



Limits of Women's Right to Assume Senior Positions

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Abstract

One of the constitutional foundations recognized in countries is the guarantee of women's rights in various fields. One prominent right is equality with men in assuming senior positions. In addition, the constitutional enshrinement of this right is one of the guarantees of any democratic system because democracy means the participation of everyone and equal opportunities away from the exclusion of anyone because of sex, religion, or other reasons. The phenomenon of the widening of women's participation in political life requires the presence of women and their representation in public authorities. This presence constitutes an activation of a constitutional right common to countries with democratic constitutional systems. The right to assume senior positions, despite being constitutionally organized in the core of the constitution, faces a number of obstacles, most notably the provisions of the constitution itself or the electoral system, in addition to factors related to the weak representation of women in political parties as well as the impact of political sectarianism.

Keywords: Senior Positions, Election, Appointment, Constitution, Election Law, Political Parties, Political Sectarianism

Introduction

First: Background to the Study

One of the basic constitutional principles in countries with a democratic system is to consolidate the principle of equality between men and women in various fields. This interest in women's rights reflects the modern orientation of those assuming political power in forming a system based on the foundations of justice and citizenship and achieving equal opportunities for all regardless of sex, nationality, or religion. Senior positions in any state are the most important pillars of constitutional law, especially the pillars that have great weight in the management of public authorities or the implementation of public policy within the state. The concern of the constitutional legislator to ensure the right of women to assume senior positions is not limited to the framework of theoretical texts, but this right is surrounded by a number of constitutional guarantees, whether in the core of the constitutional document or through constitutional mechanisms, such as the control of the constitutional judiciary, the control of parliament, or other parties. Despite this, the codification of the right of women in this field faces a number of obstacles on legal, political, and social levels, as the constitution is a set of texts that reflect this reality.

Second: Significance of the Study

The importance of investigating the issue of the limits of the right of women to assume senior positions is highlighted in the statement of the constitutional texts regulating this right and comparing them with practical application. Investigating this topic also leads to the identification of the restrictions facing women in assuming most of the senior positions, despite the Constitution stipulating their right like men, in addition to including this right in the legislation issued by Parliament and preventing any authority from encroaching on it.

Third: Problem Statement

The issues tackled in the present study include

1. The adequacy of constitutional texts regulating women's right to assume senior positions.
2. The problems preventing women from assuming senior positions, and the reasons why the constitutional legislator does not provide for the promotion of women's equality with men in these positions.
3. The obstacles that limit women from assuming these jobs and the basic means to address this situation in the Constitution of Iraq of 2005.

Fourth: The Objectives of the Present Study

1. Highlighting the concept of senior positions and everything that would achieve guarantees for women to assume those positions.
2. Identifying what hinders their role in practicing this constitutional right and participating with men in the management of public authorities and activating the constitutional texts regulating this field.

Fifth: The Research Methodology

The analytical and inductive approach is utilized in the present study, especially in the Constitution of the Republic of Iraq of 2005 and some legislation regulating the subject, with reference to some treatments in the constitutions of other countries.

Sixth: The Research Structure

The present study is divided into two sections. Section one is devoted to clarifying the concept of women's right to assume senior positions. The obstacles hindering women from assuming senior positions are tackled in section two.

Section One

The Concept of Women's Right to Assume Senior Positions

The statement of the concept of women's right to assume senior positions helps clarify the conceptual and legal framework and its development under the various constitutional systems. This analysis of these concepts contributes greatly to the distinction between public and senior positions and determines the constitutional foundations and the position of the various constitutions on this subject. In addition, there is a tendency among constitutional legislators to expand the circle of women's rights, as this guarantee is a landmark of the democratic system and is very much related to the degree of awareness of those assuming political power.

In order to clarify the subject, this topic will be divided into two subsections. The first subsection is devoted to discussing the definition and development of the right of women to assume senior positions. The second subsection tackles the justifications and ways of women's assumption of senior positions.

First: Definition and Development of Women's Right to Assume Senior Positions

In order to evoke the meaning of the right to assume senior positions by women, it is necessary to define the meaning of these positions and clarify the historical basis by examining the rooting of this right in the constitutional documents issued in the history of the Iraqi state and through the various political systems witnessed by Iraq, whether democratic or

totalitarian dictatorship.

1. Senior Positions

The Constitution of the Republic of Iraq of 2005 does not establish a specific definition of senior positions. This is due to the fact that the Constitution regulates the general framework of these special positions and leaves their organization to laws issued by the competent authorities. In the absence of a specific definition in the Constitution, reference should be made to the laws regulating the topic. Extrapolating these laws, it is noticed that few of them have talked about senior positions. Among those laws and instructions are the instructions issued in 1968. They indicate that the senior position is every position in official and semi-official departments that is stipulated in the Owners Law or any other law (Instruction No. 11, 1968). One of the Iraqi legislations that define senior positions is the Supreme National Authority for Accountability and Justice Law of 2008 stating that senior positions include those with the rank of Director General or its equivalent or above (Paragraph Second of Article (6) of the Supreme National Authority for Accountability and Justice Law No. (10) of 2008 published in the Iraqi Proceedings No. 4061). With regard to Iraqi jurisprudence, it is noted that there is a rarity in setting a specific definition, except for limited jurisprudential opinions. Some views define the employee assuming a senior position as the employee who heads a department that is not associated with a ministry or the employee with the rank of Director General that is responsible for managing any constituent or affiliated formations of a department (Abdullatif, 2009) ^[1].

Based upon, senior positions can be defined as any special position assigned to an employee through special legal means, whether from the Council of Ministers or the approval of the House of Representatives. The position is subject in its organization to a hierarchy according to the ministry or the entity not associated with a ministry. The employee manages, draws, and implements public policy in accordance with the laws in force.

1. The Evolution of the Role of Women in Assuming Senior Positions

The role of women in assuming senior positions varies in terms of spatial scope. This variance can be noticed in the level of freedom of women and the level of their education between the countryside and the city, especially in the era of the emergence of the modern Iraqi state, specifically in light of the entry of the Basic Law of 1925 into force (Al-Wardi, 2009) ^[9]. It is worth mentioning that the aforementioned text in Article (18) stipulates the right of equality as Iraqis are equal in possessing civil and political rights and in their duties. There is no distinction between them because of origin, language, and religion. They are entrusted with public jobs, whether civil or military. Despite the above text, the practical application refers to the deprivation of women from assuming senior positions, whether at the level of the executive authority or parliament (Madhi, 2000) ^[14].

As for the republican era, starting from the 1958 constitution, regardless of being a temporary constitution, political life has given women some senior positions. Mrs. Nazihah Al-Dulaimi became Minister of Municipalities in an unprecedented event in Iraq's political history (Abdulsada, 2023) ^[2]. The role of women in the subsequent constitutional

regimes varied in terms of assuming senior positions. The reason can be attributed to the fact that those regimes were based on limiting political power to men in most state institutions.

Upon reviewing the provisions of the Constitution of 2005, it is noticed that it has adopted the hybrid parliamentary system with the features of both chambers. The Constitution records the positive granting of constitutional rights to women by granting them the right to assume senior positions. It stipulates that the women's quota shall be included in the composition of the House of Representatives as the council that represents the masses of the people and expresses their sovereignty.

Second: Justifications and Means of Women's Assumption of Senior Positions

The constitutional legislator's recognition of the right of women to assume senior positions has justifications required by the democratic system. Therefore, the constitutional principles in all countries with a constitutional system agree on this principle to become a universal political constitution. On the other hand, these constitutions do not agree on a specific means for women to assume these positions. This difference reflects the specificity of each system.

1. Justifications for Women to Assume Senior Positions

Modern thought, most constitutional legislation, and the Organization of Senior Positions agree on the principle of equality in the field of assuming those positions. The reason for this is reinforced by the historical circumstances that deprived women of the most basic rights. Until recently, they were deprived of their right to those positions as well as the right to vote. Therefore, this deprivation is incompatible with the democratic system. In order to address this deficiency in constitutions, the constitutional legislator, especially in the modern era, has taken a path whereby they recognized that one of the requirements of the democratic system is the participation of men and women in assuming those positions. The United States of America is one of the first countries to decide this right by amending its constitution in force in 1920. This amendment gave women the right to vote, paving the way for them to assume senior positions, whether at the level of Congress, the judiciary, the executive authority, and at the level of the states (Al-Jamal, 1969) ^[6]. France followed the same approach when it decided the political rights of women in 1944. This right became a basis in the preamble of the 1946 Constitution, which recognized their equal right to assume senior positions and then decided the right to assume senior positions in the preamble of the 1958 Constitution in force (Badawi, 1970) ^[10].

The 2014 Constitution of the Arab Republic of Egypt sought to achieve the principle of equality between men and women in assuming senior positions. Article (11) states that the State shall ensure the achievement of equality between men and women in all civil, political, economic, social, and cultural rights in accordance with the provisions of the Constitution. The State shall take adequate measures to ensure the appropriate representation of women in parliaments as determined by law. The state shall also guarantee women their right to assume public positions.

Article (20) of the Iraqi constitution stipulates that citizens, men and women, have the right to participate in public affairs and enjoy political rights, including the right to vote, elect,

and be elected. Extrapolating this text, it is noted that the Iraqi constitutional legislator has gone along with modern constitutional systems in stipulating the principle of equality as a justification for the assumption or participation of women with men in senior positions, even if the text is theoretical.

1. Means of Women's Assumption of Senior Positions

The Iraqi constitutional legislator presents various ways of women's assumption of senior positions. Election and appointment are presented as two extreme ways of assuming senior positions.

First: Election

The Constitution of the Republic of Iraq regulates the method of assuming some senior positions in Article (61, Clause V) by stating that the House of Representatives is competent to approve the appointment of ambassadors and assumers of special positions at the proposal of the Council of Ministers. The Constitution specifies the Council of Ministers as the executive body in the state, especially since the political system in Iraq is a hybrid parliamentary system.

The Law No. 21 of 2008 stipulates that the provincial council shall be competent to elect the head of the provincial council and their deputy by an absolute majority of the number of members of the council (Article 7 of Law No. 21 of 2008).

The law also stipulates that the governor and their deputy shall be elected by an absolute majority of the number of members of the Council within a maximum period of thirty days from the date of first session (Article 7 of Law No. 21 of 2008).

Second: Appointment

This is the second method of assuming senior positions. Article (12) of the system of the Council of Ministers stipulates that the appointment of Director General Employees is approved in accordance with the law and the system of senior civil employees in accordance with the Constitution and the legislation in force thereunder and they are referred to retirement at their request.

By reviewing the orders issued by the Council of Ministers, it is noted that the appointment is in accordance with orders issued by the Council. It is believed that the mechanism for appointing some senior positions needs to be amended, especially since the position of deputy minister or deputy head of an entity that is not affiliated to a ministry that is within the competence of the Prime Minister as the executive responsible for public policy in the state. The provisions of the constitution should also be amended by adding a constitutional article that guarantees the right of women to assume those positions, similar to the electoral quota.

Section Two

Obstacles Hindering Women's Assumption of Senior Positions

The adoption of the right of women to assume senior positions is not absolute. It faces obstacles at the level of texts and at the realistic level. On the other hand, these limits have greatly affected the role of women in the formulation and implementation of state public policy, which then constitutes a constitutional violation of the principles stipulated in the constitutions, which include the equality of men and women in all rights and the effective contribution to strengthening the

foundations of the democratic system.

1. Constitutional Obstacles and the Electoral System

Women's participation in senior positions is affected by a number of factors and obstacles that negatively affect their contribution to those jobs. These factors vary according to the nature of each constitutional system. The limits of their impact are reduced in countries with advanced democratic experiences, while they interact negatively in regimes of an authoritarian nature.

First: Constitutional Obstacles

Fundamental rights are among the most important pillars on which the democratic system is based. Therefore, modern constitutional systems have sought to explicitly recognize them. According to this, the Constitution is not a document for political institutions, but has become a charter of freedom. On the other hand, building on the idea of constitutional rights will help expand the idea of democracy. The principle of the rule of law with its basic idea becomes one of the essential requirements of any democratic government (Kiwa, 2017) ^[12].

Constitutional experiences in third world countries, including the Constitution of the Arab Republic of Egypt of 2014, indicate the promotion of women's rights in Article (11) thereof, stating that the State guarantees equality between men and women in all civil, political, economic, social, and cultural rights in accordance with the provisions of the Constitution. Although the Constitution has recognized the principle of equal opportunities to assume senior positions, some argue that Article (2) of the Constitution may constitute an obstacle to women's assumption of some senior positions. It stipulates that Islam is the official religion of the State and the Islamic Sharia is the main source of legislation. Islamic jurisprudence indicates that it is not permissible for women to occupy some leadership positions, whether at the level of the judiciary or the level of executive positions (Al-Makini, 2014) ^[7].

As for the Constitution of the Republic of Iraq of 2005, it has embraced the principle of equality and equal opportunities as stated in Article (20) of the Constitution, which stipulates that citizens, men and women, have the right to participate in public affairs and enjoy fundamental rights. Extrapolating this text, it is noticed that the principle of equality in the assumption of senior positions faces a number of obstacles at the level of the provisions of the Constitution, which is not to mention provisions that guarantee a female quota in executive positions as well as at the level of the heads of the three authorities in the State. In the absence of constitutional guarantees, the representation of women has become limited in the field of senior positions. To address this constitutional deficiency, the Constitution should be amended by adding a constitutional article that guarantees the representation of women in senior positions and allocates 35% of the special positions to them. No law that contradicts this text is enacted.

1. The Electoral System

The electoral system is "a set of rules and institutions that regulate the election process. It is the mechanism or procedures through which the votes of voters are interpreted into seats in representative bodies and help in political choice (Salim, 1997) ^[13]. In addition, it is a means of expressing the sovereignty of all people, men and women. Although

countries differ in adopting unified electoral systems, they agree that democratic participation is a common denominator of democracy in those countries. The electoral system represents the main factor in building the constitutional state. It guarantees equal opportunities for all trends and political powers in the society to express themselves through the election process with the aim of reaching or retaining participation in power (Al-Sharqawi and Nassif, 1984) ^[8].

When analyzing the constitutional texts of the Iraqi constitution of 2005, it is noticed that it has adopted the hybrid parliamentary system by embracing the principle of the sovereignty of the people through the election of the House of Representatives from the people and granting it broad competencies, most notably the approval of the selection of senior positions. The problem posed here is in the effectiveness of women in the House of Representatives. Before investigating this issue, reference should be made to the determination of the electoral quota. When referring to Article (48, Paragraph 4), it is noticed that it stipulates that the election law aims to achieve a representation rate of not less than a quarter of the members of the House of Representatives for women.

Regarding the position of Iraqi constitutional jurisprudence on the quota system, it is noted that there are more than one direction. The first direction is that the Iraqi constitutional legislator tries to reduce the difference between men and women and thus ensure that the quota enhances woman's role in political life, which is reflected in their representation in executive positions (Al-Hindawi, 2010) ^[5]. As for the second direction, it indicates that the electoral quota intersects with an important constitutional principle, which is the principle of equality between men and women. It also leads to the strengthening of claims by other groups of society to their right to determine part of the seats of the House of Representatives (Abdulsattar).

The electoral experience in Iraq highlights a limited role of women within the House of Representatives. The reason for this is the immaturity of the idea of equality between men and women, specifically the heads of parliamentary committees and the entity of the presidency in the House of Representatives, which is dominated by men. This weakness is reflected in their representation in the executive authority. The representation is less than 15% in the Council of Ministers. In view of the constitutional and legal shortcomings, the quota level in the House of Representatives should be raised to 35% by stipulating that the election laws aim to achieve a representation of women of at least 35% of the members of the House of Representatives, providing that they have representation within the presidency of the House of Representatives. The quota of women in representation in senior positions should also be guaranteed by a constitutional provision that prohibits public authorities from exceeding it.

Second: Political Parties and Political Sectarianism

One of the realistic approaches in the field of the application of constitutional law is that it is greatly affected by the role of the political party and political sectarianism in the assumption of senior positions by women. In addition, these positions are negatively and positively affected according to the nature of each constitutional system.

1. Weak Influence of Women in Political Parties

A political party is a group of citizens organized under any

name on the basis of common principles, goals, and narratives, seeking to reach power to achieve its goals in democratic ways in a manner that does not conflict with the provisions of the Constitution and the laws in force (Article 2, Clause 1, 2015). One of the basic principles of the Iraqi Parties Law of 2015 is the equality of men and women in Chapter Two, as Article (4) states that citizens, men and women, have the right to participate in the establishment of a political party or to belong to it or to withdraw from it. Article (5) stipulates the adoption of the citizenship criterion as a basis for the formation of a political party. It stipulates that the party shall be founded on the basis of citizenship in a manner that does not conflict with the provisions of the Constitution.

following-up the electoral cycles in the Arab Republic of Egypt indicates that most of the political parties there have ignored woman membership in the leading bodies, which negatively impacted the tendency of women to vote, in addition to the control of men on most seats in parliamentary councils in Egypt. The weakness of the role of women in parliament also led to the limited presence of women in the seats of the executive authority in the Presidency of the Republic, the Council of Ministers, and the other senior positions (Muhammad, 2018) ^[16].

In Algeria, the most prominent challenge to empowering women there is the challenge of political parties. Poor representation is the most prominent feature of these parties, which has greatly impacted their presence in the political arena and in all public authorities. Most of the seats in parliament there belong to men and women representation is almost non-existent in senior positions (Al-Ead and Haj, 2021) ^[4].

The practical application of the Iraqi electoral system indicates that men have dominance in the leadership of political parties. The leadership councils of all the main parties represented in the parliament are mostly composed of men. In view of their weak representation in that system, the presence of women in the elections is greatly impacted despite the existence of the quota. It has also resulted in their weak role and perhaps lack of leadership in the effective parliamentary committees. On the other hand, the nature of the political system in Iraq is parliamentary and depends on elections as a means of assuming power. Since the House of Representatives is the one choosing the members of the executive authority, the weak presence of women in it has led to the reduction or confiscation of their right to assume senior positions. For the purpose of addressing this deficiency, the Political Parties Law of 2015 should be amended in a way that requires the representation of women by 40% in the leadership bodies or the general secretariat of those parties and requires the development of actual programs in its charter that empower women politically in various fields, most notably their right to assume senior positions.

1. Political Sectarianism

Political sectarianism is the quiet tendency to formulate political, cultural, or social reality in accordance with the vision or interests of a particular sect at the expense of other sects or that mundane employment of belief or exploitation to achieve sectarian interests (Muhammad, 2008) ^[15]. Political sectarianism can be defined as a political approach based on the distribution of senior posts and positions on a national, ethnic, or religious basis in order to achieve the

representation of each component according to its population percentage in public authorities.

The Constitution of the Republic of Iraq of 2005 does not adopt political sectarianism explicitly in the issue of assuming senior positions, but it stipulates the principle of equality between citizens, men and women. However, the political reality indicates the formation of a custom similar to the Lebanese experience in the distribution of positions among the components of the people (Hassan, 2014) ^[11].

In addition to the above, consensual democracy constitutes the most prominent obstacle to the democratic system and the establishment of the state of citizenship. The state has become hostage to political changes and thus stands in the way of activating constitutional texts based on legitimacy. The sectarian division in public authorities and their distribution has made the representatives of those components seek to nominate men in those positions. The Iraqi constitutional experience did not witness the representation of women in the positions of Speaker of the House of Representatives, President of the Republic, or Prime Minister. On the other hand, the large representation of men has in turn been reflected in the representation of women in special grades, as their representation in all governments formed after 2005 is poor.

In order to address the shortcomings in this issue, the nature of the political system should be reconsidered by changing the system to a semi-presidential system according to which the President of the Republic is elected by the people, provided that one of deputies is a woman. This proposed change helps to reduce the influence of the sectarian side and consolidate the principle of citizenship and equality between men and women in assuming senior positions.

Conclusion

First: The Results

1. The employee that assumes a senior position is any employee with a special position assigned by special legal means, whether from the Council of Ministers or the approval of the House of Representatives. The position is subject to a hierarchy according to the ministry or entity that is not associated with a ministry. That employee manages, draws, and implements public policy in accordance with the laws in force.
2. The right of women to assume senior positions is missing at the beginning of the establishment of the Iraqi state, due to political, social, and cultural considerations. The Constitution of the Republic of Iraq has adopted the principle of equal opportunities between men and women in all rights, while the realistic application indicates the increasing control of men over those positions.
3. The justifications for women's assumption of senior positions are the application of a constitutional text, which includes that men and women are equal in rights and duties, and that their assumption means the achievement of the democratic system and the participation of men in bearing the burdens of public authorities. As for the way they assume these positions, the Iraqi Constitution and legislation have taken election by the House of Representatives for some special positions and appointment by the Council of Ministers, as is the case in the position of Director General Employees.

4. Women assumption of senior positions faces a number of constitutional obstacles, including the nature of the political system, as equality and equal opportunities are increasing under democratic regimes and diminishing in authoritarian regimes. The electoral system also plays an active role in assuming senior positions, especially in the Iraqi constitutional system, as the legislator has set a certain quota for women, which weakened their presence in participating in drawing public policy.
5. The participation of women in political parties is poor, which has led to a reduction in their presence in the center of political decision. Since the constitutional system in Iraq is a parliamentary system, the decision in the House of Representatives is in the hands of the political parties represented in it, which is reflected in their participation and presence in the nomination of senior positions. Political sectarianism or consensual democracy as a political system has negatively affected women representation because of the division of senior positions between men on a sectarian, ethnic, or religious basis.

Second; Suggestions

1. The mechanism for appointing some senior positions, the most prominent of which is the position of deputy minister or deputy head of an entity that is not associated with a ministry should be amended, so that it is within the competence of the Prime Minister as the executive responsible for public policy in the state. The provisions of the Constitution should also be amended by adding a constitutional article that guarantees the right of women to assume those positions, similar to the electoral quota.
2. The Constitution should be amended in accordance with Article (126) by adding an article stipulating that guarantees the representation of women in senior positions and allocates 35% of the special positions to them, and it is not permissible to enact any law that contradicts this text.
3. The quota level for women in the House of Representatives should be raised to 35% by stipulating that the election laws aim to achieve a representation of women of at least 35% of the members of the House of Representatives, providing that they are represented within the presidency of the House of Representatives.

The Political Parties Law of 2015 should be amended in a manner that requires the representation of women to be 40% in the leadership bodies or the General Secretariat of those parties and that requires the development of actual programs in its charter that enable them in all fields, most notably their right to assume senior positions.

The nature of the political system should be reconsidered by changing the system to a semi-presidential system according to which the President of the Republic is elected by the people, provided that one of deputies is a woman. This proposed change helps to reduce the influence of the sectarian side and consolidate the principle of citizenship and equality between men and women in assuming senior positions.

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