



ISSN: 2957-3874 (Print)
Journal of Al-Farabi for Humanity Sciences (JFHS)
مجلة الفارابي للعلوم الإنسانية التي تصدرها كلية الفارابي الجامعة



THE RIGHT OF WOMAN TO VOTE IN THE CONSTITUTION & ISLAMIC SHARIAH (STUDY OF THE RIGHT TO VOTE FOR WOMAN UNDER THE CONSTITUTION OF THE REPUBLIC OF IRAQ 2005)

Taghreed Abdul Qadir Ali ^[*]

Author Email: Taghreed.a.ali@aliraqia.edu.iq

ABSTRACT

This study aims to strengthen, support and reveal the reality of a woman's legal exercise of her right to vote as one of the political rights of Iraqi women. Despite the importance of this right, it did not receive any attention on scientific research and political surface. This study uses legal approach by the position of the constitution of the republic of Iraq 2005 and the Islamic Sharia on this right. This study will also use the descriptive analytical method to collect all information related to the position of governmental institutions and the Iraqi judiciary. and the study relied on the statistical method done on all Iraqi governorates giving the true percentage of women who have the right to vote. The study took the last elections of the Iraqi parliament occurred on 10-10-2021 as an example of women exercising her right to vote. The study reached the most important outcome, which is the Iraqi constitution is consistent with the provisions of Islamic sharia in achieving equality between men and women the right to vote. However, there is a significant weakness when the Iraqi woman exercise her right. This was confirmed by the participation of Iraqi woman in the 2021 parliamentary elections. This study has provided a set of

recommendations to enhance the participation of Iraqi woman in exercising her right also recommends the endowments offices address a religious discourse aimed at showing the image of the true woman in Islam.

Keywords: right of vote, Islamic sharia, constitutional law, parliamentary election.

INTRODUCTION

Most constitutions included texts in establishing the right to vote for individuals. The electoral laws regulated the procedures for exercising this right freely without any control, bias, or forced preference to specific groups in achieving the true expression of the people's will. However, the statistical data obtained from analyzing the real reality of the Iraqi elections indicate a significant weakness in the ability of Iraqi woman to exercise the right to vote. The low percentage of woman exercising the right to vote has led to the creation of parliament members that do not express the reality of the members of society and fully reflect the social reality within their proximity. This has created a social oppression on the rights of the women, which cover a large portion of the society. Therefore, it has become a necessity to search for the reasons for the reluctance of Iraqi woman to vote and choose her representation within the position of Islamic sharia on woman's right.

DEFINING THE RIGHT OF WOMAN TO VOTE.

The right to vote is defined as : Enabling citizens who meet the legal requirements to participate in the selection of rulers according to what they see fit for them (Jawad et al., 1991).¹ It is defined as “a choice made by the electors by voting for persons who may be members of a representative or a parliament”(Al-Shawi et al., 2013).² The electoral systems are the mechanisms used to convert the voters’ vote to the corresponding seats in the elected bodies using certain arithmetic methods (Al-Abdali et al., 2007).³

The Iraqi parliament election law No. 9 (2020) defines the right to vote in four constructs:

1. Election is a right for every Iraqi who meets the conditions stipulated in this law to exercise this right without discrimination on gender, race, nationality, origin, colour, religion, sect, belief, opinion, economic or social status.
2. Every voter exercises his right to vote in the elections freely, directly, secretly and individually. It is not permissible to vote using any proxy.⁴ From the law, to vote in the elections, the voter must first be Iraqi nationality and fully qualified,
3. The voter has reached eighteen years of age in the year in which the elections are held.
4. The voter is registered in the voters' register in accordance with the provisions of this law and the regulations and procedures issued by the commission and has an electronic voter's card with the presentation of one of the three official documents; the civil status identity card, the unified card, or the Iraqi nationality certificate .

¹ . Saleh Jawad Al-Kadhim , Ali Ghalib Al-Ani : political systems, Baghdad, 1990-1991, p. 35.

² . Munther Al-Shawi: The Philosophy of the State, 2nd edition, Al-thakirah for publishing and distribution, Baghdad, 2013, p. 228.

³ . Saad Madhloom Abdullah Al-Abdali: guarantees of freedom and integrity of elections - a comparative study, master's thesis, college of law, university of Babylon, 2007, pg. 46.

⁴ . Article (5) of the Iraqi parliament elections law No. 9 of 2020.

It is worth noting that the majority of constitutions deprived woman of the right to vote, restricted it to men. For a long time, woman remained far from casting her votes in the elections and contribute to the country's political life due to the patriarchal belief that woman are only suitable for home and family affairs. As for other affairs, including public affairs, they are the domain of men, but political rights have been recognized for woman on the grounds that this deprivation is incompatible with the principles of democracy.

In 1967, Iraq recognized the woman's right to elect a member of the national assembly. everyone who meets the legal requirements of citizenship, age of political maturity, legal capacity, integrity of his criminal profile, as well as being registered in the election schedule, according to the national assembly election law No. 7, 1967. It should be noted that this law has obligated the males registered in the electoral roll to participate in the election, while making the registration process optional for females. The constitution of the republic of Iraq 2005 affirmed the right of the Iraqi woman to vote as a citizen when its legislator adopted a general rule (18) represented in achieving legal and political equality between citizens without discrimination on participating in the management of the government affairs in the state through voting in referendums and general elections .

Based on the foregoing, the constitution of the republic of Iraq of 2005 has granted Iraqi woman the right to vote as citizens. On this basis, Iraqi woman have the right to participate in all elections on equal footing with other political groups.

Despite the soberness of the constitutional and legal texts related to the woman's right to vote, it is noted that Iraqi women are weak in voting the members of the Iraqi council of representatives during the elections. In fact, the phenomenon of limited political participation for woman is the

result of many interacting and overlapping factors on the general society level, whether they are political, economic, social or cultural factors. Some of the them are due to :-

1. Constitutional and legal reasons, as the legislator does not stipulate the principle of equality between males and females in regard to several political rights, and whether it guarantee woman the right to nominate and vote.
2. Among the factors that impede women's broader participation are the matters that relate to the cultural and value system, which perpetuates the stereotyped images of woman and her role in society. This helps to prevail in misconceptions about the position of religion towards woman, with the availability of some interpretations that can be employed in this regard to limit the activation of women's political participation to resist the voices calling for the importance of achieving this notion.
3. Economic factors and high rates of illiteracy of all kinds among women in developing societies.
4. The dominance of the masculine mentality and the suspicion among many about the importance of women's participation in political work.
5. The lack of interest of party leaders in providing training and development requirements for women's within those parties, doubling the weakness of women's participation in the political life .
6. The influence of the society on its customs, traditions and practices by the teachings and impact of religion is considered as self-evident. However, it is important to realize that not everything that is said about religion is from religion, Society occasionally interprets the religious text, and they might misunderstand the text upon interpretation .

THE PRINCIPLES GOVERNING THE RIGHT TO VOTE .

The right to vote is generally governed by a number of principles regulated by the election laws. This will be discussed in the following three sections :-

The principle of freedom of voting

The principle of freedom of voting has two meanings. On one hand, it is defined as⁵ despite the existing right of the voter to exercise the electoral process, there is no obligation to go on the day of the election to vote without them (Albaz, 2002). On the other hand, the principle of freedom to vote means⁶ that the freedom of the voter in determining their choice of the male or female candidate they prefer is determining their choice of their own free will without subjecting to any pressure or influence, whether from the ruling authority, the candidates, or any other party that has an interest in directing their will to a specific goal (Afifi, 1984). Securing the freedom of the voter is through practical guarantees and legal measures to ensure protection for the voter while they exercise their right to vote .

In Iraq, the constitutional legislator took the optional vote, as indicated in article (20) of the Iraqi constitution of 2005, which stated that men and women have the right to enjoy political rights, including the right to vote. Hence, the Iraqi legislator has defined electoral participation as a right of the voter to exercise freely without imposing any penalty to the voter, whose names are registered in the electoral register and decided to abstain from casting their vote .

⁵ Daoud Albaz, The Right to Participate in Political Life - An Analytical Study of Article (٦٢) of the Egyptian Constitution Compared to the System in France, Dar Al Nahda Al Arabiya, Cairo, ٢٠٠٢, p. ٢٦٠

⁶ Dr. Mustafa Afifi, Our Electoral System in the Balance, Saeed Raafat Library, Cairo, ١٩٨٤, p. ١٦٠. Dr. Suad Al-Sharqawi and Dr. Abdullah Nasif, Electoral Systems in the World and in Egypt, Dar Al Nahda Al Arabiya, Cairo, ١٩٩٤, p. ٦٩

Second: The Principle Of Secrecy Of Voting

The secrecy of the vote is an important guarantee of the voter's freedom to choose. This is because public voting opens the door to the administration's interference and intimidation to the voters in electing their preferred candidates. Public voting also exposes voters to the revenge of their political opponents, due to the fact that expressing an opinion in public requires a measure of moral courage that many voters do not have (Al-Tahrawi, 2006).⁷ Public voting means that the voter announces the name of his candidate in front of an audience or the members of the election committee. Supporters of the public vote expressed that it is characterized by frankness, moral courage, and a sense of responsibility.⁸ However, public voting enables the state's ruling authorities to control the electoral process and direct its results to the candidates benefit, either through threats, coercion, or greed to obtain bribes or material benefits. Public voting also has a history of subjecting citizens in societies whose economic system is based on different classes to the dependency, binding them to their employers who control their livelihood. In this case, they vote for those who do not want to please their employers and fear of being expelled from their jobs (Omar, 2001).⁹

Thus, public voting affects the freedom of citizens to participate in elections and destroys the very concept of democracy in society. Therefore, majority of countries tend to adopt the principle of voting secrecy as a guarantee of the freedom of voters to choose. This means that the voter expresses his opinion in complete secrecy so no one knows the identities of the voter and the candidates chosen (Shiha, 1992).¹⁰ The Iraqi legislator has taken this principle of voting secrecy

⁷ Hani Ali Al-Tahrawi, Political Systems and Constitutional Law, 1st ed., Dar Al-Thaqafa, Jordan, ٢٠٠٦, p. ٢٣٧.

Dr. Ismail Marza, Principles of Constitutional Law and Political Science, ٢rd ed., Dar Al-Malak, Baghdad, ٢٠٠٤, p. ٥٠٨

⁸ Hussam Al-Din Muhammad Ahmad, Criminal Protection of the Governing Principles of Political Elections in Their Different Stages, Dar Al-Nahda Al-Arabiya, Cairo, no year of publication. p. ٥٧

⁹ Hamdi Ali Omar, Parliamentary Elections - An Analytical and Authentic Study of the Egyptian People's Assembly Elections for the Year ٢٠٠٠, Dar Al-Nahda Al-Arabiya, Cairo, ٢٠٠١, p. ٨٠.

¹⁰ Ibrahim Abdul Aziz Shiha, Political Systems of the State and Governments, Dar Al-Matbouat Al-Jami'ia, Cairo, ١٩٩٢, p. ٨٣

from the Iraqi parliament elections law No. 9 of 2020, implementing them to the election, where they conducted with secret ballot, as the fourth article stipulates:- (Second: every voter exercises his right to vote for the elections freely, directly, secretly, individually, and it is not permissible to vote using proxy). To ensure the secrecy in voting, some necessary precautionary organizational measures are taken such as stipulating the manner where those who are blind or acquire special disabilities are prevented to vote in normal circumstances.

In Iraq, a male or female voter who needs assistance because they are illiterate, blind or another obstacle may have the help of a relative or friend who are chosen by himself or the employee in charge of the polling station.¹¹

Third :The Principle of Personal Voting

Whether the election is a right for the voter, a job to be performed in special conditions, or any way that determines the voter's right to vote, it is necessary for the woman to perform the election by herself because she is the one that give testimony and express her personal desire to choose. The voter is also responsible for her vote before herself and in front of society. Apart from its negative impact on the electoral process, ignoring the principle of personal voting leads to enabling another person to vote instead of the voter and without her knowledge or consent. This is detrimental to the proper conduct of the electoral process and its fictitious results (Afifi, 1984).

¹² The implementation of this principle is necessary for the integrity of the electoral process, as it prevents people from casting electoral votes whose owners have died, left the country, or even failed to perform their electoral duty. But this principle does not prevent the existence of numerous exceptions, which are mostly factored to the inability of the female voter or voter to directly vote,

¹¹ Regulation No. ١٣ of ٢٠٠٠ issued by the Independent High Electoral Commission, Section Four, Voting Process

¹² Mustafa Afifi, our electoral system in the balance, Saeed Raafat library, Cairo, 1984, p. 848

as in the case of those with disabilities or travelled outside the country. This leads to allowing authorization, agency, correspondence, or others (Ali, 2005).¹³

THE LEGAL NATURE OF THE RIGHT TO VOTE .

The constitutional jurisprudence dealt with this right using philosophical visions for the purpose of identifying the nature of this right. So, this study will briefly present these opinions to the extent of the need for research and according to the following :-

A. Election is a Right of the Individual :-

Election is a right for every individual in society. This entails the application of the universal suffrage principle, comprising the participation of all society members who have reached the age of majority in the election. However, since it is a personal right, it does not entail any obligation, that is: the individual has the right to exercise this right to participate in the election process and give their opinion.¹⁴

B. Elections is a Social Function :-

It defines the election as an act or activity performed by an individual commissioned by the nation it belongs to contribute on the management of its affairs. This imply that election is not an absolute individual right. According to the constitutional law jurists, this difference appeared after the outbreak of the French revolution. During this era, especially when the debate began to rage over who is the sovereign, the bourgeois class, which was reformed after the French revolution, advocated the principle of the sovereignty of the nation instead of the principle of popular sovereignty in the hope of monopolizing power in its hands. The principle of the nation's

¹³ Saeed Al-Sayed Ali, the basic principles of political systems and contemporary ruling systems, 1st edition, Dar Abu Al-Magd for printing, Cairo, 2005. pp. 378-379.

¹⁴ . Muhammad Al-Majthoub - constitutional law and the political system in Lebanon, publications of Al-Halabi law library - Beirut edition - p. 316

sovereignty says that popular sovereignty does not belong to the members of the group, but to a moral personality independent of the natural individuals. This moral personality represents the nation, and the individuals who exercise the process of election and voting do so on behalf of the nation and perform a function do not obtain this right except from the constitution. The constitution is one of the laws of the state that does not recognize this right, particularly to those whom it considers qualified to do so. This leads to forcing a person to vote and imposing penalties to those who fail to do so without an acceptable excuse by whoever calls for sovereignty to be for the people. This means that popular sovereignty or the sovereignty of the people is distributed among all of its members, and each individual has a right or part of sovereignty. In addition, the right to vote is a right of the voter instead of an obligation. Also, it may not be restricted or limited, and it is not permissible to impose a penalty on those who did not exercise it, nor may it be forced to exercise it.¹⁵

c- Legal Authority:

Some writers and constitutional law scholars believe that the election is neither a right nor a social function. Rather, it is a legal authority whose main source is the constitution that organizes it in order to involve citizens in choosing rulers and achieve the public interest, because the law is the one which regulates the election process and how it is performed. The legislator are solely dependent to define the necessary conditions. It is amended, either by restriction or facilitation, according to what is required by the public interest. To make the election limited to certain people, this opinion is close to the most correct in constitutional jurisprudence (Al-Saadi, 2008).¹⁶

¹⁵ . Hameed Hanoon Al-Saadi, political systems , Faeq Press , Baghdad, 2008 p. 88-89 .

¹⁶ . Othman Khalil Othman, general constitutional principles, Abdullah Wahba library, Abdeen, 1943, p. 260. one of the supporters of this trend in constitutional jurisprudence , Ibrahim Abdel Aziz Shiha, Political systems and constitutional law - analysis of the Egyptian constitutional system, Al-Maaref facility, Alexandria, without a year of publication, p. 217, and Tharwat Badawi, political systems, Dar Al-Nahdha Al-Arabiya, Cairo, 1975, p. 239

In Iraq, ¹⁷ it is the consideration of elections as a legal authority granted by the constitution and the law to individuals (Al-Moussawi, 2017). Although the source of powers is the people, the sovereignty of the law is in accordance with what was stated in article (5) of the constitution, which states the following: direct public secrecy and through its institutions has allowed the legislature (Parliament) the power to restrict that right to the extent that it enjoys under its legislative options. This was reinforced by what was stated in the applications of the constitutional judiciary in Iraq represented by the federal supreme court, as it ruled to dismiss the appeal contained in some of the law amending the elections law No. 45 of 2013, when it considered some of the restrictions approved by the parliament in the third amendment law are among the legislative options available to the parliament and as was stated in the decision of the federal supreme court. ¹⁸ This ruled the constitutionality of the text of the fourth paragraph, article (8) of the amended parliament elections law no. 45 of 2013, which stated the following: (Fourth: A. He must have a bachelor's degree or its equivalent. B. Electoral lists allocate a percentage of no more than 20% of the number of candidates for segments of society holding a preparatory certificate or its equivalent, as this was considered one of the options available to the Iraqi legislator, even if he changed his opinion. Because of a previous law, the parliament issued an amendment to the election law in which it amended the condition that the candidate obtain a bachelor's degree instead of a preparatory certificate under the first amendment law No. (1) of 2018. Later, it returned to accepting the candidacy of the preparatory certificate holders again under the second amendment law. The first law was under consideration by the federal supreme court when it ruled that the legislator had the option to determine the condition of the certificate.¹⁹ Its explanatory decision made it clear in both

¹⁷ . Judge Salem Roudhan Al-Moussawi - authenticity of the rulings of the federal supreme court in Iraq and their binding effect , a comparative study - Sabah library publications - first edition, 2017 - p. 44

¹⁸ . In the federal supreme court decision No. 32/federal/2018 on 3/5/2018

¹⁹ . Its explanatory decision No. 15 / federal / 2018 .

resolutions for the legislator to exercise its legislative choice of choosing alternatives and solutions. There is no control over him in this aspect, as long as it does not intersect with any constitutional restriction. This matter is the essence of working with the principle of separation of powers.

THE CONSTITUTIONAL REGULATION OF WOMAN'S RIGHT TO VOTE .

The constitution is the supreme law in the state. It must guarantee the electoral rights of all citizens without discrimination and stipulate equality in those rights between women and men. As the constitution of the republic of Iraq was voted on and adopted in 2005, it contained all principles related to human rights and fundamental freedoms, that was derived from declarations, charters and international agreements in the light of the Iraqi national vision and the constants, in which the Iraqi people believe. We will mention some of them in relation to the subject of our study.

Among these principles: :-

- 1- Its preamble stated that (there is neither discrimination nor exclusion) evidence of equality between citizens, whether male or female, as the preamble explicitly approved the achievement of justice and equality between men and women when it stipulated that “We, the people of Iraq...we resolved with our men and women...to respect the rules of law, achieve justice and equality, care for woman and their rights...and spread a culture of diversity...).
- 2- Article 14 affirms the principle of equality among all Iraqis, as stated in its text (Iraqis are equal before the law without discrimination based on gender, race, nationality, origin, color, religion, belief, opinion, economic or social status) .

3- Article (16) affirmed that equal opportunities are a guaranteed right for all Iraqis, and the state guarantees of taking the necessary measures to achieve this. However, this article did not set the controls that guarantee equal opportunities for woman .

4- Article (20) included a guarantee of the woman's right to political participation and management of their country's affairs in the same way as men, as it was in accordance with the text indicated (citizens, men and women, have the right to participate in public affairs and enjoy political rights including the right to vote, elect and be nominated). It is noticeable that the Iraqi constitution did not only mention the word citizens, but also the word that include men and women. Rather, it emphasized mentioning women .

5- The texts of the Iraqi constitution were derived by the legislators from contemporary global thought the most, which means that the texts of the constitution were formulated for the benefit of women to elevate them to the ranks of their counterparts in the developed world, as these texts are mainly derived from the convention on the elimination of all forms of discrimination against woman (CEDAW). In Article (2/paragraph 2.1), the first relates to a woman's right to acquire, retain and change her nationality, while the second relates to a woman's equal right with regard to the nationality of her children, provided that it does not conflict with the provisions of the Islamic law.

6- In its first chapter on basic principles, article two of the constitution affirms that :-

First: Islam is the official religion of the state and the basis of legislation, and accordingly :-

A - It is not permissible to enact a law that contradicts the constants of the Islamic provisions.

B - It is not permissible to enact a law that contradicts the principles of democracy.

Islam has recognized woman's rights, including her right to be equal with their male counterparts, in addition to what was stated in democracies' emphasis on woman's rights and equality with men.

This means that the constitution obligated those concerned with the matter, whether they invoked Islam as a basic source of legislation or the principles of democracy the need to respect the rights of woman and her equality to men .

7- With the aim of encouraging and supporting the participation of women in all fields, especially the political ones, article 4-first of the parliament elections law No. 9 of 2020 affirmed that voting is a right for every Iraqi that fulfills the conditions stipulated in this law to exercise this right without discrimination on gender, race, nationality, origin, colour, religion, sect, belief, opinion, economic or social status.

ISLAMIC SHARIAH REGULATION OF THE WOMEN'S RIGHT TO VOTE

Islamic scholars have recognized the rights of woman by adopting the holy Qur'an and the purified Sunnah of the Prophet regarding her participation and role in life. Hence, we find that the holy Qur'an gave woman her right since the beginning of creation when God created our master Adam and Eve and made them dwell in paradise by saying " O Adam! Dwell you and your wife in the paradise and eat both of you freely with pleasure and delight, of things therein as wherever you will, but come not near this tree or you both will be of the wrong doers". ⁽²⁰⁾ In this sentence, we see that God's speech is directed to both genders without favoring or excluding any of them, and equated them with dwelling in paradise, eating and warning. Looking at this Quran sentence, the woman's equality to was present since God created the creation, making the participation of the woman with the man in everything since they were in heaven until they fell to the ground. ²¹ In the farewell sermon, the messenger (peace and blessings of God be upon him) addressed the people in general by saying, "O people, your Lord is one and your father is one, all of you belong

²⁰ . Sura Al-Baqarah , verse 35 .

²¹ . Muhammad Hussain Al-Tabatabai, volume ١٨, previous source, pg. 326

to Adam and Adam is from dust, the most honorable of you in the sight of Allah is the most righteous of you, and there is no Arab over a non-Arab, nor a non-Arab over an Arab, nor a white over a white, nor a white over a red, except with piety".²² Thus, the Islamic Sharia law emphasized absolute equality, as it renounces discrimination in all its forms and manifestations except on the basis of piety and good deeds. Woman occupied a great position in Islamic law, because Islam came with the principle of equality between all human beings, as there is no difference between one person and another.²³

As it was stated in the Almighty's saying : "And their lord responded to them, never will I allow to be lost the work of any worker among you, whether male or female; you are of one another".⁽²⁴⁾ So what counts is the work, instead of the worker, his race, his manhood and femininity. All are equal in humanity according to Islam, and this is an affirmation of the right and dignity of woman, as all humans are from one origin. All Of us are from Adam and Adam, which was created from dust. In the honorable prophet's hadith: "Women are the sisters of men".²⁵ The Almighty says, "O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women".²⁶

God almighty addresses men and women on the same discourse and description, which is Islam. In Faith, *qunoot*, and their equivalent, there is evidence of equality in it: Indeed, the Muslim men and Muslim women, the believing men and believing women, the obedient men and obedient women, the truthful men and truthful women, the patient men and patient women, the humble men and humble women, the charitable men and charitable women, the fasting men and fasting women,

²² . The Prophet's sermon on the farewell pilgrimage, the website, Islam, the electronic link: sirah.alislam.com

²³ . Suhail Hussain Al-Fatlawi, previous source, pg. 252 .

²⁴ . Sura Al-Imran , verse 195 .

²⁵ . Mohammed Jawad Mughniyeh, Al-Tafsir Al-Kashef, volume two, edition 2, Dar Al-Ilm Li'l-Malayyin, Beirut, 1978, p. 232.

²⁶ . Sura Al-Nisa, verse 1.

the men who guard their private parts and the women who do so, and the men who remember Allāh often and the women who do so - For them, Allāh has prepared forgiveness and a great reward. It is not for a believing man or a believing woman when Allāh and his messenger have decided a matter, they should thereafter have any choice about their affair, and whoever disobeys Allāh and his messenger has certainly strayed into clear error ". ²⁷

Based on the foregoing, Islam's position on woman's right to vote is as follows: "A group of contemporary jurists believes that woman are entitled to elect whoever they deem fit to take over political positions, just like men (Alaa, 2010).²⁸ The majority of contemporary jurists said this, and everyone who granted her membership in the legislative authority allowed her to vote. Meanwhile, some of those who did not allow her membership proved that she had the right to vote and exercise it. The example among them is Abdul Karim Zaidan.²⁹ Sheikh Attiyah Saqr said in his previous fatwa: "Among what the newly Muslim woman has acquired is the right to her voice. He was not nominated for some councils under democratic rule, and there is nothing in giving her this right or exercising it that prevents it by law, especially if she is asked to do so. It is nothing more than a testament to the validity of a person or its invalidity and the issue of recommending the right and giving advice confirms this right. ³⁰ The owners of this saying relied on what they went to saying, while the Almighty said, "And those who have responded to their lord and established prayer and whose affair is determined by consultation among themselves, and from what We have provided them, they spend". ³¹

²⁷ .Surah Al-Ahzab / 35-36 .

²⁸ . Shawqi Ibrahim Abd al-Karim Alaa, the political rights of Muslim women (A Comparative, Applied, Fundamental Study in Islamic Jurisprudence) Al- Wafaa Legal Library - Alexandria 2010, p. 151.

²⁹ . Abdul Karim Zaidan, previous reference, Part 4 No. 3478, p. 317.

³⁰ . The aforementioned fatwa, with the same meaning was mentioned by Dr. Abd al-Karim Zaidan, previous reference, Part 4, No. 3479, p. 317.

³¹ . Surah Al-Shura, verse 38.

In this verse, God almighty praised the group of Muslims for the fact that consultation is their way of life, and this praise was not specific to men and women that holds political office. They also relied on the nature of the electoral work itself. They said an opinion about who is fit for the political position, expressing the opinion and indicating what is valid is not specific to men, but a fixed matter for every capable person, regardless on their gender. ³²

This is in addition to the fact that the nation is addressed by Shari'a with the legal obligations, and it is responsible for their implementation. Since it is difficult to exercise this authority in its collective capacity, it should choose from the one who carries out these duties and acts on behalf of it. The legal discourse was received absolutely, so it is not permissible to restrict it except with evidence. ³³

The second saying "woman are not eligible to vote" was stated by Sheikh Muhammad Hassanein Makhoul's fatwa: "it is no secret that the entry of woman into the turmoil of elections and representation is not permissible". This stand was also said by several contemporary researchers, including Dr. Abdul Ghani Mahmoud, after his specification of general guardians to include the parliament member and voting. He stated, "From the foregoing, it is more correct". In our view, it is not permissible for a woman to be the general guardian. ³⁴

THE ROLE OF THE IRAQI CONSTITUTIONAL JUDICIARY IN SUPPORTING WOMAN'S RIGHT TO VOTE .

The judiciary is one of the most important pillars of the electoral process, as its basic role is guaranteeing the rights of all participants, individuals, institutions, committees and others (Afifi, 2002).³⁵The mission of the constitutional judiciary is expanding in Iraq. As represented by the

³² . Abd al-Karim Zaidan, previous reference, Part 4 No. 3478, p. 317, Sheikh Attiyah Saqr in the previous fatwa.

³³ . Dr. Abd al-Karim Zaidan, Al-Mufasssal fi Ahkam al-Mara, Part 4 No. 3474, p. 314, and No. 3476, p. 316.

³⁴ Shawqi Ibrahim Abd al-Karim Alaa, previous source, p. 156 .

³⁵ Afifi Kamel Afifi, parliamentary elections and its constitutional and legal guarantees - a comparative study, Dar Al-Jameyen , Cairo, 2002.

federal supreme court for several tasks stipulated by the constitution and some other laws, the constitutional judiciary in Iraq played a major role in protecting the right to vote from assault, cancellation, diversion and changing the will of the voter (man or woman) through several decisions issued by the federal supreme court, including:-

- a) The decision of the federal supreme court, where it ruled that the text of article (3) of the third amendment law, parliament elections law No. 45 of 2013 was unconstitutional.³⁶ It is noteworthy that this article had canceled the results of voting abroad and the displaced in some provinces, and the federal supreme court considered that this legal article contradicts article 14, 20 and 38 of the constitution. This is because canceling the voters' (the electorate) votes constitutes as a waste, and it confiscates the will of the voters without them caught committing any violation. Thus, any legislation that disrupts the voter's right to vote, whether by preventing it from voting or canceling its vote later, is a violation of constitutional principles, as stated in the constitution and the judiciary of the federal supreme court where similar decisions have been issued previously.
- b) The decision of the federal supreme court ruled that the text of article (3) of law No. 26 of 2009, which was amending the elections law No. 16 of 2005, was deemed unconstitutional.³⁷ This is because converting the voter's vote without its will from the elected candidate to a candidate from another list that was not directed by the electoral is considered an infringement of its constitutional rights and violates article (20) of the constitution, which states that citizens, men and women, have the right to participate in public affairs, and to enjoy rights political rights, including the right to vote, to be elected and to be elected.

³⁶ See federal supreme court decision No. 99-104-106/federal/2018 on 06/21/2018.

³⁷ See the decision of the federal supreme court No. 12/federal/2012 on 06/14/2012.

- c) The decision of the federal supreme court, which ruled that the decision of the parliament to replace a member against the will of the voter was unconstitutional.³⁸
- d) The decision of the federal supreme court, which ruled that the third step of the parliamentary seat distribution system was unconstitutional, as issued by the independent high electoral commission No. (12) of 2013.³⁹ This system had set the quota for the women, contrary to what is stipulated in the constitution. In the reasons for the unconstitutional ruling, this step contradicts articles 14, 16, 20, 38/1 of the constitution. This step is also contrary to the voter's will because it makes the voter's vote go to something other than its voice and change its will.

Through the foregoing, we find that the federal court was the safety valve in preserve the constitutional gains achieved for the Iraqi individual (women and men) in the 2005 constitution. It ruled unconstitutional legal texts enacted by the parliament or the independent high electoral commission when these texts conflict with the constitutional principles relating to the individual's right to vote .

THE ACTUAL REALITY OF WOMAN'S EXERCISE OF THEIR RIGHT TO VOTE IN IRAQ.

The reality of woman's participation in voting in the 2021 Iraqi parliament elections :- This part of the study focuses on the statistical analysis method on the data of women's participation in the last parliamentary elections conducted on 10th October 2021. The study covered the data of all 18 Iraqi governorates, in regards to woman's right to vote at the voting level. This is achieved by analyzing the data pertaining the number of voters who are entitled to exercise their electoral right

³⁸ See the decision of the federal supreme court No. 82 / federal / 2015 on November 7, 2015.

³⁹ See the decision of the federal supreme court No. 36 / federal / 2013 on August 26, 2013.

at the governorate level before clarifying the number and percentage of women from males. This study also clarified the actual number of women and men who voted in each governorate with an explanation of the actual percentage of the women's voting. Within the framework of the table analysis, the researcher found that regarding the differences between the numbers of voters in each governorate, the percentage of women voters in general is equal and less than men in most cases. As for the analysis of those who actually exercised their right in the electoral process, we find that the percentage of women has always been lower than men. Noting that this low percentage enjoys a disparity between the Iraqi governorates confirms the need to formulate policies to empower woman on the basis of the social and cultural environment of each governorate. The women's level of voting or their participation in the electoral process is observed to be greatly affected by the social environment, as well as the impact of violence or religious determinants the to women's work in this field .

Table 1 : The Differences in Percentage of the Total Female Voters from the Total Numbers according to the Voters' Data

<i>Governorate</i>	<i>The total number of voters</i>	<i>The number of male voters</i>	<i>The number of female voters</i>	<i>The percentage of female voters</i>	<i>The total number of voters</i>	<i>The number of women voting</i>	<i>The percentage of women voting</i>
Erbil	1229313	660877	568436	6.2%	502773	209968	41.6%
Anbar	1131383	660877	568436	49%	437889	143130	33.4%
Basrah	1869238	955410	913828	48.8%	660899	366560	40.3%
Sulaymaniyah	1364313	746183	618536	45.3%	453737	313285	47%
Qadisiyah	849251	434462	414789	48.8%	305099	124335	40.7%
Muthana	573215	272801	264414	49.3%	192131	41701	21.7%
Najaf	966699	498425	468274	48.4%	335573	131113	39%
Babylon	1339843	685642	654801	48.8%	516100	242247	46.9%
Baghdad	5598081	2857587	2740494	48.9%	1528800	630200	41.2%
Dohuk	826882	430791	396091	44.6%	408914	163783	40%
Diyala	11100504	551872	558632	50%	462913	216689	46.8%
Dhi Qar	1343817	691511	652306	48.5%	480141	198088	41%
Salahaddin	978125	495778	482447	49%	397773	161887	40.6%
Karbala	787916	405897	382019	48.4%	291445	125376	43%
Kirkuk	1076928	548249	528679	49%	406797	180455	44.3%
Meysan	653009	377652	375357	49.8%	260727	105616	40.5%
Ninevah	2532782	1305482	1305482	48.4%	842783	332475	39.4%
Wasit	886790	446922	439868	49.6%	348822	138244	39.6%

CONCLUSION

Despite the harmony between Islamic law and Iraqi legislation through the presence of texts in the constitution of the republic of Iraq for 2005, as well as in the Iraqi parliament elections law for 2020, the participation of Iraqi woman in the parliamentary elections of 2020 was not commensurate with the size of their presence and her actual number in Iraqi society. According to the statistics that it was presented by the independent high electoral commission, the most important results and suggestions that have been reached can be presented as follows :-

The Results.

1. Voting is the most important stage of the electoral process and the political rights aimed at achieving the principle of democracy. This is because it makes the ruling authority a reflection of the will of the people.
2. The constitution of the republic of Iraq of 2005 referred to the right to vote in parliamentary elections on the basis of equality between woman and men and the ordinary legislator organized it in elections law No. 9 of 2020, which is in accordance with the principle of equality and the spirit of democracy.
3. The religion of the republic of Iraq is Islam. The provisions and articles stipulated in the constitution have agreed with the provisions and controls of Islamic Sharia .
4. The Islamic religion is a moderate and soft religion, and it is suitable for every time and place. It honored woman and granted her rights and fairness 14 centuries , where Islamic shariah granted woman political rights such as her right to vote .
5. The right to vote for Iraqi women requires additional protection by society and state institutions, especially in the cases of violations of her rights and freedoms that have clashed with social contradictions, traditions and negative practices firmly entrenched in society that prevent woman from freely exercising their civil, political, economic and social rights.

6. The Iraqi constitution of 2005 laid the foundations for oversight on the constitutionality of laws which is the federal supreme court. The constitution grants both the cabinet and individuals the right of direct appeal to the court.
7. The persistence of political, economic, social and psychological obstacles to prove the qualifications and capabilities of Iraqi woman in all fields. The social reality is that the masculine customs, values and culture is still the main obstacle to women's voters, which contributed to the low rate of women's participation in the elections.

The Suggestions .

1. The study recommends setting up a new mechanism for the participation of Iraqi woman in political life, in which they are at least equal to men, knowing that the percentage of females is close to the men in Iraq.
2. The study recommends supporting and promoting Iraqi woman through focusing various media outlets on raising awareness about woman's right to vote, legalizing advertisements that limit their right to the traditional role in society and emphasizing the effectiveness of woman's participation in the electoral process
3. We propose to reform the feminist self on the basis of citizenship.
4. The study recommends religious institutions in Iraq to address a religious discourse through the available means to show the true image of a woman in Islam, because the interpretation and modification that accompanied the idea of woman's rights in general was not in accordance with the sound religious text and common sense as well , causing the creation of cognitive distortions specifically to woman .

5. We suggest that the country's governors undertake to remove obstacles that hinder the participation of Iraqi woman in the cultural and scientific life of the Iraqi society .
6. Set and publish specifically as a part of a comprehensive voter education campaign, where specific messages targeting women need to be developed. These messages could focus on woman's legal right to vote secretly and they must be broadcasted through the main media sources in Iraq .
7. There should be a directive to the ministry of education on including articles related to woman changing the stereotype in the curriculum.

REFERENCES

Quran. *Al-Ahzab* 33:35-36. & *Al-Baqarah* 2:35. & *Al-Hujurat* 49:13. & *Al Imran* 3:195. & *An-Nisaa* 4:70. & *Ash-Shura* 42:38.

First: Book and References.

- 1- Afifi, K. A. (2002). *Parliamentary elections and its constitutional and legal guarantees - a comparative study*. Cairo: Dar Al-Jameyen.
- 2- Ahmed, H. E. M. (n.d.). *Criminal protection of the principles governing political election in its different phases*. Cairo: Dar Al-Nahdha Al-Arabiya.
- 3- Albaz, D. (2002). *The right to participate in political life - an analytical study of article (62) of the Egyptian constitution in comparison with the system in France*. Cairo: Dar Al-Nahdha Al-Arabiya.
- 4- Al-Kadhim, S. J., & Al-Ani, A. G. (1990-1991). *Political systems*. Baghdad.
- 5- Al-Majthoub, M. (Year). *Constitutional law and the political system in Lebanon*. Beirut: Al-Halabi Law Library.
- 6- Al-Mashhadani, M. K. (Year). *Constitutional law, state, government, constitution*. University Culture Foundation.

- 7- Al-Moussawi, S. R. (2017). *Authenticity of the rulings of the Federal Supreme Court in Iraq and their binding effect, a comparative study*. Baghdad: Sabah Library Publications.
- 8- Al-Saadi, H. H. (2008). *Political systems*. Baghdad: Faeq Press.
- 9- Al-Sharqawi, S., & Nassif, A. (1994). *Elections organization in the world and in Egypt*. Cairo: Dar Al-Nahdha Al-Arabiya.
- 10- Al-Shawi, M. (2013). *The Philosophy of the State (2nd ed.)*. Baghdad: Al-Thakirah for Publishing and Distribution.
- 11- Al-Tahrawi, H. A. (2006). *Political Systems and Constitutional Law (1st ed.)*. Jordan: Dar Al-Thaqafah.
- 12- Badawi, T. (1975). *Political systems*. Cairo: Dar Al-Nahdha Al-Arabiya.
- 13- *Civil Society Project in Iraq*. (Year). Retrieved from www.boell-meo.org
- 14- Daoud Albaz, *The Right to Participate In Political Life - An Analytical Study of Article (62) Of The Egyptian Constitution in Comparison With the System in France*. Dar Al-Nahdha Al-Arabiya, Cairo, 2002.

Second: Researcher and Publications.

- 1- Hamdi Ali Omar (2001) *Parliamentary Elections - An Analytical and Authentic Study of the Egyptian People's Assembly Elections for 2000*. Cairo: Dar Al-Nahdha Al-Arabiya.
- 2- Hassan, S. A. (Year). *Women's Political Participation in Iraq: Opportunities And Challenges*. Baghdad, Iraq: Head of the Women's Leadership Institute. Retrieved from <https://www.iknowpolitics>.
- 3- Ibrahim Abdel Aziz Shiha. (1992). *Political Systems of the State and Governments*. Cairo: University Press.
- 4- Ibrahim Abdel Aziz Shiha. *Political Systems and Constitutional Law - Analysis of the Egyptian Constitutional System*. Alexandria: Al-Maaref Facility.
- 5- Iraq. (2020). *Iraqi parliament elections law No. 9 of 2020*, Article 5.
- 6- Iraq. (2020). *Iraqi Parliament Elections Law No. 9 of 2020*, Article 44.
- 7- Iraq. (1967). *National assembly election law No. 7 of 1967*, Article 1, § 20. Al-Waaqa'i Al-Iraqiyah, No. 1370, February 9, 1967.

- 8- Islam. (n.d.). *The Prophet's Sermon in The Farewell Pilgrimage*. Retrieved from sirah.alislam.com.
- 9- Ismail Marza. (2004). *Principles of constitutional law and political science*. Baghdad: Dar Al-Malak.
- 10- Mustafa Afifi. (1984). *Our electoral system in the balance*. Cairo: Saeed Raafat Library.
- 11- Munther Al-Shawi. (2013). *The Philosophy of the State* (2nd ed.). Baghdad: Al-Thakirah for Publishing and Distribution.
- 12- Othman Khalil Othman. (1943). *General Constitutional Principles*. Abdeen: Abdullah Wahba Library.
- 13- Rafea Khudher Saleh Shubar, & Ali Hadi Hamidi Al-Shakrawi. (2013). *The general referendum and the constitutional mechanism for concluding international agreements*. Baghdad: Al-Sanhoury Library.
- 14- Saad Madhloom Abdullah Al-Abdali. (2007). *Guarantees of freedom and integrity of elections: A comparative study* (Master's thesis, College of Law, University of Babylon).
- 15- Saeed Al-Sayed Ali. (2005). *The basic principles of political systems and contemporary ruling systems* (1st ed.). Cairo: Dar Abu Al-Magd for Printing.
- 16- Saleh Jawad Al-Kadhim, & Ali Ghalib Al-Ani. (1990-1991). *Political systems*. Baghdad.
- 17- Salem Roudhan Al-Moussawi. (2017). *Authenticity of the rulings of the federal supreme court in Iraq and their binding effect: A comparative study*. Baghdad: Sabah Library Publications.
- 18- Souad Al-Sharqawi, & Abdullah Nassif. (1994). *Elections organization in the world and in Egypt*. Cairo: Dar Al-Nahdha Al-Arabiya.
- 19- Tharwat Badawi. (1975). *Political systems*. Cairo: Dar Al-Nahdha Al-Arabiya.
- 20- *Woman's political participation in Iraq: opportunities and challenges*. Retrieved from <https://www.iknowpolitics>.

Third: Constitution, Laws and Federal Supreme Court of Iraq Decision.

- 1- Iraq. (2005). *Constitution of Iraq*, Articles 20, 37, 38, 93, 100.
- 2- Iraq. (2020). *Iraqi parliament elections law No. 9 of 2020*, Articles 5, 44.

- 3- Iraq. (1967). *National assembly election law No. 7 of 1967*, Article 1, § 20. Al-Waaqa'i Al-Iraqiyah, No. 1370, February 9, 1967.
- 4- *Federal Supreme Court of Iraq*. (2018). Decision No. 32/Federal/2018 on 3/5/2018.
- 5- *Federal Supreme Court of Iraq*. (2018). Explanatory Decision No. 15/Federal/2018.
- 6- *Federal Supreme Court of Iraq*. (2018). Decision No. 99-104-106/Federal/2018 on 06/21/2018.
- 7- *Federal Supreme Court of Iraq*. (2012). Decision No. 12/Federal/2012 on 06/14/2012.
- 8- *Federal Supreme Court of Iraq*. (2015). Decision No. 82/Federal/2015 on November 7, 2015.
- 9- *Federal Supreme Court of Iraq*. (2013). Decision No. 36/Federal/2013 on August 26, 2013.
- 10- Iraq. (2005). *Regulation No. 13 of 2005 issued by the Independent High Electoral Commission*, Section four, voting process.
- 11- Iraq. (2021). *Plan to support women's political participation in the 2021 parliament elections (Council Order Committee Action Plan No. 32 of 2021)*. Retrieved from <http://www.cabinet.iq/ArticleShow.aspx?ID=11376>