



## **Building Democracy and Its Role in Protecting Human Rights: Iraq as a Model After 2003**

**Mayada Hussein Salman<sup>1</sup>**

1. Assistant Lecturer at Wasit Directorate of Education, Investigations<sup>1</sup>

### **Abstract**

Protecting fundamental human rights requires the consolidation of values such as freedom, justice, equality, enhanced political participation, and the separation of powers. These principles are essential for achieving democracy, which in turn provides the natural and necessary environment for safeguarding and realizing human rights. The 2005 Iraqi Constitution guarantees a range of values, principles, and individual and collective rights through constitutional, legal, and political safeguards. These guarantees form a foundation for building democracy in Iraq after 2003.

**Keywords:** Democracy, Human Rights, Rule of Law, Separation of Powers, Power Transition

### **1. Introduction**

Human history reveals two contrasting aspects of human relations: one represents rights, while the other signifies injustice and oppression. The dream of acquiring rights and enjoying freedom has been pursued by many jurists and philosophers throughout history. They concurred that democratic principles provide an environment that respects human rights and fundamental freedoms. What is most important for the public in today's concept of democracy is closely aligned with the goals of human rights—ensuring people are free from discrimination and oppression and seeking legal means for their protection. A thorough understanding of human rights is crucial for building a democratic political system. Democracy, as a form of governance, is inherently tied to citizens' rights and is essential for securing them. In Iraq, the regime change in 2003 marked a new historical phase. Democratic processes and mechanisms began to emerge, serving the protection of rights and freedoms, which will be discussed throughout this research.

### **1.2 Research Objectives**

The research aims to define the concept of building democracy and its relationship to protecting citizens' human rights. It also seeks to identify the constitutional, political, and judicial mechanisms established by the Iraqi legislator after 2003 to guarantee these protections and their impact on the democratization process.

### **1.3 Research Significance**

Human rights are general principles of democracy characterized by indivisibility and integration. They serve as a critical criterion for assessing the democratic nature of any political system. This topic holds particular significance given the transition towards democracy that Iraq, like many other nations, has experienced following the political changes in April 2003. This transition provided Iraqis with an opportunity to enjoy their rights. Therefore, this study aims to highlight the essential principles of democracy and human

---

<sup>1</sup>. Email: mayada\_law@alkadhum-col.edu.iq

rights, as well as the constitutional and legal guarantees for protecting these rights. These guarantees include parliamentary oversight, an independent judiciary, and freedom of expression, all of which are vital for completing the democratic building process.

#### **1.4 Research Hypothesis**

The hypothesis assumes a strong correlation between the process of building democracy and the protection of human rights. It emphasizes the importance of the constitutional and legal guarantees provided by the Iraqi laws and constitution in ensuring the stability of rights and freedoms after 2003.

#### **2. Research Problem**

Based on the above, the study seeks to answer the following central question:

- To what extent is there a relationship between democracy and citizens' rights? What are the forms of constitutional, judicial, and political protection provided by the legislator for human rights after 2003?

To address this main issue, the study explores the following sub-questions:

The Concept of Building Democracy and Human Rights

-What is the Concept of Building Democracy and Human Rights, and What Are Their Principles?

-The Constitutional Evolution of Political Life in Iraq and Its Role in Protecting Rights.

-What Guarantees Has the Iraqi Legislator Adopted to Protect Human Rights Post-2003?

#### **3. Research Methodology**

The research employs a descriptive method to analyse the concepts of building democracy and human rights and their interconnection. Additionally, the analytical method is adopted to examine the principles and protective mechanisms based on the provisions of the Iraqi Constitution of 2005 and applicable laws. To understand the impact of democracy on human rights, the research is divided as follows:

-**Chapter One:** The Concept of Democracy and Human Rights.

-**Chapter Two:** The Relationship Between Democracy and Human Rights and Their Protection Mechanisms.

##### **Chapter One**

##### **The Concept of Democracy and Human Rights**

The ideas of democracy and human rights are among the most debated and controversial issues, as they are widely recognized slogans with varying perspectives. This divergence has led to an ambiguity surrounding these concepts. To clarify their meanings, it is essential to discuss their definitions and principles through the following topics:

##### **Section One**

##### **The Concept of Democracy**

##### **Subsection One: Definition of Democracy**

The concept of democracy, although profound, can be aptly described as "eloquently simple yet intricate." The abundance of studies, books, and articles addressing democracy and its various applications might suggest that

understanding democracy requires significant effort. Nonetheless, there is a widely accepted definition of democracy derived from its Greek roots:

- **Demos:** Meaning "the people."
- **Kratia:** Meaning "rule" or "authority."

Thus, democracy is defined as "rule of the people" or "majority rule" (Hilali et al., 1998: 27).

From an international perspective, democracy is defined as "**a universal principle based on shared** values among peoples, regardless of cultural and political differences. It is, therefore, a fundamental right for citizens to exercise in an environment of freedom, equality, transparency, and accountability, with respect for diverse opinions and the public interest" (Universal Declaration on Democracy, 1997).

The final document of the 2005 United Nations World Summit defines democracy as: "The choice of the people for their government and the dominance of popular authority over it, or the control of the people over the government they choose. It is a universal value based on the freely expressed will of peoples concerning their political, economic, social, and cultural systems, in addition to their full participation in all aspects of life."

Moreover, the American Encyclopedia defines democracy as: "The various methods by which people participate in governance. These include direct democracy, as well as liberal democracy, which is prevalent in the United States and Britain, characterized by constitutional governance, popular representation, and universal suffrage. Additionally, there are non-political democracies such as economic, social, and popular democracies."

It is observed that the aforementioned definitions fundamentally position democracy on the basis of people's participation through the exercise of their right to vote and popular representation. Additionally, they recognize the existence of social and economic democracies alongside political democracy as a form of governance and exercise of authority. However, they overlook semi-direct democracy, rendering these definitions neither comprehensive nor exclusive.

At the theoretical level, numerous philosophers and writers have provided definitions for the term "democracy." Joseph Schumpeter defined democracy as an institutional system aimed at enabling individuals to make political decisions through voting (Al-Shareeda, 2016).

Georges Burdeau described it as "a philosophy, a way of life, and a belief system, almost amounting to a mere form of governance" (Belkeziz, 1998: 123). Others have argued that democracy is a political system that provides all governed individuals with the systematic and constitutional ability to peacefully change their rulers, should they decide to do so with a sufficient majority. This is achieved through freely established, non-violent parties and associations that perform their role as citizens while enjoying full civil rights and lawful guarantees to exercise them.

It is noteworthy that this definition narrows the scope of democracy by limiting it to a political system. Democracy rests on a set of principles, including:

1. Granting citizens the right to choose their rulers freely and fairly.
2. Ensuring the peaceful transfer of power when the legally required majority is achieved.
3. Guaranteeing citizens the enjoyment of all their civil and political rights.

In light of the foregoing, democracy is based on a fundamental principle: **the power of the state originates from the people**. This means that the authority of the ruler is legitimate only when it derives from the consent and acceptance of the people. Notably, the term "people" here is understood in its political sense, referring to the collective individuals who meet the qualifications to vote. These voters exercise governance to achieve objectives that benefit the people both politically and socially.

Thus, democracy is inherently valuable because it grants all citizens the ability to determine their destiny and provides better living conditions (Tilly, 2010: 21). It is a daily practice that touches all aspects of life—a mode of thought and behaviour exercised continuously and consistently. Furthermore, it concerns minorities as much as it does majorities.

**The concept of building democracy:** is one of the most prevalent notions in contemporary times, both academically and politically. It refers to the process following the transition from a non-democratic, authoritarian, civilian, or military regime to a democratic system. This transition often results from social transformations or changes in the political system experienced by societies. The political system reflects competitive dynamics between political forces and the extent to which the system accommodates pluralism in political life or comprehensive and fundamental changes in the state's social structure (*Prospects of Democratic Transformation in Arab Spring Countries Amid Current Realities*, 2011).

The concept also pertains to the nature of the electoral system, the stance of the political elite towards social divisions and conflicts, and electoral and political alliances (Abd Al-Aali, 2010: 10). Thus, the concept of building democracy differs from democracy itself. According to Lewis Paul, it represents a stage following regime change, beginning when authoritarian and totalitarian regimes start to collapse. This stage includes drafting a constitution, establishing new democratic structures, and adjusting the behaviour of political elites to align with established democratic norms (Lewis, Paul, 2005: 405).

Studies emphasize that the chances of successful democracy-building are greater in more homogeneous states, particularly those not plagued by deep societal divisions. Such states are better equipped to assert control over their territories and ensure that their institutions can implement public policies and provide citizens with basic rights effectively and efficiently.

Conversely, in the aftermath of civil wars and severe internal conflicts, the process of building democracy becomes more challenging and complex. In these cases, establishing a democratic system requires achieving comprehensive national reconciliation, creating a foundation for civil peace,

and subsequently transitioning to democratic construction. This involves rebuilding state institutions on new foundations and redefining the concept of the state and its legitimacy in the collective consciousness of various social groups inhabiting its territory. This reconstruction aims to secure the loyalty of its citizens (Al-Wuhaishi, 2015: 54).

Thus, democracy-building represents an intermediate stage between dismantling a collapsed political system and establishing a new one. This stage seeks to reinforce the rule of law, develop constitutional and political frameworks, and pave the way for drafting a new constitution that ensures the principles of power-sharing, protects human rights, and guarantees the effective management of societal pluralism while conducting free, fair, and transparent elections.

The success of the transitional phase depends on the skills and expertise of the political elites and legal experts tasked with managing it. Their ability to foster a national consensus inclusive of various political forces and social groups is crucial for laying the foundation of democracy. Furthermore, it requires the ruling elites and states to accept that no ideological alternatives can compete with democracy (Abdullah, Ibrahim, 2005: 35).

This process also necessitates cultural, intellectual, and social prerequisites, approached within an integrated framework aimed at implementing fundamental reforms in political, economic, social, and religious aspects through peaceful means (Abd Al-Ridha, 2019: 301).

#### **Subsection Two: Principles of Democracy**

Democracy is founded on several principles that are inherently interconnected. The absence or deficiency of any principle negates the democratic nature of any political system, classifying it instead as a non-democratic entity. The following are the most critical principles:

##### **1. Primacy of the Individual**

Democracy assumes that the individual is the centrepiece and focal point of society. The state exists to serve, protect, and uphold the rights and dignity of individuals. Laws and systems are designed to benefit them, whether addressing individual or collective interests. Any laws that undermine the value and status of humans within society are deemed invalid in a democratic framework. Similarly, governments that do not prioritize the individual's supreme standing are not considered democratic (DahlK., 1971: 16).

##### **2. Principle of Equality**

Democracy mandates the application of equality in all its dimensions:

- **Political Equality:** All citizens, regardless of their education, wealth, family background, religion, gender, or ethnicity, are equal before the law and each other.
- **Social Equality:** Democracy emphasizes creating social and economic conditions that enable citizens to exercise their freedoms and participate politically. Legal personality and citizenship rights require equal rights and duties for all, recognizing the intrinsic dignity that makes individuals free (Maazzi, 2014).

##### **3. Respect for Rights and Freedoms**



This principle is emphasized by the French Declaration of the Rights of Man and of the Citizen of 1789, which declared that individuals are born free. This assertion highlights the supreme value of freedom as a mandatory principle for political institutions, regardless of the challenges this may pose for governing authorities while performing their duties.

Authorities are obliged to safeguard the fundamental rights of individuals, particularly political rights related to governance and exercising power, which include:

- a. The right to choose rulers.
- b. With the possibility for any citizen to become a ruler.
- c. The right to participate in critical decision-making processes.
- d. Monitoring authorities and their exercise of power.

#### **Personal Freedoms**

which includes:

- a. Personal freedoms are centered on safeguarding individual safety and ensuring liberty.
- b. Ensuring protection against arbitrary detention.
- c. Freedom of movement.
- d. Freedom of thought and belief.
- e. Freedom of opinion and expression (Al-Jabri, 1997: 16).

**With the note that freedom in a democratic system does not imply absolute freedom**, even the most democratic states impose limits on rights and freedoms to regulate them and safeguard the interests of the community, the rights of others, and public order. Ignoring rights and freedoms within a democratic framework is contrary to the democratic principle itself, which requires guaranteeing personal freedoms as a prerequisite for exercising political freedoms (Al-Baz, 2006: 206).

#### **4. The Principle of Power Alternation**

This is one of the hallmarks of a democratic system, under which opposition parties and minorities are afforded genuine opportunities to participate and practice power rotation. A single political entity cannot remain in power indefinitely; instead, another political entity, chosen by general elections, replaces it, or the previous ruling party relinquishes power based on the will of the majority. However, alternation does not entail a complete overhaul of administrative institutions but rather a change in their leadership. Maintaining the stability of critical institutions—such as the military, security agencies, economic institutions, senior officials, and judicial entities—is crucial for ensuring the state's continuity and stability (Garo & Kazem, 2023: 144-145).

#### **5. Separation of Powers**

The separation of powers serves as a safeguard for democracy and a framework for its assurance. It entails the division of state functions among distinct entities, each with specific roles and independence, while ensuring cooperation and complementary roles to enable the state to perform its duties. This principle is built on two fundamental bases (Al-Jarf, 1959: 82):

- **Functional Specialization:** This pertains to the necessity of having multiple governing bodies by distributing governmental functions among them. Each body specializes in one of the three legal functions of the state: legislation, execution, or judiciary. This distribution ensures the independence of each body and weakens the power of rulers (Al-Tamawi, 1986: 518).

- **Organic Independence:** This involves defining the relationship between the three branches of government—legislative, executive, and judicial—based on organic independence. Each branch operates independently in performing its functions without interference from the others or being subjected to their oversight (Naguib, 2011: 79).

## Section Two

### On the Concept of Human Rights

The concept of human rights varies across societies and cultures. Multiple terms are used interchangeably to describe it, including "human rights," "personal rights," and "human freedoms." The Iraqi Permanent Constitution of 2005 employs the term "rights and freedoms." To clarify the concept of human rights, we first examine its definition and then explore its principles.

#### Subsection One: Defining Human Rights

Researchers have presented varied definitions of human rights, reflecting its dynamic and evolving nature, which develops alongside societal changes. The concept witnessed significant progress during the 19th and 20th centuries, driven by labor movements, social struggles, and international declarations—most notably the French Declaration of the Rights of Man and of the Citizen issued in 1789 after the French Revolution. This declaration was incorporated into the 1791 Constitution and stated:

- **"Men are born and remain free and equal in rights."**
- The purpose of every political society is to preserve the natural, inalienable rights of humans, such as freedom, property, and security.
- Sovereignty resides in the people.
- It affirms freedom of thought and property rights, stating property cannot be confiscated except in cases of public necessity and with fair compensation.
- It establishes the presumption of innocence, prohibits punishment without a lawful trial, and protects individuals from arbitrary accusations and sentencing (Tashtoush, 2014: 45).

One of the United Nations' earliest and most significant achievements in this area was the adoption of the **Universal Declaration of Human Rights (UDHR)**. Article 1 of the declaration emphasizes:

- **"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."**

The declaration further recognizes fundamental rights that every individual aspires to, such as:

- **The right to life, liberty, and personal security.**
- **The right to an adequate standard of living.**

- **The right to seek asylum in other countries from persecution,** among others.

These rights are inherent and must be enjoyed by all members of the global community—men, women, children, and marginalized groups alike. They are not privileges or grants subject to the whims or discretion of any individual or authority but are inherent entitlements safeguarded for all.

#### **In Jurisprudential Context**

Human rights have been defined from various perspectives. According to one definition, they are:

- "Those needs and demands that must be available to all individuals without discrimination based on gender, color, type, religion, political ideology, national origin, or nationality" (Al-Rasheedi, 2002: 23).

Another definition states:

- "A set of natural rights enjoyed by every human being, individually or collectively, throughout their life stages. These are universal guarantees aimed at protecting individuals and groups from governmental interference in fundamental freedoms and obligating authorities to act or refrain from actions that safeguard human dignity" (Al-Nasser, 2006).

Some scholars view human rights as:

- "Inherent moral demands that are inalienable and guaranteed to all humans by virtue of their humanity alone. These rights have been elaborated and formulated into what is known today as human rights, translated into legal rights, and established through the norms of lawmaking in national and international communities. These rights rely on the consent of the governed, meaning the acceptance of those they aim to protect" (Levine, 2009: 17).

The researcher argues that there is universal agreement that human rights are indispensable for individuals to live a dignified life. These rights encompass civil, political, cultural, economic, and other fundamental rights.

#### **Subsection Two: Principles of Human Rights**

Human rights have, over a long journey, acquired clear principles that distinguish them from other rights. These principles include:

1. **Human Rights as a Restriction on State Sovereignty:**  
A foundational principle in international law is the respect for state sovereignty, closely tied to the prohibition of force and non-interference. However, the international protection of human rights imposes limitations on state sovereignty, constraining its ability to regulate internal matters concerning its population (Al-Masri, 2008: 18).
2. **Universality:**  
Human rights are universal, meaning they must be applied to all human societies without exception. They obligate all states to implement them. The universality of human rights stems from their nature as inherent rights for all humans, regardless of social, economic, or cultural distinctions (Al-Fatlawi, 2007: 52; *Journalism*, 2002: 22).
3. **Mandatory Nature:**  
Human rights have transitioned from being non-binding to becoming obligatory, with violators subject to international sanctions. The United Nations Charter represents a milestone in recognizing and enforcing



human rights. The provisions of the UN Charter on human rights have become part of customary international law and enjoy international legal guarantees.

**4. Inalienable and Inherent Nature of Human Rights:**

Human rights cannot be purchased, inherited, or revoked. They are inherent in every individual from birth and are universally binding and enforceable. These rights are intrinsic to human beings and must be upheld worldwide (Al-Badiri: 5-6).

Universality: Human rights encompass issues related to democracy, development, human justice, respect for freedoms, the rule of law, women's rights, children's rights, the rights of persons with disabilities, refugees, migrants, minorities, marginalized groups, and the poor, among others (Saeed, 2008: 13).

Effectiveness:

This principle implies that the state is committed to transforming the theoretical principles of human rights into a tangible reality that citizens experience in their daily lives. All state authorities work to protect these rights and prevent violations. Unlike non-democratic states that merely embellish their constitutions and laws with lofty human rights concepts without actual implementation, such states often engage in severe violations of these rights.

**Chapter Two**

The Relationship Between Democracy and Human Rights and Mechanisms for Their Protection

Democracy and human rights are fundamental concepts that have received significant attention in global discourse. While democracy functions as an essential political system, human rights embody a set of inherent entitlements. Their protection is facilitated within a democratic framework that provides a conducive environment for promoting transparency, accountability, and the rule of law.

**Section One**

**The Relationship Between Democracy and Human Rights**

Democracy, as a form of governance, serves as a foundational reference for all human rights, providing an environment conducive to their protection and actual realization. It is untenable to speak of democracy in an authoritarian or totalitarian society, despite claims that some totalitarian regimes may provide economic and social rights to their citizens. Human rights are interconnected and indivisible; sacrificing some for the sake of others contradicts their essence, as they stem from fundamental human needs.

The recognition of human rights and the establishment of mechanisms to defend them in both international and domestic law represent one of the most significant moral advancements of the 20th and 21st centuries. The international community has adopted various human rights treaties, obliging governments to take necessary steps to ensure these rights are protected both legally and practically within their jurisdictions.

The primary source of human rights in contemporary society is the **Universal Declaration of Human Rights (UDHR) of 1948**. Global human rights conferences have emphasized the interdependence between human

rights and democracy, recognizing them as mutually reinforcing. Governments acknowledge that safeguarding human rights necessitates adherence to democratic principles, and exercising these rights is essential for democracy to function effectively.

Accordingly, it is inconceivable to respect, practice, or guarantee human rights under a non-democratic regime. Democracy provides the natural environment for citizens to enjoy their rights and freedoms. This notion is echoed in **United Nations Human Rights Commission Resolution 1999/57**, titled *Enhancing the Right to Democracy*. The resolution highlights the intrinsic connection between democracy and human rights, noting that democracy, development, and respect for all human rights and fundamental freedoms are interrelated.

The resolution underscores that democracy is built upon the free will of the people, expressed in determining their political, economic, social, and cultural systems, and their full participation in all aspects of life.

The exercise of human rights and freedoms in a society cannot be achieved merely through a state's ratification of international treaties and conventions or their inclusion in the country's constitution and domestic legislation. Instead, these rights and freedoms are fundamentally realized within a democratic system of governance before being enshrined in abstract legal texts.

In essence, rights and freedoms are the citizens' entitlements in relation to public authorities. They can only exist in a democratic framework where the governing authority is rooted in the collective will of the people. This will is expressed through a legal and political organization that ensures every citizen's right to participate in shaping the public will, which, in turn, manages the affairs of the community based on pre-established rules and principles.

The primary characteristic distinguishing a democratic system from others is the subordination of governing authority to the rule of law. This subordination is ensured through constitutional and legal safeguards that uphold and protect public rights and freedoms. Democracy, therefore, provides the essential environment in which these rights and freedoms can be effectively realized and safeguarded.

#### **Subsection One: Constitutional Development in Iraq Before 2003**

The constitution is not a novel concept in Iraq's political history. Successive political authorities in Iraq, during both the monarchy and republican periods, enacted permanent and provisional constitutions. These documents outlined the rights and duties of the authorities, their relationship with individuals, and the nature of state and societal governance. However, these constitutions often served as tools for those in power, allowing them to deviate from their responsibilities by altering constitutional texts and provisions to align with their own objectives.

Examining the nature of these constitutions, it is evident that most were not created through electoral processes to establish a national committee representing Iraq's diverse societal segments. Nor were they subjected to

general elections for public endorsement. The exception is the 2005 Constitution, which

emerged from a semi-direct popular will, reflecting a strong public demand for democracy (Murad, 2012: 206).

Additionally, under these earlier constitutions, no constitutional court was established to monitor the legality of the authorities or the laws and decisions they issued concerning the organization or management of state affairs. Furthermore, none of these constitutions facilitated the emergence of an Iraqi government elected by the people. Instead, most authorities in Iraq came to power through military coups or political revolutions.

### **Subsection Two: Protection of Rights in the Post-2003 Constitution**

After the occupation of Iraq and the overthrow of its regime on April 9, 2003, discussions began about reshaping the Iraqi state from a unitary system into a federal, democratic one. The 2005 Iraqi Federal Constitution, in its first article, declared: "The Republic of Iraq is a federal, independent, and sovereign state. The system of government is a parliamentary, representative, and democratic republic." This marked the first step towards building new Iraqi institutions founded on democratic principles.

This vision was reinforced by a speech from U.S. Ambassador Paul Bremer to the Iraqi people on September 5, 2003. He outlined the initial steps to establish democracy in Iraq, including forming a temporary Iraqi government, drafting and approving a constitution, electing a permanent government, ending the Coalition Provisional Authority, and transferring sovereign powers to the Iraqi government (Hamadi, 2009: 165).

The 2005 Iraqi Constitution was subsequently completed, incorporating Islamic values, democratic principles, and human rights. It consisted of **144 articles** organized into **four sections and six chapters**.

### **Rights and Freedoms in the Constitution**

The Constitution devoted **Chapter Two** to rights and freedoms, covering Articles **14 to 46**. It divided this chapter into two sections:

1. **Section One: Rights**
2. **Section Two: Freedoms (Articles 37–46)**

The **Rights** section is further divided into two branches:

- **Civil and Political Rights**
- **Economic, Social, and Cultural Rights**

### **Branch One: Civil and Political Rights**

This branch covers Articles **14 to 21** and emphasizes equality before the law without discrimination. The principle of equality is fundamental, as rights and freedoms cannot exist without it.

Among the fundamental individual rights recognized by divine messages and upheld by modern legal systems is the "**Right to Life**." Article 15 of the Iraqi Constitution affirms that every individual has the right to life, security, and liberty. These rights cannot be restricted or revoked except in accordance with the law and based on a judicial decision.

The Constitution also guarantees the right to **personal privacy**, provided it does not conflict with the rights of others or public morality.

**Due to the repeated and continuous violations of human rights resulting from formal legal procedures and mock trials, often without criminal evidence, the Constitution of Iraq includes key provisions to protect individuals' rights.** These provisions are in response to the need for legal safeguards against such abuses. The Constitution states that:

- "There is no crime or punishment except for an act that the law defines as a crime at the time it was committed, and no punishment shall be harsher than the one in effect at the time the crime was committed. The accused is presumed innocent until proven guilty in a fair legal trial" (Iraqi Constitution, 2005, Article 19).

Additionally, individuals are protected from being tried again for the same crime after release unless new evidence emerges.

Regarding political rights, the Constitution guarantees citizens—both men and women—the right to participate in public affairs, including voting, running for office, and exercising other political rights. It also prohibits the extradition of Iraqis to foreign entities.

**Economic, Social, and Cultural Rights:** The Constitution addresses economic, social, and cultural rights (Articles 22–36), affirming that work is a right for all Iraqis, ensuring them a dignified life. The state is obligated to guarantee the right to establish and join unions and professional associations. Private property is protected, with the owner having the right to enjoy, utilize, and dispose of it within the law. Property may only be expropriated for public benefit with fair compensation.

The Constitution also emphasizes the protection of family structure, viewing it as the foundation of society. The state is tasked with safeguarding the moral, religious, and national values of families. Furthermore, the state is committed to providing social and health guarantees, particularly for children, women, the elderly, the disabled, and those facing economic hardships, such as unemployment.

**Freedom and Human Dignity:** The second part of the Constitution focuses on liberties, asserting that human freedom and dignity are inviolable. No one can be detained or investigated without a judicial order, and torture—whether physical or psychological—is prohibited. The state ensures protection from coercion in intellectual, political, and religious matters. Forced labor, slavery, human trafficking, and the trafficking of women and children are also strictly forbidden. These provisions form the core principles of human rights protection in Iraq, ensuring that individuals' freedoms and dignity are upheld in all circumstances.

## Chapter Two

### Mechanisms of Democracy in Protecting Human Rights in Iraq

The issue of human rights is closely related to the existence of protective and supervisory mechanisms that transcend the rule of law. The effectiveness and efficiency of these mechanisms confirm the presence of actual solidarity among state institutions within a legal framework based on democracy. These mechanisms include:

### **Subsection One: Constitutional Mechanisms**

Constitutional mechanisms are the various means and methods that can be employed to ensure that rights and freedoms are protected from violations. This is achieved through national legislators organizing these activities through legislative provisions (Hilmey, 1974: 228). Therefore, the constitution and national laws are the primary means of protecting and ensuring the proper implementation of the human rights system, as they define the mechanisms for safeguarding these rights from violations. By stating the rights, freedoms, and their types, and how to ensure constitutional protection through their inclusion in the national constitutional document, the existence of these rights is affirmed. This allows citizens to easily claim and defend them politically and judicially in the event of violations. In general, there are three constitutional guarantees for protecting fundamental rights:

#### **First: Rule of Law**

The rule of law refers to the application of legal rules, regardless of their source, whether they are constitutional, statutory, or regulatory. The constitution, as the supreme law, holds sovereignty, and all state authorities and individuals must adhere to it. The legislative authority must comply with the constitution in the laws it enacts, while the executive authority must also be bound by the rule of law. This means that the executive branch must operate in accordance with the laws and regulations in every action, decision, or measure it takes, particularly when managing public affairs and protecting public order, as these are closely linked to human rights and freedoms. The Iraqi constitution of 2005 adopted this principle and incorporated it into its policies and internal law. As stated in Article 5, "The people are the source of all authorities and their legitimacy..." It also states, "The exercise of any rights or freedoms under this constitution may be restricted or defined only by law or based on it, provided that such restrictions do not infringe upon the essence of the right or freedom. No one may exercise their rights to the detriment of others. The principle of sovereignty requires everyone to respect it, not to exploit it."

#### **Second: Principle of Separation of Powers**

The principle of separation of powers constitutes an important and effective guarantee for the state's adherence to the rule of law, ensuring that the governing bodies respect their constitutional boundaries and do not exceed their authority. When the separation of powers is disrupted, the following consequences arise:

1. No authority of the state may issue an individual decision except within the scope of a general decision, ensuring equality among all members of the community.
2. Every general rule, whether legislative or regulatory, must be respected, even by the authority that issued it. Failure to apply it constitutes a breach of the principle of legality, which can be contested through judicial means. Any restriction imposed on individual rights and public freedoms must be enacted by law, which has been approved by the representatives of the people.



The 2005 Constitution of the Republic of Iraq adopted the principle of the separation of powers as one of the most important guarantees for human rights and freedoms. Article 48 of the Constitution states: "The federal authorities consist of the legislative, executive, and judicial authorities, which exercise their powers based on the principle of separation of powers." However, the separation between the legislative and executive branches was not absolute, which is the true meaning of the principle of separation of powers as practiced in parliamentary systems in many countries around the world.

### **Third: Judicial Independence**

Judicial independence is a constitutional principle that applies to the relationship between the judiciary and other branches of government, granting the judiciary a separate and independent authority from the legislative and executive branches (Sarour, 1977: 168). Judicial independence is not only crucial for the judges but is closely linked to the rule of law and the protection of human rights. It is a primary and essential condition for various reforms, most notably political reforms and the fight against corruption. The judiciary is the hope of the people for reform, and if their hope in it fails, they will inevitably resort to violence (Adnan, 2017: 22).

A key change in Iraq's political landscape has been the connection of the judiciary to the Supreme Judicial Council. To ensure its importance and guarantee its respect, the constitution explicitly enshrines the judiciary as one of the fundamental guarantees for the protection of rights and freedoms. Article 87 states: "The judiciary is independent," while Article 88 emphasizes the full independence of judges, stating that no authority can interfere with the judiciary or judicial affairs. It also stipulates: "Judges are independent and no one may influence them in their judgment except the law. No authority shall intervene in the judiciary or in matters of justice." Additionally, Article 96 ensures judicial independence by prohibiting judges and public prosecutors from holding any legislative, executive, or other positions, and forbids judges from joining political parties or engaging in any political activities.

The Iraqi legislator issued the **Supreme Judicial Council Law No. (45) of 2017**, which aims to regulate the formation, jurisdiction, and operational procedures of the Supreme Judicial Council in a manner that aligns with constitutional, legal, and judicial developments in Iraq. The law was intended to ensure the council's ability to exercise its constitutional powers effectively.

### **Subsection Two: Judicial Mechanisms**

One of the most important guarantees for human rights in modern legal systems is the judicial mechanisms and safeguards against the overreach of the legislative and executive branches on individual rights and freedoms. Among the most crucial of these mechanisms is the system of judicial review, ensuring the protection of individual rights and freedoms by having the judiciary supervise the constitutionality of laws and the legality of regulations.

It is well-established in constitutional doctrine that there are two main methods for organizing judicial review of laws:

1. **Judicial Review of the Constitutionality of Laws:** This is the judiciary's task of verifying whether a law complies with constitutional principles. Judicial review is the process by which courts examine the constitutionality of laws and regulations. Not all countries that adopt judicial review follow the same procedure, and this method can vary depending on the country's legal system. In Iraq, this task is undertaken by the **Federal Supreme Court**, which has the authority to review the constitutionality of laws after their issuance, as stipulated in the 2005 Constitution.

2. **Primary Jurisdiction Review (Cancellation Review):** In this method, courts have the power to annul laws if they are found unconstitutional, either **prior to enforcement** or **after they have been enacted**. The **Iraqi Constitution of 2005** follows the latter approach, allowing the **Federal Supreme Court** to examine the constitutionality of laws after they have been passed and enforce its rulings accordingly.

**Constitutional Review by the Argument of Unconstitutionality (Non-Application Review)**

This type of review assumes that a case is already being heard by the court, and one of the parties—whether the plaintiff or the defendant—argues that the law to be applied in the case is unconstitutional. If the court finds the argument valid, it issues a judgment to abstain from applying the law in the specific case at hand.

The **2005 Constitution of Iraq** incorporates this type of judicial review. According to the **Internal Regulations of the Federal Supreme Court No. 1 of 2005**, ordinary courts, at all levels, have the authority to, of their own accord, during the examination of any civil or criminal case, request the Federal Supreme Court to rule on the constitutionality of a legal provision, legislative decision, or regulation relevant to the case. This allows the ordinary courts to send a request to the Federal Supreme Court for a decision on the matter.

**Second: Judicial Review of Administrative Acts**

The judiciary is the most capable body for safeguarding the principle of legality and protecting rights and freedoms, provided it has the necessary guarantees to maintain its independence. This allows the judiciary to effectively carry out its review functions (Jamal al-Din, 1992 AD: 182).

As is known, administrative bodies exercise a wide range of activities in the performance of their duties, but their actions are not limitless. They are bound by the legal rules in place and must operate within the scope of the authority granted to them by these rules. If they exceed their powers or misuse their authority, they become subject to judicial review, which can stop them from exceeding their limits.

The Iraqi legislator adopted a dual judicial system, consisting of two independent judicial bodies: the **ordinary judiciary**, represented by ordinary courts, with the highest being the **Court of Cassation**, and the **administrative judiciary**, represented by administrative courts, headed by the **Council of State**. These courts are responsible for adjudicating disputes between individuals and the administration, with the administration being

vested with powers and privileges not available to individuals (Mujahed, 2020: 88).

The **2005 Iraqi Constitution** explicitly protects the principle of judicial oversight over administrative decisions. Article **100** of the Constitution states, "No law shall provide for the immunity of any administrative act or decision from judicial review." Additionally, **Article 101** of the Constitution allows for the establishment of the **Council of State** by law, which is responsible for judicial functions in administrative law, legal advice, drafting, and representing the state and public entities before the judiciary, unless otherwise specified by law.

In summary, Iraq's legal system ensures judicial oversight of both legislative acts and administrative decisions, reinforcing the protection of rights and freedoms by ensuring that the actions of both the legislature and the administration comply with the Constitution and laws.

### **Third Section: Political Mechanisms**

Political mechanisms refer to legal oversight that precedes the issuance of a law, preventing its passage if it conflicts with constitutional provisions. This oversight is carried out by a political committee whose members are selected by the legislative authority, in collaboration with the executive branch, or through

public opinion, often facilitated by media outlets. This mechanism ensures that democratic principles are applied to political systems, as representative democratic governance is considered the best way to guarantee human rights. The most important political mechanisms are as follows:

#### **First: Parliamentary Oversight**

Having an elected parliament is not sufficient to ensure a democratic system; its power must be real and effective. The **Iraqi Constitution** emphasizes that the parliament must exercise its primary functions of legislation and oversight over the executive branch, holding it accountable for any violations, ensuring a more politically stable future, and embodying democratic values that protect basic rights in accordance with the constitution (Amir, 2016: 70).

Like other nations, Iraq practices parliamentary oversight as stipulated in **Article 161, Paragraph 2** of the Constitution, which states: "The Council of Representatives shall oversee the performance of the executive branch," and it may direct questions to the Prime Minister and Ministers on any subject within their jurisdiction, with each required to answer the members' questions. The parliament also has the authority to discuss general matters to clarify the policies and performance of the Cabinet or individual ministries. Furthermore, it may issue a vote of no confidence against any minister by an absolute majority. This provides clear mechanisms for parliamentarians to oversee the executive branch, while the detailed procedures are left to the internal rules of the Council of Representatives.

#### **Second: Public Opinion and Media Oversight**

Public opinion and the media are vital tools for citizens to exercise their oversight over government and parliamentary policies. This form of oversight supports democratic life and is a genuine avenue for the exercise of many

freedoms and rights. Public opinion oversight is a common feature in all forms of democratic governance (Al-Ibrahimi, Kazem, 2014: 8).

Due to the pivotal role that the media plays in shaping public opinion, it is often referred to as the "fourth estate" in modern democracies. The media acts as a watchdog on both the legislative and executive branches by presenting laws to the public, discussing their benefits or harms, and advocating for their amendment or repeal. It allows citizens to express their opinions and concerns regarding proposed laws and government actions. The media is also instrumental in mobilizing, educating, and raising awareness, serving as a crucial indicator of the extent of freedom and democracy afforded to individuals (UNDP K Report, 2007: 4).

In Iraq, the **2005 Constitution** acknowledges the importance of public opinion and media freedom. **Article 38, Paragraphs 2 and 3** guarantee freedom of the press, publication, advertising, and assembly, and it allows for peaceful demonstrations. It also stipulates that the law shall regulate matters related to freedom of speech and expression.

The text indicates that freedom of the media is one of the applications of public opinion, which should be directed towards the authorities in the state within the limits of the law and respect for individual rights and ethical values (Al-Ibrahimi, Kazem, 2014: 10). Respect for one's opinion and the opinion of others is the foundation of partnership among all, and we must understand that understanding the other person's opinion is the highest form of respect. Freedom of expression is not complete unless we commit to the responsibility of listening.

Although the 2005 Iraqi Constitution includes important provisions guaranteeing the rights and freedoms of citizens, the reality indicates a significant gap between the constitutional provisions and their actual application. The guarantees of human rights become meaningless when political practices violate them in practice. Iraq continues to suffer from human rights violations and a deterioration of conditions on many levels (housing, healthcare, security, services, etc.), and these are behind global human rights standards.

#### **Results:**

**1-** Human beings have a set of inalienable rights and freedoms that cannot be revoked or suspended because these are universal and inherent rights. Protecting them is essential for democratic political systems that emphasize the rule of law and avoid concentrating power in the hands of a few individuals.

**2-** Democratic reform is not merely about amending laws and regulations; it requires continuous development of the approach governing the practices and relationships between citizens, the government, and elected representatives who bear the responsibility of making decisions on behalf of the citizens who elected them. Our commitment to the principles of citizenship, respect for differing opinions, and the views of others is essential for the success of our nation in its quest to deepen democracy.

**3-** Building democracy is not completed merely by casting votes in the electoral process. It is an ongoing process of holding those in power

accountable and asking questions. Citizens should engage in discussions and dialogues without fear of penalties for expressing political views or those related to the challenges their lives or country face. They should communicate with their elected representatives and community leaders, ask questions, follow up on their performance, and work to improve services in healthcare, education, transport, reduce the impacts of rising living costs, and fight corruption in all its forms, while safeguarding citizens' rights.

4- The democratic model in Iraq is guaranteed by the adoption of a permanent constitution in 2005, which includes a dedicated chapter on rights and freedoms, providing the fundamental guarantees for human rights and freedoms, including constitutional guarantees, as well as other protections.

#### **Recommendations:**

1- To build a sustainable democracy based on rights, citizens must be aware of their rights, and political participation in elections and active engagement in expressing opinions should be encouraged. This can be achieved through the activation of the media's role, conferences, and periodic seminars aimed at entrenching democracy as an alternative to tyranny in all its forms. There should be a call for rebuilding the state and reviewing its relationship with its citizens. Human rights reflect a deep desire to establish political practice based on the values of freedom and rights, considering these as essential conditions that cannot be disregarded, no matter the justifications for governance.

2- Establish academic studies focused on democracy and human rights with the aim of training qualified personnel in various fields, such as teaching and visiting schools to spread the culture of sound democracy and human rights. Additionally, training specialized cadres to work in this field and carry out research and dissemination is important.

3- Build a network of relationships with institutions working in the areas of democracy and human rights, both within Iraq and with international organizations abroad..

#### **Sources**

##### **First : the books**

- Al-Nasser, Mohammed ( 2006), concepts of human rights, a lecture within the curriculum of the course on countering violence against women for students of Al-Al-Bayt University, the National Center for Human Rights.
- El-Baz, David (2006), political systems of the state and government in the light of Islamic Law, University thought House: Alexandria, P.206.
- Al-Badiri, Abdullah gesture, lectures on human rights and democracy, Central Technical University, pp. 5-6.
- Charles, Tilly(2010), democracy, translated by Mohamed Fadel Tabakh, reviewed by Dr. Haidar Haj Ismail,, 1st floor, Beirut: Center for Arab unity studies, P. 21.
- Al-Jabri, Mohammed Abed(1997), democracy and Human Rights, Center for Arab unity Studies, Vol.2, Beirut, P. 16.
- Al-Jurf, Tomah (1959), summary of constitutional law, modern Cairo library, Cairo, pp. 82-83.



- Gamal al-Din, Sami(1992), Justice of convenience and discretionary authority of management, Dar Al-Nahda Al-Arabiya: Cairo, P .182.
- Al-Rashidi, Ahmed(2002), Adnan El-Sayed Hussein, human rights in the Arab world, Dar Al-Fikr: Beirut, pp. 15-23.
- Sorour, Ahmed Fathy(1977), legality and criminal procedures, Dar Al-Nahda Al-Arabiya : Cairo, P.168.
- Saeed, Suad(2008), human rights violations and the psychology of political blackmail - psychological comparisons, Vol.1, world of modern books publishing: Amman, P. 13.
- tashtoush, Haile abdulmoula (2014), Human Rights between Islamic thought and positive legislation, start publishing and distribution house : Amman, P.45.
- Tamawi, Suleiman (1986), the three authorities in the Arab and contemporary constitutions and in Islamic political thought a comparative study, Ain Shams press: Egypt, P.518 .
- Abdel Rahman, Helmy(2009), Human Rights guarantees under the emergency law, Vol.1, Dar Al-Hamid publishing and distribution: Jordan, P. 228 .
- Abdelali, Abdelkader ( 2010), social rifts and their impact on the Israeli Party System, Center for Arab unity studies: Beirut, P.10.
- Abdullah, Abdul - Jabbar Ahmed-Ibrahim, Hassanein Tawfik(2005), democratic transitions in Iraq, constraints and opportunities, Gulf Research Center,, P.3, p. 35.
- al-Fatlawi, Suhail (2007), Human Rights, House of culture publishing and distribution: Amman, P.52.
- Levin, Leah (2009), human rights ( questions and answers), translated by Alaa Shalabi, Vol.5, p. 17.
- al-Masri, Zakaria (2008), democracy and Human Rights, House of thought and law publishing and distribution: Cairo, 2008, p.18.
- Naguib, Sahar Mohammed (2011), constitutional regulation of guarantees of human rights and Freedoms - a comparative study in some Arab constitutions, shattat publishing house and software : Egypt, P.79.
- Al-Hilali, Ali al-Din, and others (1998), democracy and Human Rights in the Arab world, Arab Future Book Series(4): center for Arab unity studies, P.27.

#### **Second: published research**

- belkeziz, Abdallah, we and the democratic system, published research, journal of the Arab future, P.236, 1998, p. 123.
- Brahimi, Khaled Kazem, Kazem, Muntaha, Jawad (2014), public opinion and its constitutional guarantees, published research, journal of Dhi Qar University, Vol.9, p. 3, P. 8.
- al-Wahishi, Ali Mesbah Muhammad (2015), a theoretical study in democratic transformation, published research, journal of the Faculty of economics for Scientific Research, Vol.1, p. 2, p. 54.
- Groo, Mona Karim, Kazem, duha laibi(2023), the peaceful circulation of power, published research, Maysan Research Journal, vol.19, p. 37, p. 145.

- Abdulreda, Rasha Dhafer Mohieddin(2019), dimensions of the democratic transition in [6]Iraq after 2003, published research, journal of political issues, Al-Nahrain University, p.301
- Murad, Ali Abbas (2012), on some problems of rebuilding a state in Iraq, published research, Hammurabi magazine, P.4, p. 206.
- Hammadi, Hafez Alwan(2019), Human Rights, University of Baghdad, 165.
- Adnan, Nour Riad(2017), judicial independence in Iraqi legislation, published research, University of Diyala, Faculty of Law, P.22.
- Mujahid, Ali Ismail ( 2020), judicial control over the actions of the administration to protect public rights and freedoms, research publication, Journal of Law, P.1, p. 88.
- Omair, Hassan Turki(2016), parliamentary control and the future of the political system in Iraq, published research, journal of legal and Political Sciences, P.1, p. 77.

**Third: international laws and declarations:**

- Universal Declaration of human rights, 1948 .
- Appendix (3) to the Universal Declaration on democracy, session (161), Cairo, September, 1997.
- the final document of the UN summit /September / 2005.
- the permanent Iraqi constitution of 2005.
- Supreme Judicial Council Law No. 45 of 2017.

**Fourth: websites :**

- Amal Al-Sherida, the concept of democracy and its meaning, published research, on the website: last visit 13/11/2024
- <https://mawdoo3.com/%D9%85%D9%81%D9%87%D9%88%D9%85>
- Zuhair Maazi, workshop on Human Rights, published on the website
- <https://www.slideshare.net/slideshow/ss-38803262/38803262>.