing compensation for those affected by war operations, military errors and terrorist operations, this is evidence of the government's inability to keep the dignity of the honoured person in the heavenly laws, declarations, international covenants, and man-made laws in one's life and in one's death.

The decrease of dignity or lack of respect, a gross and continuous violation of the rights and dignity of citizens, and injustice and tyranny may lead to an explosion, then to rebellion, resistance and then, revolution²⁶. So, it is necessary for the state to build its institutions in harmony with the constitution and the law, in order to reach fair opportunities in development, services and work so as to achieve respect for human dignity, and to treat citizens well.

Since the constitutional approval is a theoretical documentary approval, what we aspire to is to make this constitutional approval brew in the minds of the people as a societal culture, by interacting with the law in a positive way, starting from the simple citizen to the top of the pyramid in power, by reporting any legislative deviation or deviation in applying the law, obstructing it or circumventing it, as well as requiring everyone to achieve the constitution with its rules, and thus, it is not allowed for any person to violate the dignity of any person, or to be subjected to cruel or brutal treatment, and making this as a command or an untouchable rule that no one is able to enact laws which contradict this regard.

Torture, insult, oppression, arrest, alienation, exploitation, injustice, contempt, injury to the body, discrimination against and humiliation of the individual, is a violation of the right to respect for human dignity.

There is no doubt that moral humiliation, racial discrimination and forcing the little (girls) to marry are a violation of human rights, and human trafficking often occurs by forcing women and children into prostitution, forced marriage, or joining an organized group of beggars, all this behaviour isn't in accordance with human dignity²⁷.

On the other hand, we find that a person has the right to receive decent treatment, such as living freely, by being able to act in his/her own affairs and maintain one's dignity and existence, not subject to insults in oneself or one's feelings, and s/he has physical freedom, and one's freedom to move within and outside the state and return to it on his/her own. In addition to, his/her right to security, in the sense that it is not allowed to arrest him/her, punish him/her psychologically, or imprison someone, because personal freedom relates to the soul of a person and to the core of one's dignity and the source of his/her value as a person, and the reason for his progress towards the ideals of humanity²⁸, and one has freedom of thought and expression of his/her political and social opinions away from oppression and arrest, and human beings have the right to a fair trial, and to appoint lawyers in the matter of accusations or attacks against someone, in addition to that, in this regard, the freedom and dignity of everyone becomes sacred and enshrined in most constitutions, declarations and international charters.

Acknowledgment is a guarantee expresses the constitutional value of the right to dignity. If the constitutional approval fails to achieve protection for the right, the Federal Supreme Court examines the text suspected of violating it, and examines its constitutionality.

The second requirement Constitutional oversight

Control over the constitutionality of laws is concerning with political oversight and judicial oversight too, oversight does not arise unless we are in front of a rigid constitution, and it is not possible to speak about oversight if we are in front of a flexible constitution, since a flexible constitution does not have any formal superiority over ordinary legal rules, because supremacy imposes stagnation, the violation of an ordinary

law with a flexible constitutional text is regarded as an amendment to the constitutional text²⁹.

Judicial oversight is through direct lawsuit or it may be judicial oversight by methods of pleading unconstitutional, and there is no doubt that entering control over the constitutionality of laws in the jurisdiction of the judiciary provides it with the advantages of judicial work according to impartiality and independence, in addition to the procedural actions of publicity, guaranteeing the right to defense and reasoning of judgments³⁰.

It is necessary that the law proceed within the orbit of the constitution, which imposes respect for the constitutional texts on all organs and authorities of the state and ensuring their implementation, as well as the constitutionally established mechanisms to keep the right to human dignity, regardless of religion, race, colour, and ones' full rights.

The introduction of oversight over the constitutionality of laws through the constitutional case is a peaceful way to defend the prestige of the constitution, and it is an attempt to push the ruler out of one's wrong position, and this is done by creating a competent judicial body which ensures rulers respect the constitutional provisions.

It should be noted that the Federal Supreme Court is not the only one to protect the right to dignity, but rather, it is carried out by the courts of all kinds and degrees, as well as by other supervisory bodies based on combating corruption³¹.

In regard to the ruling authority's violation of the rules of the constitution, and the failure of the body competent to oversee the laws and the supervisory authorities to reduce the authority's violations and tyranny.

In this case, the matter is left to the people - the true owner of authority - who has the right to force the authority to respect the rules of the constitution, whether by peaceful means, or by force if necessary, because the ruling authority that does not abide by the rules of the constitution which is the basis of its legitimacy, leads to the demolition of this legitimacy. This loses its legal basis, and thus the people have the right to isolate the tyrannical authority, even if its legitimacy is derived from the constitution in free elections.

We conclude from the foregoing that constitutional protection includes two methods, namely constitutional approval and constitutional oversight, but in fact it includes, all in all, several methods intertwined with these two means to have real protection between them, so the basis on which we start is the citizens' satisfaction with democratic principles such as the principle of the rule of law and the independence of the judiciary. The right to a fair trial, and to ensure its respect, requires the state and its institutions to believe in these principles, then, protection of the right to human dignity becomes a mechanism and a primary result of the application with respect to these democratic principles.

Conclusion

The most important findings and recommendations are as follows:

First: Results:

1. The right to human dignity is related to the essence of the human being and is inherent in it, it is a principle that everyone instinctively feels in his/her strength and truth, so respect for it, is protection of human rights from any aggression, and it is a flexible and unstable principle differs in different people and countries, and it has not been defined as suitable to work in the field of Law.
2. It is evident that the Iraqi constitutions in question have not been overlooked from the reference to the right to human dignity in constitutional texts such as the Basic Law of 1925, the Constitution of 1970, and then, the Constitution in force of 2005.
3. It was found that the real danger facing the right to dignity is the spread of corruption, neglect and government failure, quotas in sharing positions, security chaos, poverty and unemployment, deprivation of housing, insult, injustice and contempt, torture, threats and moral humiliation, and the like.

Second: Recommendations:

They can be summarized as follows:

1. We call on the ruling authorities to adhere to the rules of the constitution in force, definitely concerning with keeping human dignity, by addressing the crisis of the displaced, providing housing and a safe and secure life, responding to the demands of the demonstrators, for the relief of the people affected by the war operations, military errors and terrorist operations, to restore reconstruction and services to their cities, and just compensation for the damages resulting from that.
2. The need to protect the right to human dignity, and to ensure respect in this regard, by activating the constitutional rules that guarantee equality and equal opportunities, work and adequate housing, protection of motherhood, childhood, old age and the disabled, security, health, social security and fair treatment.
3. The need for the Iraqi legislator to intervene to draft a constitutional text that defines punishments for those who underestimate human dignity, and for the text to specify what happens if the people exhaust all peaceful means to demand respect and protection of human dignity.

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- ³¹ Such as the Public Integrity Authority, the Federal Office of Financial Supervision, as well as the oversight role of the House of Representatives.