

The Discretionary Power Of The Administration To Restrict The Concept Of Public Freedoms In Iraq: Demonstrations As A Model

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Abstract: The stages of administrative discretion begin with the administration's unequivocal recognition, diagnosis, and definition of the problem it faces. The administration then makes a decision, takes action, or takes a position on the matter. It also determines the objectives of the decision, gathers and analyzes information, evaluates available alternatives, selects the best among them, implements the decision, and follows up on it to accurately assess the situation, while respecting the law and not exceeding the limits of legality. Actions taken by the administration are sometimes subject to judicial oversight, in which case they are referred to as restricted; at other times, they are not, in which case they are considered absolute. The Iraqi legislator has combined the two principles in many laws. One of the most significant examples of the discretionary power of the administration is how to handle demonstrations and gatherings guaranteed by the Permanent Constitution, within the framework of public freedoms that represent a social and philosophical concept. However, it is difficult for executive authorities to practically exercise discretionary power to manage and organize them, which has created a state of uncertainty in this regard. This has constituted a burden on the security authorities, which bear enormous pressures in fighting terrorists and outlaws, and has often limited their authority when exercising that right. This has led them to the problem of violating the effective Permanent Iraqi Constitution, which is the basic guarantor of the freedom of all segments of society. It is not sufficient for the existence of constitutional and legal texts to protect public liberties. Still, rather the legislative and executive authorities must abide in all their actions by the constitutional texts first and then by the legislative texts, which is expressed by the principle of the rule of law. The article concluded by proposing the enactment of a special law on demonstrations, granting security forces the freedom to deal with protests and gatherings that constitute terrorist acts or threaten public security or public property. Their work should rely on trained and sophisticated electronic intelligence. It must also prohibit the interference of certain parties and popular movements with religious or ethnic affiliations in leading, directing, or participating in demonstrations. It must also prohibit the use of live ammunition when dispersing demonstrations. It must also ensure that political authorities listen to demonstrators' demands under all circumstances.

Keywords: Administrative discretion, restriction of the concept of public freedoms, demonstrations.

Introduction: In Administrative discretion is essentially the administration's acknowledgment of a particular issue that necessitates a decision or stance. This discretion is then determined, along with the objectives of the decision, gathering and analyzing information about it, evaluating available alternatives, selecting the best, implementing, and following up on the decision to accurately assess the current situation, while respecting the law and not exceeding the bounds of

legality. These actions are sometimes subject to judicial oversight, in which case they are deemed restricted; at other times, they are not, in which case they are deemed absolute. The Iraqi legislator has combined these two principles in many laws. One of the most important examples of administrative discretion is how to deal with demonstrations and gatherings guaranteed by the Permanent Constitution, within the framework of public freedoms that represent a social

and philosophical concept. However, it is difficult for executive authorities to exercise discretionary power in managing and organizing them. This has created a state of ambiguity, placing a burden on security authorities, who bear enormous pressures in combating terrorists and outlaws. This often limits their authority when exercising this right, leading them to the problem of violating the Constitution. First: The Objective of the Article

The primary objective of the article is to highlight the problems arising from the issue of administrative discretionary power in restricting public freedoms in Iraq, and to attempt to find solutions to it, using demonstrations as a model.

Second: The Problem of the Article

The research problem lies in demonstrating the extent to which administrative discretionary power to restrict public freedoms in Iraq can be illustrated through demonstrations as a model. This is because public freedoms are fundamental rights enjoyed by individuals in society, such as freedom of opinion, expression, peaceful assembly, the press, and freedom of religion and belief. Restrictions on the concept of public freedoms in Iraq refer to the limitations imposed by the government or laws on individuals exercising their fundamental rights and freedoms. These restrictions may be justified in some cases. Still, they must be proportionate to a legitimate goal and not exceed the necessary limits to protect public order and society, such as national security, public health, and the rights of others. Any restriction on public freedoms must be consistent with the constitution and local laws, justified by a legitimate necessity, and proportionate to the desired goal. The state must strive to strike a balance between protecting public freedoms and maintaining public order, ensuring that one is not compromised at the expense of the other. Several Iraqi laws address and regulate public freedoms, including the Freedom of Expression and Demonstration Law and the Information Crimes Law. However, there are concerns that some of these laws may be vague or ambiguous, which may lead to unjustified restrictions on public freedoms. The judiciary needs to play an effective role in monitoring the extent of legitimacy of restrictions on public freedoms, as this is crucial to ensuring that authorities do not overstep their boundaries. Civil society plays a vital role in defending public freedoms, monitoring the performance of authorities, and providing legal assistance to individuals who are subjected to violations. Dispute resolution involves seeking the help of competent authorities, usually the Federal Supreme Court. Alternatively, the dispute can be adjudicated by the court issuing a decision to resolve it, which both parties

must implement. Alternatively, the court can determine the original jurisdiction of each party in accordance with the constitution and applicable laws. Alternatively, the dispute can be referred to a court that examines the evidence, legal arguments, and facts presented by both parties.

Third: Scope of the Article

The scope of the research is limited to examining the discretionary power of the administration to restrict the concept of public freedoms in Iraq: demonstrations as a model.

Fourth: Methodology of the Article

The article employs a descriptive and analytical approach, extracting information from its sources, indexing and presenting it, and then describing and analyzing it to achieve the desired goal.

Fifth: Article Plan

This article is divided into two parts:

The first deals with defining the concepts that must be clarified in a manner that avoids any doubt or confusion with others, given that they are more general than those used in other fields of science. This section covers two points. The first is to define the discretionary power of the administration, and the second is to determine the restriction of public freedoms.

The second section highlights the restriction of public freedoms.

Unit One: Concepts

Defining the concepts underlying studies, in general, and legal studies, in particular, is an essential requirement (1). Defining them facilitates the expression of the researcher's intended ideas (2) and prevents the researcher from provoking controversy with others (3). These terms, in any given research, are merely practical tools or mechanisms for investigation (4) and an essential link between the researcher and the reader and the intended explanation (5). Therefore, dispensing with a clear definition of them would be a methodological shortcoming (6). Thus, this section is devoted to clarifying the key concepts that need to be mentioned.

Because most of these concepts appear in legal thought as a combination of two words, each with an independent meaning and another within the idea formulated in the form of addition (7), inclusion (8), or a revealing and specific characteristic (9); Considering that most scientific concepts consist of two or more words (10) in an additional, mixed, or hybrid construction (11), scholars and thinkers sometimes use the term to mean the general, absolute term, and other times to refer to the specific meaning used in the field

exclusively. Therefore, it is necessary to address them as follows:

First Topic: Defining Administrative Discretionary Power

First Section: Defining Vocabulary

First: Authority

1 - Linguistically

Authority: A noun (12) from (seen, lam, and ta), which is a single root denoting strength and coercion (13). Arabic dictionaries (14) mention the word in the article with various meanings, indicating: (control, domination, overcoming, empowerment, authority, dominance, victory, ability, coercion, strength, and ownership), and the like (15). The Philosophical Dictionary defines it as: "the ability and power over something, and the authority that a person has over others" (16). The article appears in the Holy Quran in (thirty-nine) places where the word (authority) does not appear. It came in the form of (the verb) in two areas: The first, in His (the Most High) saying: {And if Allah had willed, He would have given them power over you, and they would have fought you} (17). The second: in His (the Most High) saying: {But Allah gives power to His messengers over whom He wills} (18). It came in the form of the noun (sultan) in (thirty-seven) places, including His (the Most High) saying, narrating from Moses (peace be upon him): {Do you argue with Me about names which you have named, you and your fathers, for which Allah has sent down no authority?} (19). In the Sunnah, the term ""sultan"" (sultan) was used to mean ""ruler"" in a narration from the Messenger of God (peace be upon him and his family), who said: ""Whoever dislikes something about his ruler should be patient, for whoever departs from the authority even a handspan dies a pre-Islamic death."" (20).

2 - Technically:

Definitions of "authority" have varied, making it challenging to formulate a comprehensive and exclusive definition. This is due to the multiplicity of its essential characteristics, which represent a diagnosis of its essence and functions, its constant change, and the divergence of viewpoints toward it according to ideological and theoretical premises. (21). The dictionary defined it as: ""The highest authority whose influence is acknowledged, or the social body capable of imposing its will on other wills, through leadership, favor, ability, and the right to judge, impose punishments, and everything that bestows legitimacy upon it and necessitates respect for its considerations and adherence to its decisions."" (22). Note in its definition the characteristics of political thought,

although it is more general due to the presence of context. The Encyclopedia of Politics defined it as: ""The supreme authority whose influence is acknowledged, or the social body, capable of imposing its will on other wills; such that other wills recognize its leadership and decision-making, its ability and right to judge and impose punishments, and everything that bestows upon it legitimacy and requires respect for its considerations and adherence to its decisions"" (23). The most specific qualification of "political" was noted in it. The Philosophical Encyclopedia defined it as: "A moral concept that refers to the fully recognized influence of an individual, a system of viewpoints, or an organization derived from certain characteristics or certain services performed. Authority may be political, moral, or scientific..., depending on the sphere of influence. The existence of an authority apparatus is a crucial condition for the development of social-historical applications. Authority plays a crucial role in the context of socialist construction, where all working people are actively involved in the affairs of society. The abuse of authority may, in the final analysis, lead to a loss of confidence in authority or to blind worship of it, which leads to the cult of personality" (24). The definition notes the viewpoint of Marxist socialism, which has its own distinct philosophy (25). George Catlin sees it as "A will that expresses itself through an institution" (26). George Perdue refers to it as: "The ability of one person to obtain from another behavior that the latter would not have performed spontaneously on his own" (27). Sociologist Walter F. Buckley defined it as: "The direction or control of the behavior of others to achieve collective goals, based on some kind of agreement and understanding. Thus, authority involves voluntary compliance, which is a psychological state that expresses coordination or congruence in the orientation toward the goal of both parties the one exercising authority and the one subject to it. That is, the desire to achieve societal goals and objectives creates a kind of consensus in achieving the higher public interest."

Second: Discretionary

1 - Language

The word "Taqdir" is an artificial noun derived from the word "Taqdir" (28), adding a doubled "ya" and a tied "ta" to the noun (29); "to indicate the set of moral attributes and indications represented by this noun or contained within it" (30), thus giving a characteristic or characteristics derived from the original noun. Therefore, it must have the meaning of "the characteristic of estimation" or "something related to estimation" (31). The root of "Taqdir" is a noun derived from the verb "Qadar" (32), which is augmented by doubling (qadaar) (33), meaning "to make something

according to its sufficiency" (34). Some have said it means "to make something equal to something else, without excess or deficiency" (35). Others have said that it means "to place something in its appropriate place, and it is like the foundation and design of things before their formation and creation" (36). However, the term has been used in recent times in many areas, including: (respect and veneration for someone or something, such as appreciating the efforts of others or appreciating someone's achievements or status; determining the value or amount of something, whether material or moral, such as estimating the time required to complete a task, estimating the value of a commodity, or estimating a certain quantity of a material; evaluating or judging the importance or value of something, whether a person or a work, such as evaluating a student's performance, assessing a work of art, or evaluating an employee's competence; and predicting or assuming something in the future, such as estimating the volume of expected sales or the success rate of a project). It is used in various fields, including grammar and mathematics.

2 - Technically

The technical meaning has not deviated much from the linguistic origin, but it is more specific. It means: the authority's particular anticipation of the surrounding circumstances before making the decision entrusted to it (36), while observing the law and not exceeding the limits of legitimacy (37); because any authority, when making a decision; It must anticipate the surrounding circumstances before making a decision (38), by acknowledging the problem that calls for a decision or position, defining it, determining the objectives of the decision, gathering and analyzing information about it, evaluating the available alternatives, selecting the best, implementing the decision, and following up on it to assess the situation (39) accurately. The decision-making process aims to properly diagnose the problem and correctly anticipate the consequences of choosing one of the proposed solutions. Decision-making is, by its nature, an ongoing process undertaken by all managers (40).

Third: Management

1 - Language

Management: A noun of the form if'ala, derived from the verb augmented with a hamza (adara), meaning to surround something, or to move from something and return to it again, or to make something revolve around itself or around something else, or to circle something, from the root word for "dawra" (circling). Some believe that the verb means to plan, facilitate, and implement (41); "Based on the interpretation of the verse, 'Except when it is a present trade which you conduct among

yourselves' (2:282), this understanding is open to scrutiny, as it may involve a figurative usage."

2 - Terminology

Administration has two criteria for defining its identity:

The first is organic or formal. Thus, an action is administrative whenever it is carried out by a person who assumes an administrative form. Thus, the administration is a group of state agencies that carry out their activities as administrative bodies and are described as administrative.

The second is objective, defining the work undertaken by the entities that exercise this work, meaning the product or outcome of the activity.

The term encompasses all work processes in the state, as they exist in any small unit among the components of the three branches of government. The administrator differs from one activity to another. An engineer who performs his work alone is not considered an administrator, but rather one when he manages an engineering department or a specific project, as he has been entrusted with directing others through oversight and supervision, and coordinating their activities (43).

Some researchers have provided several definitions for it, including: "The function of implementing things through others, or the management, science, and art of resources to achieve desired goals, or a type of highly cooperative human effort, or the art of obtaining maximum results with minimal effort; thus achieving happiness and prosperity for the employer and employees while providing the best possible service to society, or an ongoing social process that works towards optimal utilization." He then concluded that it is: "A profession, science, art, and process for achieving cooperation and coordination between available and potential human, financial, and material resources to achieve planned goals in a rational manner."

Second Section: The Concept of Administrative Discretionary Power

The complex concept among legal scholars has not deviated greatly from the linguistic meanings of the words that comprise the concept. Most legal scholars have recognized that the administration has the right to exercise its discretionary power, and this is not considered a deviation from what is required by law, but rather a means of implementing the law. However, the discussion revolves around the criteria that determine its discretion. This is because the administration's obligations are multiple and varied, and by their nature, do not lend themselves to definition for several considerations, including the fact that administrative work in and of itself is not a

privilege granted. The administrative authority is not only the responsibility of the administrative body, but rather it is an obligation and responsibilities that lead to disciplinary accountability for errors and violations that may occur during the performance of these administrative tasks, regardless of the method adopted by the administration (discretionary authority or restricted authority), with the discretionary authority of the administration being a necessary matter that must be accepted because it is linked to the nature of the administrative function, imposed by the public interest, and confirmed by the legislator's inability to regulate the details and particulars of administrative tasks. However, this authority is not absolute, but rather restricted by what the legislation aims for in terms of the public interest (44). In general, the administration exercises its authority through material and legal actions. It is often noted that the former does not entail legal effects, unlike the latter, which does, such as administrative decisions and administrative contracts. However, the material actions carried out by the administration must be preceded by administrative decisions. In this case, either the administration, when issuing these decisions, has discretionary authority to take the appropriate decision, provided that it does not go beyond the general legal framework, or its authority is restricted such that it cannot go beyond the legal text and its provisions, so it does not expand in its interpretation or go beyond it even if Partially, without the agreed-upon legitimacy of not violating its rules (45), meaning that the law has determined its course of action in advance. It must follow it in accordance with the legal rules. If it deviates from it, its actions are invalid (46). We conclude that (the discretionary power of the administration) is nothing but the authority granted to the latter by law; to make certain decisions according to its own discretion, or to carry out certain actions as well (47). It has the freedom to make the decision it deems appropriate or to refrain from making it if it considers it futile. However, this requires that the legislator have left it the freedom to choose the method and timing of intervention in issuing that decision according to the circumstances. In other words, he was content to establish a flexible general rule and left it to assess the appropriateness of the action, provided that it seeks the public interest in making any decision and does not deviate from the goal; otherwise, its decision would be tainted with the defect of abuse of power. This was merely the legislator's feeling that the administration is more capable than he is of making the appropriate decision in the given circumstances and of choosing the appropriate means of intervention, and that he would not be able to envision all the cases that usually it arises in the administrative environment, and to develop

effective solutions for it, unlike the restricted one based on the idea of the legitimacy of the administrative decision; because it is always subject to what the law imposes, the judiciary then has the power to extend its oversight over the legitimacy of the decision taken. It has the power to cancel it if it is found to be in violation of the law. The scope of oversight is focused on the element of reason, as it has the power to assess the importance and seriousness of the facts, and is not subject to judicial oversight, but rather to the validity of the material facts that exist in light of which the decision was made. It is legally adapted and transferred to the element of the subject, because it enjoys broad discretionary power to intervene or not, to choose its time, and to determine the legal effect it wants to arrange, unless the legislator stipulates the necessity of its intervention, its time, and the effect. There are two trends, one of which believes that the judiciary refrains from extending its oversight over the actions of the administration based on its discretionary power; because the judge exercises legitimacy without oversight, while the second goes to that the judge is permitted to monitor discretionary power; because his role includes revealing the rules of administrative law, so he includes some issues under the principle of legitimacy that is incumbent upon the administration To adhere to it, otherwise its actions would be invalid. However, the development of modern jurisprudence has attempted to combine the discretionary authority of the administration and the oversight of the judiciary simultaneously, ensuring that the authority's decisions do not include deviation or clear error, and implementing the principle of legitimacy (48).

The Iraqi legislator has granted administrations a margin of freedom to make appropriate decisions according to the circumstances, stipulating that these decisions should take into account the public interest within the general framework determined by the law. Perhaps the reason for this is to enable the administration to adapt to emergency and changing circumstances that the legislator is usually unable to anticipate or legally regulate in advance, and to achieve the public interest by enabling the administration to make decisions appropriate to the time factor, and replacing administrative stagnation with practical and flexible action. Examples of this can be seen in the procedures necessary to maintain security and public order, regulate traffic, and grant licenses, as outlined in certain provisions of the Constitution (49) and specific articles of the Governorates Law (50). The second requirement: Defining restriction from the concept of public freedoms

The first section: Defining vocabulary

First: Restriction

1 - Linguistically

Restriction: The source of the doubled verb (qayda yaqyda) (), the opposite of release (51). The root of (qayda) is a rope or something similar that is placed on the leg of an animal or any other thing to hold it and prevent it from moving (52). The plural forms are qayyad for the many and qayyad for the few (53). Restriction is by the five objects and the like, to indicate the type of action or what it occurred to, in, for, or by comparing it. It is restricted by the state to indicate the state of its owner and restrict its agent, and the distinction limits it to reveal what is hidden in essence or relation. Restrictions are the focus of interest; otherwise, they are false (54). The concept of restriction in Arabic grammatical theoretical discourses has two meanings: the first is a general linguistic meaning that indicates the meaning of restriction and departure from generality, while the second is a technical term derived from it, suggesting the sense of direction and specification in structural relationships (55). The concept of restriction is the means by which generality is specified, i.e., reducing ambiguity and removing possibility. Therefore, the relationship between restriction and specification is stronger than the mere use of terms (56); we refer to the word (restriction) in general to several meanings, the most important of which are: a tool for recording or registration, and a tool of confinement used to restrict the movement of a person or animal, such as a rope or chain tied to the leg, and obligation, and limiting the freedom of action, movement, or disposal, whether moral or material. 2 - Technically.

Restrictions in legal terminology do not differ much from their linguistic meanings. They refer to the limits or restrictions legislated to regulate freedoms and rights, whether imposed on various activities or individuals. They are part of constitutions, legislation, regulations, systems, and agreements. These restrictions aim to implement principles of justice, such as restricting the authority of judges in some cases to prevent abuse of power; regulating various activities, such as controlling traffic or the use of natural resources; protecting the public interest to prevent harm to society, such as restricting freedom of expression to avoid incitement or defamation; and protecting the rights of disputing parties, such as registering rights in real estate records to protect them from illegal actions. Their importance is evident in achieving societal stability by regulating relationships between individuals and preventing conflicts, applying the principles of justice and equality in society, regulating social life and facilitating coexistence among individuals, and protecting the rights of individuals and society from unlawful acts (57). Second: The Concept of

Public Liberties

Public liberties represent a multifaceted social, legal, political, and philosophical concept (58). Their definitions have varied. The French Declaration of the Rights of Man and of the Citizen of 1789 defined them as: "The right of the individual to do what does not harm others, and that the limits imposed on this freedom may only be imposed by law." The concept of freedom—as some see it—is inseparable from the idea of right, and the former cannot be understood without understanding the latter. This is because freedom implies the existence of a prior right. This means that the concept of right is more comprehensive than the concept of freedom. Freedom is a type of right that can be litigated, like other human rights (59).

Second Section: The Concept of Limitations from the Concept of Public Liberties

The principle of "drafting the constitution" is fundamentally linked to the principles of freedoms and rights. Its initial formulation took the form of a grant (60) from sultans who viewed themselves as possessing supreme authority and the upper hand (61), even after the great revolutions of the people to obtain their freedoms and rights (62).

However, the idea of (sovereignty) has remarkably developed in modern political jurisprudence, after the French Revolution; because it emerged from the depths of philosophical books into practical reality, so it began from the tension between the principles of (sovereignty of the individual) or (sovereignty of the minority distinguished by social, financial or military status) or (sovereignty of the law) or (sovereignty of the nation) and went through its difficult path until it settled on the idea of (sovereignty of the people) represented by the legislative authority and implementing what the executive authority wants, and thus the Constitution became the supreme law in the country; as it is a right of the people and an expression of their will, restricting the actions of the sultans without being merely a picture of the social contract (63).

This development of the idea of sovereignty has given people more rights and freedoms than before, by restricting the actions of rulers and determining the nature of the political system. The concept of drafting constitutions has been linked to the idea of freedoms and rights, which have been classified in different classifications and given various names, within the scope of individual freedoms and rights, which are privileges for individuals that the authorities are prohibited from interfering with, and political freedoms and rights, the essence of which is placing power in the hands of the people. The latter is distinguished from

the former by the fact that the former is limited to citizens without foreigners, unlike individual rights that include citizens and foreigners alike, and that political rights assume a condition for the possibility of determining them related to morality, ethics, eligibility, age, fitness and mentality, unlike individual rights that are usually for all citizens and foreigners even if they are lacking in eligibility or have been issued judgments against them that violate honor and trust or lack their moral competence. Political rights are related to the exercise of power in society, and individual and public rights are related to the individual's position in relation to power and their freedoms in confronting it. They are divided into two main categories, represented by civil equality and freedom of expression. The first is before the law, the judiciary, taxes, and holding public office. Individual freedom encompasses freedoms with both material and moral content, as manifested in the freedoms of assembly, ownership, housing and its sanctity, personality, the press, belief, religion, work, trade, industry, education, forming associations, and similar rights. However, some do not consider this division to be valid, as it has no legal effect (64).

Unit Two: Restrictions on the Concept of Demonstrations

The permanent, effective Iraqi constitution is the primary guarantor of the freedom of all segments of society. The existence of constitutional and legal texts is insufficient to protect public liberties (65). However, both the legislative and executive authorities must adhere, in all their actions, to constitutional texts first and legislative texts second, as expressed by the principle of the rule of law (66).

Freedom of peaceful assembly is a fundamental human right. It was recognized and emphasized by the Universal Declaration of Human Rights, issued on December 1, 1948, in Article 20 (67), and the Arab Charter on Human Rights of 2004, in Articles 11 and 24 (68). However, most of the charters did not make the right to peaceful assembly an absolute right, but somewhat restricted it by legal recognition. Article 21 of the International Covenant on Civil and Political Rights stipulates that: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" (69). The permanent and temporary Iraqi constitutions referred to the freedom of assembly in different formulations (70), but they stipulated that this freedom be exercised within the limits of the law. The beginning was with the Ottoman

Public Meetings Law of 1909, Article (1) of which allowed the holding of public meetings without a license, provided that they were free of weapons and that they complied with the provisions contained in the law (71). Then, the Ottoman Assembly Law, issued on 26 Rabi' al-Awwal 1330 AH (March 15, 1912), regulated the right to assemble in its broadest sense (demonstration or assembly), prohibiting assembly with or without weapons if it was deemed to be a threat to public security and peace. Decree No. Repealed this law. (25) of 1954 on Meetings and Demonstrations, which empowered the Minister of the Interior to grant permits for demonstrations and assemblies and granted administrative officials the right to disperse demonstrations if they threatened to disrupt security and order, or if the demonstrators, or a portion of them, were chanting slogans hostile to the regime, or for the purpose of inciting the public against security and order, or carrying banners of this kind.

Article 12 of the 1925 Constitution established freedom of assembly within the law.

The 1958 Constitution guaranteed freedom of belief and expression, which were regulated by law, although it did not directly refer to the freedom of demonstration.

Public Meetings and Demonstrations Law No. (115) of 1959 stipulates that individuals may not hold a public meeting or hold a demonstration without obtaining prior permission from the competent administrative authority (72).

The 1964 Constitution included an explicit text regarding the right to assemble, stating that: "Iraqis have the right to assemble peacefully, unarmed, and without the need for prior notice. Public meetings, processions, and gatherings are permitted within the limits of the law." (73).

Iraqi Penal Code No. (111) of 1969 stipulated that: "If five or more people gather in a public place, and this is likely to disturb public security, and the authorities order them to disperse, then anyone who receives this order and refuses to obey it and does not comply with it shall be punished by imprisonment for a period not exceeding one year." (74). The 1970 Constitution clearly included the term "demonstration" (75). However, according to the vision of the dissolved Ba'ath Party regime, gatherings and demonstrations could only be approved if they were in support of the existing authority. Here, we must recall the forced exodus of Iraqis under threat to chant "Long live the party (the only one)" and "The Leader (the necessity)." The Ba'ath government did not hesitate to execute demonstrators against it on various occasions, culminating in the mass graves of demonstrators during

the 1991 Sha'ban uprising (76). The right to express one's opinion through demonstrations was among the critical issues that the Coalition Provisional Authority attempted to address after the 2003 occupation. It issued Order No. (19) of 2003 entitled "Freedom of Assembly" (77), which means the ability of citizens to meet collectively for the purpose of holding public meetings, peaceful sit-ins, marches, conferences, or the like, regardless of the organizing body. To exchange opinions and formulate positions on various issues, and to exert pressure on the executive authority to express their positions and achieve their demands, peaceful assembly is considered one of the collective means of expressing opinions and exchanging views on various social, economic, political, and other issues. It is necessary for the practice of democracy (78).

Section (2) of the same order suspended the provisions of Articles (220, 222) of the Penal Code No. (111) of 1969, as amended, which stated the right of the people to freedom of expression and the right to peaceful assembly. Order (19) also specified the entity granting the license or permission for a peaceful demonstration or peaceful assembly. It required notification of the licensing authority at least (24) hours before the start of the march or peaceful assembly. It also required the names of the organizers of the peaceful assembly or demonstration, the maximum number of people participating, the route it would take, and the start time and duration of the assembly or demonstration. The licensing authority was required to inform the organizing group or the group that provided notice (12) hours in advance of the minimum number of people permitted to participate. Demonstrators were prohibited from bringing or carrying firearms, sharp objects, or anything that could be thrown and cause harm, including stones, batons, and sticks, except for what is used to raise banners and slogans carried by demonstrators; however, the language under which Order No. (19) was issued was confusing and legally imprecise; The lack of an official translation of the text, originally written in English and published in the Iraqi Gazette in the same language, along with an unofficial translation of the order, created a state of ambiguity, especially regarding the articles about the punitive provisions contained in Section (7) thereof, as they are not clear (79).

The permanent and effective Constitution of the Republic of Iraq of 2005 guarantees the freedom of assembly and peaceful demonstration, and is regulated by law. Article (38) thereof stipulates that: "The legislative basis guarantees the right to peaceful demonstration, freedom of assembly, and freedom of expression in various ways and means, provided that they do not disrupt the elements of public order and

public tranquility, provided that this guarantee is regulated in the future by law" (80). However, the issuance of the law prompted the executive authorities to regulate that right through executive instructions, which created uncertainty in exercising that right. Although it is a right guaranteed by the constitution, it constitutes a burden on the security authorities, which bear enormous pressures in their war against terrorism. This often leads them to limit the exercise of that right, which in turn leads to the problem of violating the Constitution (81).

Conclusion

First: Conclusions

1 - The steps of administrative discretion begin with the administration's acknowledgment of the problem it faces. It then attempts to make a decision, act, or position regarding it, define it, and determine the objectives of the decision, gather and analyze information about it, evaluate available alternatives, select the best, implement the decision, and follow up on it to accurately assess the situation, while respecting the law and not exceeding the limits of legality.

2 - Actions taken by the administration are sometimes subject to judicial oversight, in which case they are termed restricted, while other times they are not, in which case they are absolute. The Iraqi legislator has combined these two principles in many laws.

3 - One of the most important examples of the discretionary power of the administration is how to deal with demonstrations and gatherings guaranteed by the Permanent Constitution, within the framework of public freedoms that represent a social and philosophical concept. However, it is difficult for the executive authorities to practically exercise discretionary power to manage and organize them, which has created a state of ambiguity in this regard. This has constituted a burden on the security authorities, who bear enormous pressures in fighting terrorists and outlaws, and has often limited their authority when exercising that right. This has led them to the problem of violating the effective Permanent Iraqi Constitution, which is the basic guarantor of the freedom of all segments of society. It is not sufficient for the existence of constitutional and legal texts to protect public freedoms. Instead, the legislative and executive authorities must adhere to the constitutional texts first and the legislative texts second, which is expressed by the principle of the rule of law. Proposals:

1. Enact a special law on demonstrations, granting security forces the freedom to deal with demonstrations and gatherings that constitute terrorist

acts or threaten public security and public property. Their work must rely on trained and advanced electronic intelligence.

2. Preventing the interference of certain parties and popular movements with religious or ethnic affiliations in leading, directing, or combating demonstrators.
3. Avoiding the use of lethal live ammunition when dispersing demonstrations.
4. The political authority must listen to the demands of demonstrators under all circumstances.

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