

Protection of the Religious Minorities' Rights Under the Iraqi Constitutions

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The feature of variety and human diversity of peoples and communities throughout the world is one of the consistent and widely recognized truths. Providing religious minorities with legal protection and the ability to practice their human rights in all areas of life. In order to establish their existence by preserving their historical and ideological heritage and distinguishing themselves from the rest of society, one of the issues that has received not only national legislators' attention, but has also become the focus of attention of the international community as a whole, as many international and regional organizations have confirmed. Especially in view of the substantial and growing breaches of religious minority' rights. "Civilization of Nations is measured by the way they treat minorities," says Mahatma Gandhi.

Key words: *Constitution, Court, Minority, Protection, Freedom, Federal Supreme Court*

1.0: Introduction:

Annual studies and analysis issued by international organizations show that powerful people continue to violate minority' rights in many parts of the world. With the permission of national governments or other majority groups who are aiming to eliminate minorities, conceal their identities, and violate their human rights in a variety of ways. Furthermore, failure to defend and assure compatibility between minority' interests and the country's specificities.

There are some of the countries, but within narrow limits that do not know the problem of minorities, so that they have full individual and communal rights, as well as the freedom to express their complete identity and sense of belonging. However, when the state and its laws fail to safeguard religious minorities from radicals who represent an ethnic or religious community,

violations occur, aggravating their rights. Because the constitution supersedes all other laws in the state, national constitutions and the guarantees that the state creates for the protection of minorities are critical, it gives all laws their power and legitimacy, as a result, national constitutions, including successive Iraqi constitutions, seek to safeguard those critical elements in Iraqi society's fabric and strength.

1.1: The significance:

The Significance of this issue stems from the fact that minorities' rights in general have a prominent position in human studies. Especially as one of the issues in legal studies, that is worth studying, especially because we live in a multi-ethnic world with many different religions and civilizations. The other hand, the Research also takes its importance through the research, On the other hand, the research is significant because it examines and evaluates the constitutional treatment of religious minorities' rights in consecutive Iraqi constitutions that focused on the three primary groups: Shi'a, Sunnis Muslims and Kurdish, there is an obvious inequity in the constitutional handling of those minority' circumstances. Which people were the first to settle in Iraq and had a significant part in the country's contemporary renaissance?

1.2: Research Problem:

It's feasible to state that one of these minority' distinguishing characteristics is that they have their own set of views that differ from those of others. In a society with various ethnicities, how have previous Iraqi constitutions dealt with religious minorities? What are religions and sects? Was the subsequent constitutional approach sufficient in ensuring the rights of these religious minority in a way that prevents extinction and irreversible migration? the impoverishment of Iraq and its deprivation of its elements of power? In addition, the ability of those constitutional remedies as well to face the dangers. Minorities are not in danger, but the majority are in danger.

1.3: Research Design:

The research will be structured by examining it in two areas. The first part will focus on two requirements that will help to explain the idea of religious minorities: The first is an idiomatic description of minorities, while the second is an explanation of the criteria for defining religious minorities and their many varieties. While the second topic, The Position of Successive Constitutions on the Issue of Religious Minorities' Rights, contains two requirements: the role of religious minorities in Iraqi constitutions, and constitutional protection for minorities (1925-2003 AD). Furthermore, the second demand, entitled Constitutional Protection of Religious Minorities, was included in the Republic of Iraq's 2005 constitution, and it was achieved using two methods: the first was an analytical approach to constitutional provisions, and the second was a comparative approach.

2:0: The Concept of Religious Minorities

Giving a specific concept to minorities is one of the most complicated issues, therefore the challenge isn't restricted to legal studies, However, there are a number of specialties that are relevant to minorities. Because of the disparities in minority situations and the lack of a consistent criteria to characterize a human group in the minority. In addition, the idea of the minority must be defined, so we'll start with the concept and then move on to the legal meaning of the term, as it has to be separated from other concepts that are similar in certain ways.

2.1: Idiomatic Definition of Minorities

The concept of a minority is a flexible concept, which is difficult to define, the concept of a minority is a fluid one that is difficult to define since it is always changing owing to a variety of causes such as numerical majority integration and fusion, migration, and so on. As a result, we will answer this demand in two ways: first, we will explain the reformist meaning of religious minorities, and second, we will provide a set of criteria for the notion of religious minorities. The first branch: The Idiomatic Definition of Religious Minorities: Initially, it can be pointed out that some of the jurisprudence avoided delving into giving a definition of the term minority, but rather it was sufficient to explain the general rules for its protection. However, some of them were familiar with the concept since they defined the minority as "a group of persons inside a certain country who vary from the majority of the population." The fact that a person from the minority is a factual issue is related to its assessment of the objective elements in terms of gender, creed, or language⁽¹⁾. The political encyclopedia defined the minority as "A group of residents of state, a region, or a country that violates the majority in its ethnic, linguistic, or religious affiliation, without necessarily implying a distinct political and applied position⁽²⁾". The International Encyclopedia of Minority Social Sciences defined it as:" a group of individuals who they are distinguished from the rest of the members of society, whether racially, nationally, religiously, or guba, and they suffer from a relative lack of strength, and from there they are subject to some types of slavery, persecution, and discriminatory treatment.

Minorities are defined by the American Encyclopedia as: "Groups that have a social status within society less than the status of dominant groups in the community itself and have less power and influence and exercise fewer rights compared to dominant groups in society, often depriving members of minorities of adequate enjoyment of the privileges of citizens first degree⁽¹⁾".

⁽¹⁾ Dr.S alwa Ahmed Maidan, international guarantee of the rights of Minorities to confer rituals, Journal of University of Human development, No:4, 2009, p.126.

⁽²⁾ Abd al-Wahhab al-Kayyali, Encyclopedia of Politics, Part One, Three Edition, Arab Foundation for Studies and Publishing, Beirut, 1990, p. 244.

It's worth noting that the Permanent International Court of Justice has defined minorities on several occasions, including what the court provided in its advisory opinion issued. In the year 1930 AD on the migration of Bulgarian Greek groups, where the minority court knew: "A collection of individuals who live in a state or territory. They identify with a race, religion, or language, or with their own traditions, and are bound together by their shared identification with that race, religion, language, or traditions. They are also linked to a sense of unity in order to protect their identity and rituals, as well as to offer a genesis and education for their children that is compatible with the essence of their race and language, and to project a cooperative image among them."⁽¹⁾.

2:2: Criteria for Defining the Concept of Religious Minorities:

It is important to note that the concept "religious minority" is a flexible word that fluctuates depending on the period and area in which these religious minorities dwell. Certain studies have attempted to extract some generic characteristics that allow for a clear classification of the idea of religious minorities in order to overcome this difficulty in defining the term.

A- Numerical Criterion: Despite the fact that there was no consensus on a set number for conferring minority status, some experts in this subject believed that the numerical criterion may be used to determine a group's standing inside the state. As a result, the minority, according to this criterion, is defined as the demographic group that makes up the smallest proportion of the majority (less than half of the population). The minority must not be in a position of political, economic, or social dominance. The Supreme Court of India adopted this criterion in 1972 in a case: (AM-PATRONI-VE SHESAVAN), The court defined a minority as "any religious or linguistic group whose population is less than 50% of the population of the state's group of people, and so requires the constitution to ensure its basic rights, particularly religious rights."⁽²⁾. As a result, it can be concluded that the numerical criterion alone is insufficient to describe the minority within a group experiencing marginalization and subjugation.

B- The Objective Criterion: A minority, according to this criterion, is a group of people who are different from the majority in terms of culture, language, religion, ethnicity, origin, and other factors. As a result, members of the minority differ fundamentally in one of the previously mentioned characteristics.⁽³⁾. So, if a certain group of people speaks a dialect that is derived from the majority of people's original language. When this isn't enough to claim that this group is

⁽¹⁾ Abd al-Wahab al-Kayyali and others, *The Political Encyclopedia*, Part 3, The Arab Institute for Studies and Publishing, Beirut, 1985, p. 745.

⁽²⁾ Mr. Mohamed Gabr, *International Center for Minorities in Public International Law with Comparison to Islamic Law*, Maarif Institution, Alexandria.

⁽³⁾ Dr. Saad Eddin Ibrahim, *Towards a sociological study of the unity of minorities in the Arab world*, *Journal of Arab Issues*, Year 3, No. 1-6 / 1986, p. 66.

a linguistic minority, the same can be said for the groups that follow. Because a doctrine is based on the religion that the majority of the population follows, it cannot be classified as a religious minority because it is simply a branch of that religion.

C- Self-criterion: The most important feature of this criterion is that it has been used to define minorities, based on an internal psychological basis that reflects the feeling generated by members of a particular minority about the necessity of unitary rapprochement and emphasizing that necessity. Therefore, some minority jurisprudence was defined as: " A human being whose members experience a sense of belonging as a result of their collective participation in possessing a quality or qualitative characteristics that other groups in society lack"⁽¹⁾. Based on the viewpoint of the owners of this criterion, it is not possible to consider a specific group a minority that enjoys legal protection simply, because of the presence of certain ethnic, religious, or linguistic characteristics that are different from those enjoyed by the rest of the population. However, these individuals (members of the minority) must have the desire to Preserving their heritage and traditions that distinguish them from others, and without that desire, they cannot continue or exist as a private entity.

We can say that these criteria cannot be the only ones capable of clarifying the concept of religious minorities, because some minorities have the ability to impose their vision, interests, and aspirations through their ability to use legislative authority to express themselves. For the Kurds in Iraq represent a minority in relation to the total population of Iraq. However, through the democratic experience after the year 2003 AD, they managed to access many of the gains that were not available to other majority of the population in Iraq. For example, that the Federal Budget Law of 2019 gave the Kurds in Iraq more than 16% of Budget Union. Which has become a tradition when parliamentary adoption of the budget law by force and political influence enjoyed by the Kurds in Iraq. As well as the religious Jewish minority in America and with its political and economic, influence.

2:3: Types of Minorities

We will address the various types of minorities in this requirement, either in terms of their distinguishing characteristics or in terms of their geographic concentration.

A: Religious Minorities: The main element of the minority's religion is its distinction from the majority's belief in the same society. Over the course of history, religion and the principle of protecting religious minorities have shaped the original picture of the concept of the minority. And in the element of religion or belief, the religious minority is the main and fundamental

⁽¹⁾ Soto-Andrade, Jorge; Jaramillo, Sebastian; Gutierrez, Claudio; Letelier, Juan-Carlos. "Ouroboros avatars: A mathematical exploration of Self-reference and Metabolic Closure" (PDF). MIT Press. Retrieved 16 May 2015.

difference between it and the majority, such as Muslim minorities in Western societies, Hindu minorities in India, Buddhist minorities in China, and the Christian, Jewish, Baha'i, Mandaean, Kakai, and Faili Kurds in Iraq.

Religious minorities are regarded as one of the most difficult types of minorities to deal with because of the importance of religion and the human need for it, regardless of the religion's type, validity, or corruption. Religious minorities exist today in every country of the world, and their fates and circumstances of contentment or discontent vary depending on their presence, as well as the degree of justice and respect they receive in the countries where they live. And doctrinal differences within the same religion as the doctrine found in the Islamic religion or in the Christian religion cannot be described as a religious minority⁽¹⁾.

B: The Linguistic Minority: Language is one of the essential elements in identifying and defining minorities, as language is the external expression of difference. As it is the original means of preserving the culture of the minority, language is a key factor in protecting the ethnic or national identity of any minority group. In addition, the linguistic minority can be defined as that group or sub-groups Residents of a particular country that speaks a language that differs from the dominant language or the language of the majority, which is often called the mother tongue. It is important to say that education in the mother tongue does not necessarily mean that members of minorities do not have an opportunity to learn the spoken language, and speak it fluently, but rather it is advisable in fact that they speak in several languages, where we find that many countries of the world expressly state in their national constitutions that the majority language is the official and dominant language in the country ⁽²⁾. Language is the vessel that embraces ideas, beliefs and the keys to culture and the link between the members of one group, so it makes sense for each minority to have a specific language with which to understand and transfer its heritage. A model for linguistic minorities (Berbers in the Maghreb)⁽³⁾.

⁽¹⁾ Abd al-Wahab al-Kayyali and others, *The Political Encyclopedia*, Part 3, The Arab Institute for Studies and Publishing, Beirut, 1985, p. 745.

⁽²⁾ Maher Faisal Saleh Al-Dulaimi, same source, p. 8.

⁽³⁾ Draft of 1921, the first constitution project / March 1922 AD, the second constitution project in February 1923 and the draft constitution in its final form: In June 1924, the Iraqi Constituent Council began studying the draft basic law., after its ratification of the Iraqi-British treaty, and this constitution was intended to take into account a set of issues It was mentioned in the Iraqi-British agreement of 1924 before it was presented to the Iraqi Founding Council, including:
1-To take into consideration the wishes and rights of the Iraqi people.
2-To provide for the guarantee of religious freedoms and rituals that do not contradict morals.
3- Ensuring the rights of sects and minorities. For more, See: Abdul-Razzaq Al-Hassani, *Modern Political History of Iraq*, Dar Al-Rafidayn, Beirut, 7th edition, 2008 CE, Part 1, p. 246

C: National Minorities: It differs from other minorities in that it has its own territory, as it is bound to a specific region. This has led some to believe that it has a political dimension, as evidenced by the group's sense of belonging, which always translates to a demand for an independent political entity. Regardless of differing viewpoints on the nature of the national group's constituents. It can be said that the minority or national group is more cohesive than any other ethnic group, whether that group is linguistic, religious, or ethnic, in terms of language, history, culture, or common economic interests. These minorities exert a greater influence on the state's unity and cohesion than other minorities. Particularly if this minority is an outgrowth of the neighboring international nationalism ⁽¹⁾.

3:0: The Position of Iraq's Successive Constitutions on Religious Minorities' Rights.

The ethnic and religious diversity imposed by historical and geographical considerations distinguishes Iraq, as the map of minorities in Iraq includes various ethnic, religious, sectarian, and linguistic groups. The major Iraqi cities, especially the three major cities: Baghdad, Mosul, and Basra, were also distinguished by being open cities mixed with religions, sects, and nationalities, and the characteristic of coexistence has been the dominant characteristic for centuries, despite their different religions and sects. Furthermore, there should be legal protection for this diversity in Iraqi society as long as it exists. In particular, the religious diversity of Iraq's minorities has been reflected in successive constitutions, those constitutions that dealt with the issue of minority rights and included them in their articles starting with the Basic Law of 1925 CE and ending with the Constitution of the Republic of Iraq for the year 2005 in force. Therefore, we will divide this topic into two requirements. The first will be Constitutional Protection of Minorities (1925-2003 AD). As for the second requirement, we will discuss constitutional protection of religious minorities in the Constitution of the Republic of Iraq for the year 2005AD. The first requirement: constitutional protection for minorities (1925-2003). The importance of this era in the contemporary history of Iraq, and because of the existence of many constitutions in that period, whether permanent or temporary constitutions. We will address this requirement in two branches *as following*:

3:1: The Basic Law of 1925 AD and the protection of Religious Minorities

Before the establishment of the modern Iraqi state and the monarchy in 1921 AD, various calls and social movements called for the establishment of a national government to end the British occupation and the mandate later. In addition, one of his highest priorities were to announce a plan to establish an interim Iraqi government that would take the lead in laying the groundwork for the country's national system to be established. The Basic Law went through several stages that led to the establishment of the Iraqi Basic Law in 1925. Article 13 of the Iraqi Basic Law of

⁽¹⁾ Munir Hammoud Dakhil, the legislative organization for practicing religious rituals - a comparative study, Dhi Qar University, 2017, p. 44.

1925 AD states: "Islam is the state's official religion, and the freedom to practice its rituals, regardless of sect, is respected and untouchable. It also guarantees all citizens of the country complete freedom of belief, as well as the freedom to practice their religious rituals according to their customs, as long as they do not violate security and order, or contradict public morals"⁽¹⁾.

Some may interpret the text of that constitutional article as contradictory, leading them to believe that other religions have no place in a state where Islam is the state religion. However, the complete recognition of other religions in Iraq (which includes all residents) has been emphasized in the context of this article. There are no religious restrictions in the country.)⁽²⁾.

"There is no difference between Iraqis who are equal before the law and if they differ in nationality, religion, and language", it stated in Article (6). This article is simply a reference to a general principle of individual equality before the law, not as members of multiple societies, but as individuals. Despite the reference to the 1925 Basic Law, which gave religious minorities the right to establish schools to teach their children in their own language (Article 16 of the Basic Law), This article's intended benefit was very limited. Because students from these schools cannot easily enroll in public jobs that require the Arabic language as an official language, and because these schools are private rather than public, students from these schools cannot easily enroll in public jobs that require the Arabic language as an official language. In Article (17), the Basic Law stipulates that: "Arabic is the only official language in the state except as stipulated by a special law". Since the Local Languages Law No. (74) for the year 1931 AD, this law has been in effect because it expressly affirms the right of minorities to use their language in education. In some Mosul sub-districts, the language of the courts should be Arabic, Kurdish, or Turkish, according to their articles. It was also found in another article of this law that deals with the field of education, which is taught in all primary schools. What is mentioned in this law, where the mother tongue (home language) of the majority of the students in those schools, whether Arab, Turkish, or Kurdish, is the language of instruction⁽³⁾.

One of the important documents issued under the Iraqi Basic Law that contained guarantees granted by the Iraqi government to protect minorities is the Declaration of May 30, 1932⁽¹⁾. Whereas, when Iraq joined the League of Nations on 3/10/1932. It was subject to the condition that the Iraqi Kingdom abides by a set of obligations set by the League of Nations,

⁽¹⁾ Article (13) of the Iraqi Basic Law in 1925.

⁽²⁾ Munir Hammoud Dakhil, the legislative organization for practicing religious rituals - a comparative study, Dhi Qar University, 2017, p. 44.

⁽³⁾ The issuance of this law was delayed after the issuance of the Basic Law of 1925 for more than six years, to be issued in 1931 in the name of the Law of Local Minorities No. 74. Which is still in effect, as it determined the areas of use of these languages, see the Iraqi Fact Sheet No. 989 June 1931. For more see: Salman Shuhaib Al-Saadi, The Role of Minorities in Governing Iraq According to the 2005 Constitution, Al-Nahrain University, Without a Year, pp. 34-36.

which were embodied in standards and matters of international concern that were included in this declaration, which - the declaration has placed great emphasis on the use of language And freedom of religious rites for minorities. which overshadowed the rights of national minorities, which he mentioned within the general context of the speech. It should be noted here that after the enactment and implementation of the Basic Law in the year 1925 AD, Iraq joined the mandate of Mosul, which made the nascent state a multi-national entity that includes Kurds, Turkmen, Assyrians, and Chaldeans besides the Arabs.

Furthermore, anyone who examines the articles of the Iraqi Basic Law of 1925 will see that it does not favor one sect over another or provide the rights and freedoms of one group over another, regardless of its size, population, or religion. We feel that the above-mentioned writings indicate their harmony with the reality of Iraqi society as a multi-national, multi-ethnic and multi-religious society. The Ministry of the Interior issued the official guide to the Iraqi kingdom in 1936, which stipulates the most important social components of Iraq: Muslims, Christians, Jews, Yazidis, the righteous, as well as a few Baha'is and Persians, strengthening these constitutional articles that affirm the state's protection of religious minorities in Iraqi society⁽¹⁾.

3:2: Protection of the temporary Iraqi constitutions of religious minorities (1958-2003 AD)

On 14 July 1958 AD, the monarchy in Iraq was overthrown and the Republican system proclaimed, which witnessed political and constitutional developments of great importance. The inability of successive republics to develop a lasting constitutional document is the most significant difference from the preceding age. However, they have all approved transitory constitutional papers, demonstrating the insecurity of these political systems and constitutional documents, which are far from the democratic manner of constitution-making. Which is something that its demise is explained by the demise of the ruling powers that formed it, and which it has long utilized as a tool to fulfill its objectives and aspirations at the expense of Iraqi people's interests.

One of the first comments on the interim draft constitution was that it did not include a language connected to the fact that Islam is the state's official religion, and we believe that this trend stems from the secular ideals held by Mr. Hussein Jamil, the man in charge of developing the constitution..

⁽¹⁾ The following language was listed in the Iraqi Kingdom Guide for the year 1963 AD: "In Iraq, there are languages that are Arabic, Kurdish, Chaldean, Hebrew, Turkish, and Armenian, but the Arabic language is a mother of all and a tongue for all," according to the guide. Three major religions, namely Christianity and Judaism, were noted in population data from the years 1934, 1947, and 1957, as well as three religious minorities: Sabeans, Yazidis, and Baha'is. Minorities in Iraq, Saad Salloum, Masar Foundation for Cultural and Media Development, Baghdad, 2013, p. 128.

The Interim Iraqi Constitution of 1958 included thirty articles, distributed into four chapters, and Article 3 of it states: “The Iraqi entity is based on cooperation between all citizens to respect their rights and protect their freedoms. Arabs and Kurds are considered partners in this country and this constitution recognizes their rights Nationalism within the Iraqi unity. “With this text, the Iraqi legislator will have indicated for the first time and explicitly that Kurdish nationalism, and the Iraqi people count consists of two main nationalities, namely Arab nationalism and Kurdish nationalism. Although this text remains an important turning point in the political and constitutional history of Iraq. We believe that the constitutional legislator was not successful in that text. Because Iraq consists of many nationalities and many other minorities, and the constitutional legislator was obligated to mention it like the Arab and Kurdish nationalism. Which they were mentioned in the text of Article 3 and we believe that this text was inconsistent with the text of Article (9) of it: “Citizens are equal before the law in terms of public rights and duties. In addition, it is not permissible to distinguish between them in that because of gender. Origin, language, religion, or belief.”

As for religious minorities, the Provisional Constitution of 1958, abrogated, according to the provision of Article (12) thereof: “Freedom of religions is inviolable. The law shall regulate the performance of its function, if it does not violate public order and is not inconsistent with public morals ⁽¹⁾.

We note that the constitutional legislator in this constitution did not refer to religious minorities clearly and explicitly as mentioned in the Iraqi Basic Law of 1925 AD in many of the articles that were referred to in this research. Rather, it was sufficient to provide for freedom of religion in absolute terms ⁽²⁾.

On the eighth of February 1963, it was announced that the political system of the July 14 Revolution was toppled and that a new political system led by the National Council, Which did not include any reference to religious minorities in its texts

This is what the Constitution of April 29, 1964 AD applied, and we believe that these constitutional texts did not limit the suppression of religious minorities and their practices by the authority, especially for the Baha'i community. As it appears that, the government of Iraq was affected by the experience of Nasserite rule in Egypt (1956-1970) in some positions and the reproduction of some policies in full, including their positions towards some minorities, particularly the Baha'is. On August 6, 1963, the authority decided to cancel the contracts registered for the Baha'i forums, and that this sect is not a sect and therefore criminalizing the practice of its religious rites and then issued an order to close the Baha'i forums, and place a hand on its property in All righteous Iraq, based on the National Safety Law No. 4 of 1965. The

⁽¹⁾ Article 12 of the Iraqi Transitional Administrative Law of 2004.

⁽²⁾ Article 12 of the Iraqi Transitional Administrative Law of 2004.

authority decided to cancel the contracts registered for the Baha'i forums and that this sect is not a sect and therefore criminalizing the practice of its religious rites and then issued an order to close the Baha'i forums. Moreover, place a hand on its property in all Noah Iraq, according to the National Safety Law No. 4 of 1965⁽¹⁾.

The provisional constitution of 1970 AD included (67) articles when it was first issued, and when revisions were made to it during the year's validity span (1970-2003 AD), the number of articles increased to (70), distributed in five chapters. This Constitution has indicated in Article (5 / b) of it on a clear and explicit text on the rights of minorities in general, including religious ones, of course, provided that this does not contradict the provisions of the constitution and laws, and that it does not contradict the Iraqi unity: "The Iraqi people consist of two main nationalities, namely Arab nationalism." Kurdish Nationalism, and this constitution recognizes the national rights of the Kurdish people and the legitimate rights of all minorities within Iraqi unity.

Here we can point in this regard to the issuance of some laws and decisions by the Revolutionary Command Council that contradict the constitutional texts that guarantee the legitimate rights of religious minorities contained in the abrogated 1970 constitution. Many researchers and specialists in the field of human rights consider this period to be the worst in the matter of religious minorities. In addition, if we want to take a quick look at the decisions that have largely restricted these religious practices ⁽²⁾.

4:0: the Constitutional Protection of Religious Minorities in the constitution of the Republic of Iraq for the year 2005 AD.

We will divide this section as follows because of the importance of this constitutional article and its implementation in protecting religious minorities in particular: The first branch is included in the Iraqi State Administration Law for the Transitional Phase of 2004, while the second branch is found in the Iraqi Constitution for the year 2005 AD.

4:1: The Transitional Administrative Law of 2004 :The 1970 constitution was in effect until September 4, 2003, when the reigning political system collapsed. This political shift has an impact on all aspects of the economy, The state's cultural and social aspects Permanent for the Iraqi state, compatible with the new stage in which the Iraqi state is evolving from a simple

⁽¹⁾Article 12 of the Iraqi Transitional Administrative Law of 2004.

⁽²⁾ Law No. 105 of 1970, known as the Prohibition of Baha'i Activity Law, Civil Status Directorate Decision No. 358 on 24/7/1975, to freeze Baha'i restrictions in civil status records. For more, See Saad Salloum (Minorities in Iraq). Unjust expulsion campaigns based on sect from the beginning of April 1970, and continued until 1979 AD, which reached its climax at the end of that year and the beginning of 1980. With the issuance of Resolution No. 666 on May 7, 1980, and caused the removal of more than half a million Philly Kurds from their Iraqi roots .The ancient people for thousands of years.

unitary state to one with a federal system. The new stage the Iraqi state is going through and its transformation from a simple unified state into a state with a federal system. Article 4 of the transitional law stipulates: “The system of government in Iraq is republican, federal (federal), democratic, pluralistic, and power is shared in it between the federal government, regional governments, governorates, municipalities, and local administrations. The federal system is based on geographical and historical facts and the separation of powers not based on origin, race, ethnicity, nationality, or sect”.

The requirement to eradicate the impacts of racist and sectarian policies was included in the statute for managing the Iraqi state in the transitional phase. The declaration also underlined the federalism of the government's system, which is defined as a pluralist, democratic, and federal government in which power is shared between the center and the regions based on historical and geographical facts rather than ethnic, racial, or national considerations⁽¹⁾.

The requirement to eradicate the impacts of racist and sectarian policies was included in the statute for managing the Iraqi state in the transitional phase. Furthermore, the paper underlined the federalism of the governance structure. That is, it is a pluralist, democratic, and federal government in which power is distributed between the center and the regions based on historical and geographical facts rather than ethnic, racial, or national considerations. End the harsh acts of displacement and displacement of many segments of the Iraqi population, restore all civil rights, and end persecution and attempts to revoke citizenship⁽²⁾.

The law considered both the Arabic and Kurdish languages as the official languages of the country, and it also affirmed the guarantee of teaching the mother tongue to the people of Turkmen, Chaldean, Assyrian and Armenian nationalities.

Thus, this document was a gesture of hope for all components of the Iraqi people. As for the first time it explicitly stipulates that, Iraq is a multi-national country. In addition, stressed that everyone who holds Iraqi nationality is an Iraqi citizen and this citizenship is the basis of his relationship with the country and the state, and it is the first time that the Iraqi has an opportunity Feeling of equality despite its difference with other people of the country in certain aspects. This law emphasized The prevention of discrimination against an Iraqi citizen based on his gender, opinion, belief, nationality, religion, or origin⁽³⁾.

4:2: In the Constitution of the Republic of Iraq for the year 2005 AD: With the issuance of the Law on Administration of the Iraqi State for the Transitional Period for the Year 2004 AD,

⁽¹⁾Article 4 of the Transitional Administration Law 2004.

⁽²⁾Ahmad Fadel Al-Saffar, Constitutional Protection of Freedom to Practice Husaynid Rituals in Iraq, Master Thesis, College of Law, University of Karbala, 2014, p. 56.

⁽³⁾Article 12 of the Transitional Administrative Law of 2004.

the constitutional process that began following the events of April 9, 2003 did not come to an end. During the transitional era, the latter established a similar timeline for the continuation of the constitutional process in Iraq. Furthermore, which eventually resulted in the drafting of the country's new constitution, known as the (2005 Constitution of the Republic of Iraq). It should be noted that the Constitution of the Republic of Iraq for the year 2005 AD attempted to arrange a wide range of accumulated and inconsistent social and political interactions that Iraqi society had experienced over lengthy periods of time⁽¹⁾.

On the other side, he attempted to integrate the majority of Iraqis' religious principles with Islam, as well as the rights of Iraqi religious minorities, so that there would be no confrontation between them. True, the constitution recognizes Islam as the state's official religion and that no law shall be passed that opposes Islam's tenets and principles⁽²⁾. However, the constitution later stated that it is also not possible to establish legislation that is incompatible with democracy. The constitution went on to say that the majority of the people's Islamic identity should be preserved for an Iraqi, and that all persons, including Christians, Yezidis, and Mandaeans, shall have full religious rights to freedom of religion and religious practice. This, of course, demonstrates the consensus formula, which proposes taking into account political and societal balances among Iraqi groups and sects when addressing the new constitution's age. **In addition**, Article (14) of the current constitution stipulates : "Iraqis are equal before the law without discrimination based on sex, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status." This article allows for the participation of all Iraqis in new political practices, and their equality before the law, regardless of gender, religion, sect, or belief, i.e. not to differentiate in treatment between the Iraqi people and respect their desires and religious privacy in accepting them as they are.

With regard to the treatment of the Iraqi constitution for the year 2005 AD from religious minorities, it stipulated freedom of belief and the practice of religious rites in full frankness in several constitutional articles. In its article (2 / second): "This constitution guarantees the preservation of the Islamic identity of the majority of the Iraqi people, and also guarantees All religious rights for all individuals are free to religious belief and practice such as Christians, Yazidis and Mandaeans, "and this is an official, clear and explicit recognition of these religious minorities, especially the Yazidi minority. As this text is an official recognition of them, that did not exist previously. As well as their representation in the Religious Endowments Department.

⁽¹⁾Marina Spernova, Constitutional Transitions in Iraq, translated by Dr. Faleh Al-Hamrani, Adnan Library, Baghdad, 2012, p. 91.

⁽²⁾The Constitution of the Republic of Iraq for the year 2005, Article 2 "First / A, B, C", and Second.

At the same time, it states in Article 15 that "everyone has the right to life, security, and liberty." Deprivation or restriction of these rights is only permissible under the law and on the basis of a judgment issued by a competent legal authority.

It should be noted that the word (freedom) was used in an absolute sense, as it encompasses an individual's enjoyment of all kinds of freedom, including religious freedom, which encompasses the inner and interdependent aspects of freedom of belief and the crystallized practice of performing religious rites. The constitution also stipulated in Article (37 / Second): "The state guarantees the protection of the individual from intellectual, political and religious coercion." Generally by persons or groups, or even by the three authorities in the state, compelling him to convert to a particular religion or sect but not another, and accordingly preventing him from practicing the religious rites imposed on him by his faith ⁽¹⁾. The permanent constitution stipulated in Articles (43, 42) to regulate freedom of belief and worship, so in Article (42): Everyone has freedom of thought, conscience and belief, and Article (43) states: "First: Following every religion or sect is free in: A - Practicing religious rites. Including Hussein rituals, b - the administration of religious endowments, affairs and institutions, and this is regulated by law. Second: The state guarantees freedom of worship and the protection of its places. It is noted, on these constitutional texts that the Iraqi constitutional legislator in Article (42) has organized freedom of belief and I am satisfied with mentioning that, at a time when the freedom of worship was detailed in Article (43). In addition, it is noted that item (A) of the first paragraph of Article (43) after referring to the freedom of individuals to practice their religious rites, he went back to mentioning the Hussein rituals. Moreover, this particular reference is certainly a reflection of what the Shiite sect owners suffered under previous regimes. Religious affairs and institutions, and this is regulated by law ⁽²⁾.

Finally, notwithstanding the confusion between rights and freedoms and the lack of a section on freedoms, we may claim that the State Administration Law is a good law. In our judgment, it was more successful than the 2005 Constitution, Regarding the topic of rights and freedoms, it stated unequivocally in Article 23 that the Iraqi people have the right to enjoy all of the rights and freedoms mentioned in international treaties, agreements, and other documents of international law. However, this article was not incorporated to the constitution through active or spontaneous activity, as it was removed from its original form on August 25, 2005. Which is the text of Article (44): "All individuals have the right to enjoy all the rights mentioned in international

⁽¹⁾Ahmad Fadel Al-Saffar, Constitutional Protection of Freedom to Practice Husaynid Rituals in Iraq, Master Thesis, College of Law, University of Karbala, 2014, p. 63.

⁽²⁾Sunni Endowment Law No. (56) For the year 2012, Shiite Endowment Law No. (57) For the year 2012 Regulation No. (5) for the year 2014 the formations of the Endowment Bureau for Christian, Yazidi and Mandaean Religious Endowments and their functions issued by Cabinet Resolution No. (297) of 2014.

human rights treaties and agreements ratified by Iraq, which It does not contradict the principles and provisions of the constitution. " This could ultimately be explained by the lack of freedoms in the Iraqi constitution to the degree of freedoms according to international standards. Also, the current Constitution of the Republic of Iraq for the year 2005 AD provided another constitutional protection represented in the text of the formation of the Federal Supreme Court, through the text of Article (92 / First): "The Supreme Federal Court is an independent financially and administratively judicial body." Article (93) of the Constitution On the jurisdiction of the Federal Supreme Court, which includes oversight of the constitutionality of laws and regulations in force. Through the Court's exercise of its powers stipulated in the constitution as a legitimate guardian of the constitution, it ruled many provisions that were based on protecting the rights of religious minorities. Because of gender, religion, or origin, and the unconstitutionality of Paragraph (c) of the Second Article of Law No. (26) for the year 2009 AD, Law Amending the Elections Law No. 16 of 2005 AD, where the ruling stated: "The following components are given (a quota) calculated For seats allocated to their portfolio on a This does not affect his percentage if he participates in the national lists ... ".

Conclusion:

We came to the following major conclusions and recommendations as a result of our research:

The results:

- 1 - The minority is the smallest group among the rest of the state's residents, distinguished from them by ethnic, religious, or linguistic traits, which are founded on a sense of togetherness, belonging, or solidarity shared by its members in order to preserve this group's privacy.
- 2- Extrapolating from many constitutions and legislation, it may be concluded that legislators have always acknowledged minorities as possessing fundamental rights and liberties, sometimes through plain and explicit words. For these minorities, enjoy these rights and freedoms, and at other times, through general texts.
- 3- Nationalism is neither a wholly material nor a fully spiritual phenomenon. Rather, it is determined by the presence of both types of elements.
- 4- Religious minorities' rights and fundamental freedoms are protected by the constitution, which is based on both national and international laws.
- 5- Successful dealing with the phenomenon of religious pluralism requires the presentation of a far-reaching and comprehensive strategy first

Recommendations:

- 1- The lawmaker must use the law to reinforce the superiority of the state's national loyalty above ethnic group affinity.
- 2- Religious minorities must be acknowledged for their fundamental rights, granted the freedom to exercise them on an equal footing, and racial discrimination against the minority must be prohibited, as well as acceptance of differing viewpoints.
- 3 - The state must not only recognize religious minorities' rights and fundamental freedoms, but also provide the essential safeguards for members of the minority to enjoy these rights and freedoms, not formally but in practice.

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