

Human Rights Laws and Institutions in New Democratic Iraq: An Assessment

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ABSTRACT

It goes without saying that all human beings need dignified life for their better existence. They always realize that their dignity is interconnected with their rights and privileges for their individual and collective well-being. However, denial of their rights through exploitation, oppression and persecution has become a common phenomenon these days. In the case of Iraq, the country was considered as a 'rogue state' and exploitative of human rights of their citizens, particularly before the invasion of Iraq. After 9/11 Iraq was invaded by the coalition forces to overthrow the government and protect the human rights of the common populace. After the invasion Iraq has changed its all institutional setup for the promotion and protection of human rights and betterment of the people. The present state still continues to suffer from various human rights challenges. It is against this backdrop that the paper aims to discuss and analyze the certain human rights provision mentioned in the current Constitution of Iraq. The paper also highlights the role of High Commission for Human Rights that was established by new democratic government for the promotion and protection of human rights in Iraq. The paper uses both primary and secondary sources of data. The paper finds that new democratic Iraq has better constitutional provisions and institutional mechanism for the promotion and protection of human rights. But the sad reality is that the state lacks in the implementation of all human rights provisions stipulated in the new Iraqi Constitution. In addition, the people are unaware of their human rights provided by the laws of the state. Therefore, awareness programmes need to be made by the government institutions as well as civil society organizations.

Key Words : Human Rights, Constitution, Democratic Government, Government Institutions, Civil Society, Iraq

INTRODUCTION

Each individual is fundamentally entitled to a dignified life and the discourse on human rights seeks to safeguard this entitlement. Human rights are considered sacrosanct and must be protected for human development. Since the mid-20th century, issues such as recognition and protection of human rights have been intensely debated in academia and among policymakers. There have been numerous categories of defenders of human rights. Some uphold the concept of human rights on the precept of moral philosophy and theology. For them, human rights are moral rights of the individuals to fulfil moral aspiration of human beings. Others believe in social philosophy of

human rights and they claim that these are social rights of individuals promising to social equality in the society. Several others base their argument for human rights on the legal theory. They also claim that human rights are legal rights of the individuals.

In the case of human rights situations in Iraq, the pre-invasion society of Iraq was controlled by the Ba'ath Party apparatus through a combination of ruthless coercion, financial co-optation and a complex web of security agencies spying on the population and on each other. The subordination of civil society and culture to the state sapped these of their vitality and ultimately their viability. The pre-invasion regime of Saddam Hussein was eventually removed and he was hanged on 30th

December 2006 for human rights violation and crime against humanity. The US justified the invasion and the death sentence of Saddam Hussein by saying that he was brutal and abusive. The US claimed that his regime continued to engage in severe abuses of human rights against the Iraqi people. He used chemical weapons extensively on both its enemies (the Iranians) and its own population (the Kurds). He massacred thousands of people to suppress internal revolt after 1991. The Al-Anfal Campaign and Halabja massacre against Kurdish and Shi'a people were the most popular among them.

The post-invasion era is a matter of grave concern for human rights. The new democratic government is adopting human rights laws for the nation and also ratifying most of the international laws related to human rights. Here the question arises whether these new laws are appropriate or not for the proper promotion and protection of human rights of Iraqi citizens. In this study, the paper aims to discuss and analyze the constitutional provisions of human rights and institutional setup in Iraq for the better promotion and protection of human rights in post-invasion era.

Evolution and Concept of Human Rights:

A majority of people consider human rights to have evolved through the accretions of various episodes in history. Although the first charter related to human rights exists as Magna Carta by King John of England in 1215, it did not prove sufficient enough to deal with rights of the subjects. Consequently, the English Bill of Rights came into being in 1689 that encompass a wide range of rights of the citizens. The term 'Human Rights' firstly appeared in the 'US Declaration of Independence' in 1776 that covers the rights of liberty, equality, justice and the like. Subsequently, the US Bill of Rights was brought in 1789. These developments in the US motivated the people of France to start revolution for the demand of their rights. Ultimately, French Declaration of the Rights of Man and of the Citizen was adopted by France in 1789 in order to give liberty, equality and other rights to its citizens.

After the killings of a large number of people in the Second World War, protection of the common masses took primacy over all other issues. Ultimately, the United Nations (UN) was established in 1945 and several provisions of human rights were included in the UN charter that was later adopted as declarations and conventions. The Universal Declaration of Human Rights (UDHR) of 1948 was the first document of human rights

adopted by the UN. It stipulates that "all human beings are born free and equal in dignity and rights".¹ Subsequently, the UN adopted two conventions *i.e.* International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural rights in 1966 that came into force in 1977. Further, the Vienna Declaration and Programme of Action adopted by the World Conference of Human Rights in 1993 states that "human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Government."² However, it emphasises as "while the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."³

The success of human rights primarily rests on the recognition and respect for the primacy of universal human rights principles by the state. Respect for human rights is to be reflected in state's norms, institutions, legal frameworks and enabling economic, political and policy environment. Human rights principles provide a set of values to guide the activities of government and other institutions. Through those principles, governments develop the legislative frameworks, policies and programmes, budgetary allocations and other measures for the protection and promotion of human rights. The implementation of human rights relies on conducive and enabling environment, including appropriate legal framework and institutions as well as political and administrative process responsible for responding to the rights and needs of the population. A state strives to implement the principles and practices of human rights through national protection systems anchored in law.

The human rights component should be identified as integral to national promotion and protection systems. Laws of the nation should be consistent with international human rights standards and independent human rights institutions for individuals to effectively claim one's rights and other accountable government institutions that promote and protect human rights. The Constitution must ensure that individuals have certain rights and they ought to be recognized by the government and its institutions. Therefore, the Constitution must enlist the rights of the citizens and mention all the measures that can protect their rights. The rights of a person may be threatened by any person or private organisations. In the case of threat

of human rights of an individual by others or any institution, protection is needed by the government.

Constitutional Framework of Human Rights:

The new Iraqi Constitution was adopted by the post-invasion government in 2005. The preamble of the Constitution says that "Iraq will be free from sectarianism, racism, complex of regional attachment, discrimination and exclusion with the adoption of course of just distribution of resources and providing equal opportunity for all. We the people of Iraq have resolved with the determination of our men, women, elderly and youth to respect the rule of law, to establish justice and equality, to cast aside the politics of aggression, to pay attention to women and their rights, the elderly and their concerns, and children and their affairs, to spread the culture of diversity, and to defuse terrorism".⁴

The fundamental principle states that 'no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.'⁵ 'Iraq is a country of multiple nationalities, religions and sects'⁶ and Constitution guarantees the rights of religious and linguistic minorities with 'the full religious rights to freedom of religious belief and practice of all individuals,'⁷ and right 'to educate their children in their mother tongue.'⁸ The safeguarding places of worship and guaranteeing the right to practice rituals are key components of the broader religious rights. Thus, the Constitution states that 'the holy shrines and religious sites in Iraq are religious and civilizational entities, the state is committed to assuring and maintaining their sanctity and to guaranteeing the free practice of rituals in them.'⁹ Further, racism and ethnic cleansing are prohibited by the Constitution and such entities may not be part of political pluralism in Iraq.¹⁰ In context with political rights, the Constitution guarantees to all without discrimination and it also stipulates that 'the people are the source of authority and legitimacy, which they shall exercise in a direct, general, secret ballot and through their constitutional institutions'.¹¹ The positive provisions might be helpful to democratic development and the exercise of human rights in Iraq.

During the pre-invasion period armed forces and security services were considered very prestigious and they were open for only limited persons. These types of practice were against the right to equal opportunity to all Iraqi people. But, the new Constitution opens the door for all and states that 'the Iraqi armed forces and security services will be composed of the components of the Iraqi

people with due consideration given to their balance representation without discrimination or exclusion.' The authoritative role of these institutions has also been curtailed by the Constitution which states that 'these institutions shall not be used as an instrument to oppress the Iraqi people and not interfere in the political affairs, and also have no role in the transfer of authority.' These institutions 'may not stand for election to political office, campaign for candidates, or participate in other activities prohibited by Ministry of Defense regulations.' The Iraqi National Intelligence Service shall operate in accordance with the law and be pursuant to the recognized principles of human rights.'¹²

Though the 'Fundamental Principles' are appropriate to the context of Iraq, seeking to end internal as well as external conflicts, acknowledging the sentiments of large groups and respecting the rights of minorities, laying the foundations of democracy and the rule of law, they don't meet the social goals adequately. There could have been special mention of human rights, social justice, and fair distribution of resources.

The section two of the Iraqi Constitution is divided into two chapters, *viz.*, 'Rights' and 'Liberties'. The rights mentioned in the Constitution are mainly divided into two parts *i.e.* 'Civil and Political Rights' and 'Economic, Social and Cultural Liberties'. It is not so easy to divide rights in this way, for they are all interconnected and interdependent. The rights and liberties are laid out in a fairly comprehensive manner that shows the care and concern of the rationale of rights.

Civil and Political Rights:

The Iraqi Constitution guarantees almost all civil and political rights which are necessary for the dignified life of an individual. If an individual claims for her/his rights, s/he must be a citizen of the state. Therefore, the Iraqi Constitution guarantees 'right to citizenship' for the enjoyment of all basic rights.¹³ Further, the Constitution guarantees equality before the law and non-discrimination;¹⁴ right to life, security and liberty;¹⁵ equal opportunities;¹⁶ and right to personal privacy, public morals and the sanctity of the homes so long as it does not contradict the rights of others.¹⁷

The Article 19 of the Constitution is the longest article in the subchapter of civil and political rights. It deals with judicial procedure and punishment system for culprits in the respect of their human rights. For example, there is no crime or punishment except by law; litigation

shall be a protected and guaranteed right for all; the right to a defence shall be sacred and guaranteed in all phases of investigation and the trial; the accused is innocent until proven guilty in a fair legal trial and the accused may not be tried for the same crime for a second time after acquittal unless new evidence is produced. Every person shall have the right to be treated with justice in judicial and administrative proceedings; the proceedings of a trial are public unless the court decides to make it secret. Punishment shall be personal and laws shall not have retroactive effect, unless it is to the benefit of the accused. The court shall appoint a lawyer at the expense of the state for an accused of a felony or misdemeanour who does not have a defence lawyer. Unlawful detention shall be prohibited; imprisonment or detention shall be prohibited in places not designed for these purposes and pursuant to prison laws covering health and social care, and subject to the authorities of the state. The preliminary investigative documents shall be submitted to the competent judge in a period not to exceed twenty four hours from the time of the arrest of the accused, which may be extended only once and for the same period.¹⁸

The Constitution guarantees the political rights and states that 'Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office.'¹⁹ The Constitution also guarantees the rights for the political asylum seekers, and states that 'a law shall regulate the right of political asylum in Iraq and no political refugee shall be surrendered to a foreign entity or returned forcibly to the country from which he fled.'²⁰

Economic, Social and Cultural Rights:

The Iraqi Constitution guarantees several economic rights like right to work and right to form and join labour unions and professional associations. The law shall regulate the relationship between employees and employers on economic bases.²¹ Private property is protected and the owner shall have the right to benefit, exploit and dispose of private property within the limits of the law. Expropriation is not permissible except for the purposes of public. Every Iraqi shall have the right to own property anywhere in Iraq, but ownership of property for the purposes of demographic change is prohibited.²² Freedom of movement of Iraqi manpower, goods, and capital between regions and governorates are guaranteed.²³ The reform of the Iraqi economy in

accordance with modern economic principles to insure the full investment and diversification of its sources, and the encouragement and development of the private sector are guaranteed.²⁴ The encouragement of investment in the various sectors²⁵ and the preservation of the minimum income required for living are guaranteed.²⁶

There are several provisions of social rights in the Iraqi Constitution. The family is considered as the basic unit of society and the state has responsibility to preserve it and its religious, moral, and national values. The state cares for children and youth and provides them with the appropriate conditions to develop their talents and abilities.²⁷ In addition, the state guarantees the individuals and the family, especially children, women and old age their social and health security in cases of sickness, employment disability, unemployment, orphan hood or homelessness for the basic requirements of a free and decent life. The state protects them from ignorance, fear and poverty and secures them their suitable income and appropriate housing with special programmes of care and rehabilitation.²⁸

Every citizen has the right to health care and individuals and entities have the right to build hospitals, clinics, or private health care centres under the supervision of the state.²⁹ The state cares for the handicapped and those with special needs, and ensures their rehabilitation in order to reintegrate them into society.³⁰ Every individual has the right to live in safe environmental conditions.³¹

Education is an essential prerequisite for the progress of society. Free education in all its stages to all Iraqis is guaranteed by the state.³² Children have the right to upbringing, care and education from their parents. Economic exploitation of children in all forms is prohibited, and the state takes the necessary measures for their protection. Further, all forms of violence and abuse of children in the family, school and society are prohibited.³³

The Constitution provides little provision regarding cultural rights to the Iraqi citizens. The state promotes cultural activities and institutions in a manner that befits the civilization and cultural history of Iraq, and it seeks to support indigenous Iraqi cultural orientations.³⁴ Practicing sports is a right of every Iraqi and the state encourages and cares for such activities and provides them for their requirements.³⁵ There is no special provision in the Constitution which ensures that the minority cultures of Iraq receive fair treatment from the state.

Right to Freedom:

There is a separate chapter for the personal freedom of Iraqi citizens mentioned in the Constitution. This chapter named 'Liberties' comes under section two of the Iraqi Constitution. It states that 'the liberty and dignity of man is protected' and 'no person may be kept in custody or investigated except according to a judicial decision'. Torture and inhumane treatment are prohibited and the victim has the right to seek compensation for material and moral damages. Forced labour, slavery, slave trade, trafficking in women or children, and sex trade are prohibited.³⁶

Freedom of speech, expression, press, and assembly is considered as fundamental human rights in a democratic state. Thus, the Constitution guarantees 'freedom of expression using all means like freedom of press, printing, advertisement, media and publication'.³⁷ It also guarantees freedom of communication and correspondence by all means.³⁸ 'Freedom of assembly and peaceful demonstration'³⁹ and 'freedom to form and join associations and political parties' are guaranteed and regulated by law.⁴⁰

The sub chapter 'Liberties' also guarantees freedom of religion and states that 'Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices'⁴¹ and 'individuals have the freedom of thought, conscience, and belief.'⁴² Freedom for practice of religious rites and worship, management of religious institutions and endowments (*waqf*) and their affairs, and the protection of places of worship are also guaranteed.⁴³ The freedom of movement and residence is also guaranteed by which 'each Iraqi has freedom to move, travel and reside inside and outside Iraq and no Iraqi may be exiled, displaced, or deprived from returning to the homeland.'⁴⁴

There are major roles of civil society in protection and promotion of human rights. The Vienna Conference of Human Rights (1993) emphasized the role of civil societies and Non-Governmental Organizations in this regard and appealed to states to provide better space for the work of societies and organizations. Thus, the Iraqi Constitution guarantees freedom to civil society institutions and strengthens them to support, develop and preserve their independence in a way that is consistent with peaceful means to achieve their legitimate goals.⁴⁵

Some provisions are also stipulated in the Iraqi Constitution for the protection of the rights of indigenous

peoples. It mentions that 'the state seeks the advancement of the Iraqi clans and tribes to their affairs in a manner that is consistent with religion and law. It also upholds their noble human values in a way that contributes to the development of society. But the state explicitly prohibits tribal traditional practices that are deemed inconsistent with human rights.'⁴⁶

Rights are seldom absolute and restrictions are sometimes justified. But most of the articles end by saying 'regulated by law' which puts restrictions and limitations on the qualification of rights of Iraqi citizens. Finally, the section two named 'Rights and Liberties' of the Iraqi Constitution ends with some protective measure which states that 'restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom.'⁴⁷

Institution for Human Rights:

Iraq has gone through major political change since 2003. The post-invasion Iraq has adopted a new political system that is based on Western model of liberal democracy. The concept of state's structure and functions of government have been totally changed with new institutional setup that has brought some transformation in the political order and developed sustainable democratic order. The present development engendered hopes for democratization of Iraq. It is perceived that the new democratic political institutions will change the attitude of people as well as government and also protect and promote human rights of the Iraqi citizens. Thus, it is important to analyze the new institutions which have been established by the post-invasion Iraqi government in favour of the constitutional human rights provisions and their implementation.

High Commission for Human Rights:

A national human rights institution can be described as an independent organization, which is established by the government in accordance with the Constitution or other legislation with the sole aim to protect human rights at the national level. It has been described as one of the fundamental building blocks to protect human rights in order to provide national human rights institutions with a sound legal basis and preserve their autonomy and incorporation of their power in the Constitution.⁴⁸

Thus, to deal with the human rights issues prevalent

in Iraq, the interim government established the Ministry of Human Rights under the Transitional Administrative Law of Iraq in 2003 with the first squad after the fall of the Saddam regime. The ministry tried to train its staff and other related officials concerning with the law enforcement and peer ministries as well as activists of non-governmental organization. The ministry was also working on dissemination of human rights education in universities, schools and even kindergarten via programmes, publications and change in curriculums. In addition to these, the ministry cooperated with international parties, non-governmental organizations and groups dealing with training and holding conferences, seminars, workshops, preparing studies and research reports. It also monitored human rights violations and disseminated human rights education through special groups concerning with detention and prisons, involuntary disappearance and mass graves.⁴⁹

The ministry established wide network of bureaus over all parts of Iraq to ensure its existence by granting the financial and technical support to achieve its best performance. The ministry also promoted, developed and supported their various goals, particularly issuing reports objective to the reality of human rights in Iraq on a regular basis and providing periodic reports to the committees of international conventions on human rights signed by Iraq.⁵⁰ This ministry worked with the first High Commission for human rights of Iraq, but it was totally replaced after the establishment of the second High Commission for human rights in 2017.

Article 102 of the Iraqi Constitution stipulates that the functions of the High Commission for Human Rights shall be regulated by law. Therefore, a Law No. 53 was enacted by the Council of Representatives in December 2008 for the establishment of a High Commission for Human Rights (HCHR) with financial and administrative independence.⁵¹ The HCHR acts in accordance with the Paris Principle that was adopted by the United Nations in 1990 aiming to provide proper guidelines to state's human rights commission.⁵² The law gives power to the Council of Representatives to appoint a special Committee of Expert consisting of ten members from the Members of Representatives, two members from Civil Society Organisation, one member from the Federal Court, one member nominated by Prime Minister, and one member from the human rights office of the United Nation Mission (UNAMI) for the selection of the members of Council of Commissioners of human rights

commission. The law states that the Council of Commissioner consists of eleven original (voting) members and three reserved members. Women's representation on the Council of Commissioner shall be no less than one-third of the original members and representation of minorities shall be made by no less than one original member and one reserved member. The appointments of the Council of Commissioners represent the diversity and plurality of society⁵³ by appointing female and minority members.⁵⁴ To ensure legitimacy and accountability in the functions of the commission, an Office of the Inspector General is established.⁵⁵

The Council of Representative reinstated the Committee of Expert which was charged under the law with nominating candidates for membership on High Commission for Human Rights in 2011. After many months of evaluation, discussion and interviews the Committee of Expert presented the list of commissioners to the Council of Representative for final approval and endorsement of the commission. Finally, the first High Commission for Human Rights was composed in Iraq on April 9, 2012 with eleven original members and three reserved members. The original members and the reserved members both included two women from the Iraqi community and one from the minority groups each.⁵⁶ The first commission ended without finding a president and without producing a single report or document, which clearly assessed the reality of human rights situations of Iraq. Further, the second commission was composed in 2017 with thirteen members in total, eleven of whom are distributed across the main political party blocs according to the current system of political quotas (five seats to the Shiite Alliance, three seats to the Union of Sunni forces, two to the Kurdistan Alliance, and one to the Assyrian movement).⁵⁷

The removal of a commissioner only occurs after an absolute majority vote by the Council of Representatives. The decision for the expiration of a term of membership of the commission for any reason or incompetence is made by the President of the commission. The Council of Representatives also has the power to question the President's recommendation of removal of any member of the commission. The President's discretion is thus sufficiently limited to ensure that commissioners will only be removed where good cause exists, and 'incompetence' cannot be used as a ground for removal due to personal differences or political

reasons.⁵⁸

For the dignity and respect for the post, law states that the level of President of the Council of Commissioners is regarded same as a Minister of Iraq. The levels of other dignitaries such as the Vice President and other commissioners are regarded same as a Deputy Minister and Heads of Department respectively. The law ensures that the Commissioners perform their duties independently and without fear of retribution from the government.⁵⁹ In terms of financial independence, the law states that the financial resources of the Commission are drawn primarily from general state budget allocations. The law further states that any funds from outside sources are subject to majority approval by the Council of Representatives.⁶⁰

The Commission is required to submit an annual report to the Council of Representatives furnishing details of the general assessment of the status of human rights in Iraq.⁶¹ The law of HCHR also empowers it to investigate complaints of human rights violations. It may refer these complaints to the Public Attorney to take legal action. Further, the law of HCHR directs the commission to be pro-active in seeking evidence of human rights violations. To this end, commissioners are directed to visit prisons, social correction centres and other places without prior permission from the concerned entities. They are further directed to meet the convicted and detained individuals, document cases of human rights violations, and notify competent entities to take appropriate legal action.⁶²

International Human Rights Commitments of Iraq:

Iraq has ratified most of the international documents related to promotion and protection of human rights such as the Convention on the Prevention and Punishment of the Crime of Genocide in 1959; the International Convention on the Elimination of All Forms of Racial Discrimination in 1970; the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights in 1971; the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1975; the Convention on the Elimination of All Forms of Discrimination against Women in 1986; and the Convention on the Rights of the Child in 1994. Iraq also became a party to the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and the sale of children,

child prostitution and child pornography in 2008. Iraq also ratified the International Convention on the Protection of All Persons from Enforced Disappearance in 2010 and acceded to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 2011. Moreover, Iraq lately ratified Hague Convention on the Civil Aspect of International Child Abduction in 2018.⁶³

Iraq approved some regional documents such as the Cairo Declaration of Human Rights in Islam at the Organization of the Islamic Conference in 1990, which is a guiding document that does not require ratification. The state also approved the original Arab Charter for Human Rights in 1994 and its revised version prepared by the Arab League at its 2004 Summit that was ratified in 2009. In addition, Iraq ratified the Arab Convention to Combating Information Technology Offences in 2018.⁶⁴

Conclusion:

The government and its political system in the post-invasion Iraq have registered a total transformation in the constitutional setup of the country. The provisions of human rights and institutions mentioned in post-invasion Iraq are premised on liberal ideas and Western model of democracy. The civil, political, social, economic and cultural rights in the new Constitution are important milestones on the part of the civilians for their promotion and protection of human rights. Further, the establishment of the Ministry of Human Rights and High Commission for Human Rights in post-invasion Iraq also lays good foundations for the proper implementation of human rights of the Iraqi citizens all over the country. Moreover, the ratification of some international conventions has acted as powerful motivators to bring effective changes in laws and policies of the government for better implementation of human rights in Iraq. All these constitutional provisions and institutional developments in post-invasion Iraq reflect constructive and positive steps for the promotion and protection of human rights of Iraqi citizens for their better prospects. The successful implementation of the above mentioned laws in Iraq depends upon faith of the citizens in harmony and solidarity, tolerance and peaceful coexistence with one another as well as cultural heritage of humanitarian society. Therefore, the government institutions as well as civil society organizations need to make the Iraqi citizens aware of the laws related to their rights and privileges enshrined in the Constitution.

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