### Social Justice Development According to Iraqi Law

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Abstract—Social Justice inevitably is the substantial concept and the core of any civilization. This concept has been fluctuating in the whole world. The huge gap among countries implementing this concept shows developed countries are to succeed in achieving the peak of social justice for its citizens and pushing them towards development and sufficiency, while it is clear to see the absence of social justice is considered a common element in many societies. Iraq, for example, is belittle the importance of the social justice. In this country, the wealth is not divided among the citizen equally, as well as the barriers among citizens are unjustified due to sex, age, race, ethnicity, religion and etc. This paper is tackling the lack of the Social Justice in Iraq through the legal perspective. This paper shows the role of the consecutive constitutions carrying out the social justice principles. Also, this paper demonstrates the barriers and challenges of the social justice in Iraq. The role of the corrupt consecutive governments to raise social justice obstacles, in which lead to lack of social justice eventually to prevalence of insecurity, poverty, unemployment, illiteracy and poor health services, etc. Also, this paper reveals the solutions to overcome these challenges and have a better social justice system in Iraq.

Keywords—Social justice, constitutions, obstacles, insecurity, poverty, unemployment, illiteracy.

#### I. INTRODUCTION

SOCIAL justice refers to "efforts to improve the life circumstances of society's members, particularly those who suffer from any of various forms of social disadvantage." [1] In other words, social justice is a state intervention through legislation and regulations to ease the evils and injustices that resulted from the absolute individual freedom or/and, it is certain provisions intended to alleviate the terrible injustice. Iraq has been suffering for decades from injustice and the absence of a social justice. This absence came out for many reasons, mainly the political reasons and the poor planning of the consecutive governments.

In Iraq, the rich become richer and the poor people are in reverse. In Iraq, the corrupted politician are getting the top jobs, not because of the high qualification and professionally, it is just a nepotism. Also, the natural resources are abundant, while the poverty is getting up and

worse. A spokesman for the Iraqi Ministry of Planning Abdul Zahra al-Hindawi, who is responsible for conducting surveys and statistics in the country, said the ministry Planning assessments indicates to a 30% high poverty rate in Iraq, Also, The Central statistical organization (CSO) has assured that a person income has reached 195.1 Iraqi dinar, which means approximately \$175.59 only yealry. [2]

# II. INTELLECTUAL BASES (FOUNDATION) OF SOCIAL JUSTICE IN IRAQI LEGAL ROLE

Social justice concept refers to equal implementing of rules and regulations to everyone in order to achieve the common life. Social justice is classified into:

- a. Distributive Justice (distribution of society's resources on individuals, taking into account their scientific qualifications, and serve people in education, health, recreational and social services they need equally)
- b. Reciprocal Justice (equality and balance in the reciprocal value of any give and take among individuals, groups and nations)
- c. Corrective Justice (correction of the damages suffered by the individuals, resulting from an attack on their rights by an individual or group of people, through justice which is supervised by judges and juries) [3].

#### A.Social Justice in Hammurabi's Code of Laws

The Code of Hammurabi (1772 BC) [4] could be considered the most amazing and effective creation of its period of time, where there had been no set of laws written or followed. The Hammurabi's Code is 44 columns, the code is consisting of 28 paragraphs of where the whole code contains 282 provisions. The American writer William Durant believes that "Hammurabi Code mixes the finest and greatest laws with the maximum and most brutal penalties and set divine Arbitration Act, in which could prove the crime by throwing the accused in the trial of water and fire, floating means innocent, otherwise is guilty."[5]

Justice was fundamental perception during the Babylonian life 'where Hammurabi code set'. It was overseen and run by the courts. Mostly, the seniors of a town are the judges. Hammurabi clearly and expressly states that he has been entitled by the gods "to cause justice to prevail in the land, to destroy the wicked and the evil." Also, stated that "Let any oppressed man who has a cause come into the presence of my statue as king of justice, and have the inscription on my stele

read out, and hear my precious words, that my stele may make the case clear to him; may he understand his cause, and may his heart be set at ease."[6]

#### B.Social Justice in Islam

Islam has emerged in a land of no authority to a king or/and empire. And grew up in a tribal society where there wasn't set of laws or regulation as it was in the Romanian empire. Islam is based on the basis of the unification of the life on earth with the rules that (Allah) has revealed to the people in a single system. This unification wouldn't be made in an isolation from the society, and if they don't adopt Islamic rules in the social, legal and financial system.

- 1. Social Justice in the Holy Book 'Quran'
- a. Allah has stated in the holy book "Allah commands justice, the doing of good and giving to kith and kin, and He forbids all indecent deeds, and evil and oppression: He instructs you, that ye may receive admonition". [7]
- b. Also said "O you who have believed, do not violate the rites of Allah or [the sanctity of] the sacred month or [neglect the marking of] the sacrificial animals and garlanding [them] or [violate the safety of] those coming to the Sacred House seeking bounty from their Lord and [His] approval. But when you come out of ihram, then [you may] hunt. And do not let the hatred of a people for having obstructed you from al-Masjid al-Haram lead you to transgress. And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty". [8]
- c. Allah has mentioned demanding the son of Israel for doing good deeds, he 'almighty' said "And [recall] when we took the covenant from the Children of Israel, [enjoining upon them], "Do not worship except Allah; and to parents do good and to relatives, orphans, and the needy. And speak to people good [words] and establish prayer and give zakat. Then you turned away, except a few of you, and you were refusing". [9]
- d. And stated that "Righteousness is not that you turn your faces toward the east or the west, but [true] righteousness is [in] one who believes in Allah, the Last Day, the angels, the Book, and the prophets and gives wealth, in spite of love for it, to relatives, orphans, the needy, the traveler, those who ask [for help], and for freeing slaves; [and who] establishes prayer and gives zakat; [those who] fulfill their promise when they promise; and [those who] are patient

in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous". [10]

- e. Allah has combined giving money to needy people as a way to get his rewards the almighty Allah said "Never will you attain the good [reward] until you spend [in the way of Allah] from that which you love. And whatever you spend indeed, Allah is Knowing of it". [11]
  - 2. Social Justice in The Prophet Practice (Sunnah)

The prophet (PBUH) has said "One who strives to help the widows and the poor is like the one who fights in the way of Allah." Also, he said "O people! Your God is one and your forefather (Adam) is one. An Arab is not better than a non-Arab and a non-Arab is not better than an Arab, and a red (i.e. white tinged with red) person is not better than a black person and a black person in not better than a red person, except in piety".

3. The Principles of Social Justice According to the Contemporary Muslim Scholars

Social justice is considered as one of the most important components and elements of justice in Islam. Sayyed Qutb one of the great Muslim scholars has tackled these principles in details. In his Social Justice in Islam, he raised up three fundamental elements of social justice in Islam. The elements are as follow[12]:

- a) Absolute freedom of conscience,
- b) The complete equality of all men, and
- c) The social interdependence among members of the society.

# C.Social Justice in Iraqi Constitutions

It is no exaggeration to say that a constitution is the most important document in the life of people. Not only because it regulates the relationship between the ruler and the ruled, but also because it has political and social values, that represent the collective identity of the people

The concept of social justice has been evolved and improved in the contemporary period of time. The modern countries are more concerned to providing the fundamental rights of the citizens regarding to social justice. The initiatives of adopting social justice rules started immediately after the declaration of human rights 1948, where the provisions in its articles guaranteed people's rights, social security, and social solidarity within a society. Moreover, ensure the rights of living for each person, at a good level of health and well-being.

Despite the civilizational and cultural heritage in Iraq, Iraqi constitutions and regulations have rarely implemented social justice. Since the first constitution of the Iraqi Kingdom, Moreover, the consecutive governments have involved in internal and external issues that expand the lack of social justice.

#### 1. Ottoman Basic Law (December 24, 1876)

The draft has clearly declared in that "Islam is the state religion. But, while maintaining this principle, the state will protect the free exercise of faiths professed in the Empire, and uphold the religious privileges granted to various bodies, on condition of public order and morality not being interfered with." [13] In which means, the law has adopted all the principles of Islam including social justice. Even though, the principle of Islam has adopted social justice as it was clarified before, there was nothing about justice, equality, and more so the words (social and justice) are not found in the draft.

# 2. Constitution of the Kingdom of Iraq (March 21, 1925, as amended July 29, 1925)

The first Iraqi constitution that promulgated by the Kingdom of Iraq in March 21, 1925, had come up with new set of rules that promote social justice and equality. Art. 18. Stated that "Iraqis shall be equal in status, as regards the enjoyment of their rights and the discharge of their obligations. Government appointments shall be bestowed upon them alone, to each one without discrimination, in accordance with his capacity and fitness. No persons other than Iraqis shall be employed in Government appointments, except in such exceptional circumstances as may be prescribed by a special law. Foreigners who must or may be employed in accordance with treaties and agreements shall not come within the scope of this article." Also, Art. 77 stated that "Justice shall be administered in the Sharia courts in accordance with the terms of the Sharia doctrine peculiar to each of the Islamic sects, in conformity with the terms of a special law. The Qadhi (judge) shall be a member of the sect to which the majority of the inhabitants of the place to which he is appointed belong, maintaining the appointment of both Sunni and J'aferi Qadhis (judges) in the cities of Baghdad and Basra."[14]

## 3.Interim Constitutions of (July 27,1985)

The constitution of 1958 had nothing to deal with social justice or even any hint to a fair distribution of wealth. This constitution came along to entrench principles of the 1958 revolution and to sustain its goals.

#### 4. Interim Constitution of 1963 (April 29, 1963)

The interim constitution of 1963 has a lot of legal texts in which granted different rights to the Iraqi people, precisely in Part II (The Basic Components of Society), where the Constitution enjoined the State to ensure equal opportunities for all Iraqis, and to achieve economic development and social justice. The Constitution also stipulates that private property inviolable. The constitution stated "The State shall guarantee equal opportunities for all Iraqis." [15] Also, has stated "economic system in Iraq aims to achieve economic development and social justice, which prohibits any form of exploitation." [16]

## 5. Interim Constitution of 1968 (September 21,1968)

The Ba'ath Party revolution of 1968 came up with a new interim constitution, along with glamorous slogans to deceive people. It was so clear to find that the interim constitution of 1968 copied a lot of legal materials received in the previous constitutions, with the addition of legal materials that served orientation of Baathists to enslave people and rob their rights and their money. For example, Article 12 of this constitution stated "The economic system of Iraq aims to achieve socialism by applying social justice, which prohibits any form of exploitation." [17].

#### 6. Interim Constitution of 1970 (July 16, 1970)

Even though the Baath government had promised Iraqi people in the interim constitution of 1968 to set a permanent constitution for the country, but that did not happen. In 1970 the Revolutionary Command Council (RCC) decided to Issuance of the interim constitution of 1970, which states in Article I that Iraq aims (to achieve a single Arab state and the establishment of the socialist system). Part III of the Constitution addresses (Fundamental Rights and Duties) in which considered the people "(a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin, or religion. (b) Equal opportunities are guaranteed to all citizens, according to the law."[18]

Even all of these previous fundamental rights and many others have stated in the constitution, the government sought to prohibit the people from any rights, practicing authoritarianism on the citizens, and prohibit any partisan, political, and economic activity that does not satisfy with the interests of the ruling authority on the grounds that it is contrary to the objectives of the people!! As stated in Article 36 [Prohibited Activity] "It is prohibited to exercise any activity against the objectives of the People, stipulated in this Constitution. Every act or behavior, having for purpose

to crumble the national unity of the popular masses or to provoke racial, sectarian, or regional discrimination among them, or to be hostile to their gains and progressive achievements."

# 7. The Permanent Constitution of 2005 (Approved by Referendum on 15 October 2005)

Iraqi constitution of 2005 process was characterized as a great experiment in Iraq. Also, it has a private dimension in the Arab world in particular, where there is no value for Middle Eastern people voices. Therefore, importance of this referendum came from the sense that accompanied Iraqi citizens that their voices have value.

The 2005 constitution has comprehended the standards and principles upon the civil state in Iraq, which mainly regarding to social justice includes:

- a. People are the source of authority article 5 of the constitution stated "The law is sovereign.

  The people are the source of authority and legitimacy, which they shall exercise in a direct, general, secret ballot and through their constitutional institutions."[19]
- b. Equality and non-discrimination Article 14 stated "Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status." [20]
- c. Ensure the provision of social justice, in which basically refers to protect the right of citizens to live well, to achieve basic standards of human rights, the emphasis on human rights guarantees, and regulate the relationship between employees and employers on an economic basis taking into considerations the rules of social justice. Article 22 has stated that "First: Work is a right for all Iraqis in a way that guarantees a dignified life for them. Second: The law shall regulate the relationship between employees and employers on economic bases and while observing the rules of social justice. Third: The State shall guarantee the right to form and join unions and professional associations, and this shall be regulated by law."[21]
- d. Security and development: The state's commitment to reforming the Iraqi economy according to modern economic bases, in a way that ensures successful investment of its resources and encouraging the development of the private sector. Article 25 of the constitution stated "The State shall guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of its sources, and the encouragement and development of the private sector." [22]
- e. Equal opportunities: Iraqi constitution has been very keen on equality between members of Iraqi society. Iraqi constitution has been very keen on granting political, economic and

cultural civil rights equally between members of Iraqi society, in order to achieve diversity and participation of all members of the community so as to enhance the democratic approach All of that was indicated by the Constitution in Section II [Rights and Liberties] Chapter One [Rights] First: [Civil and Political Rights] "Article 14: Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belien or opinion, or economic or social status. Article 15: Every individual has the right to enjour life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority Article 16: Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken."[23] Also, Article 30 of the constitution would be considered as the foundation and the cornerstone of social justice in Iraq. The article stated that "First: The State shall guarantee to the individual and the family - especially. children and women - social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing. Second: The State shall guarantee social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphanhood, or unemployment, shall work to protect them from ignorance, fear and poverty, and shall provide them housing and special programs of care and rehabilitation, and this shall be regulated by law."[24]

# D. Challenges Faced in the Implementation and Application of Social Justice in Iraq

Despite the current Iraqi constitution has initiated the principle of social justice expressly or/and implicitly, the lack of social justice issue is still increasing.

There are a lot of reasons beyond the lack of social justice, as followed:

#### 1. The Political Economic Problems

During the period of republican (1963-1953) many laws regarding to social justice were issued. The aim was to lay the foundations of social justice, and guarantee equivalence among the Iraqi people. Such as, the law of personal circumstances, which guarantees freedoms for Iraqi women, the law of land reform in which ended the control and domination of feudal, the public service law, and the nationalization of Iraq's oil, etc.[24]

Once the Baath party took over the authority, internal conflicts begun and more so, Iraq fought a war against Iran for 8 years. Such conflicts affected the level of social care and could not achieve any improvement in social justice as it should be in the conventional sense and practice.

After the fall of Saddam Hussein's regime, a new stage of democracy in Iraq has begun. The new governments faced great difficulties of the political process under bloody conflicts against terrorist forces. A conflict is about power, wealth and about the form of future political and economic system.

The country entered in successive crises, such as rampant corruption that has turned into a part of the state and community infrastructure institutions, a deterioration of the security situation, and a horrible deterioration of services inability to provide electricity, safe drinking water, sanitation and high prices. Also, the increasing of inflation rates, rising poverty and unemployment rates. All of that led to international and regional foreign interventions in Iraqi affairs.

One of the Iraqi economy problems is the omnidirectional source, that Iraq's economy is considered as the economy of a yield in which depends on oil rents from abroad. Reports are showing that at least 92% of the total national income comes from oil rent, and a significant increase in the value of imports up to 45 billion dollars per year with the weakness of the economic capacity productivity other in agriculture, industry and the weakness of internal trade. In addition to that, the lack of coordination between monetary policy and fiscal policy is a reflection of the lack of strategic vision in the field of economic development, thereby leading to hinder and delay the reconstruction of Iraq, the achievement of equality, equal opportunities, increasing unemployment rates and an increase in poverty rates.

## 2. Widespread Poverty in Iraq

One of the most essential challenges to achieve social justice in Iraq is the poverty. The statistics of United Nation Development Program in Iraq shows that "75% Iraqis identified the need to reduce the country's poverty as the most pressing need" and also shows that "23% of Iraqis live on less than US\$ 2.2 a day"[26] The Ministry of Planning released a new report of poverty for the period 2007-2013 which showed that "a fifth of Iraq's population live under the poverty line despite booming oil revenues in that period, but the GDP grew at a cumulative rate of more than 40% and an annual rate of 7 % between 2008-2012"[27]

Regarding to the high level of poverty in Iraq, a report released by an economic expert in World Bank who said "The report results also reflect the legacy difficult of violence and

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vulnerability and institutional weakness in Iraq, which is facing enormous challenges in the long run may take a long time to overcome them where large parts of the country saw between 2003 and 2012 the continuation of internal violence and insecurity in the deepening economic and social fragmentation" Iraq mostly relies on oil revenues and not to exploit other resources such as agriculture, tourism, water resources, etc. which negatively affected the increase in poverty.

In addition, the absence of real vision for social development and not to adjust the market economy mechanisms, also the absence of trade controls, all of that led to the emergence of minimulations who could increase their wealth and teamed up with rampant corruption practiced by bureaucratic groups from within state institutions. These groups take advantage of lawlessness, lack of laws and legislations, and the exploitation of public money in the services sectors, real estate and trade.

Furthermore, approved budgets is one of the reasons for the disparity in wealth, particularly in granting of privileges to social groups close to power and clear differences in the scale of salaries and wages. Also, the lack of mechanisms for implementing projects that creates jobs.

The government pays attention mostly to increase the budget of security provisions and armament. In reverse, less attention to social crises, amid the absence of a strategy for poverty alleviation in Iraq.

#### 3. Unemployment Extension

Due to economic imbalance in Iraq, the development is facing an increasing number of unemployed, particularly among young people. According to statistics, Minister of Labor and Social Affairs Mohammed Shayaa al-Sudani said "Currently, the unemployment rate in Iraq has passed 25%."Thus constitutes 'less than 35 hours per week'. Moreover the percentage among women is exceeding 33 percent, plus varies widely between cities and the countryside. Another Statistics released by the Iraqi Trade Ministry indicate that Iraq has a population of almost 36 million people, two million of whom are internally displaced as a result of the conflict with Islamic State. [28]

Providing equal opportunities among the people would create a great justice atmosphere. Thence, the new perception of social justice raises to the purpose of realizing equal opportunities.

<sup>&</sup>lt;sup>1</sup> Nandini Krishnan is a World Bank Senior Economist and an expert on poverty spoke during the conference held by the Ministry of Planning in Iraq on February 01, 2015.

#### 4. Education and Literacy

A huge number of illiterate in Iraq is a barrier to achieve social justice. The education system has contributed negatively to worsen lack of social justice.

A World Bank survey carried out within the framework of a Bank project financed by the Iraq Trust Fund called 'Iraq Household Socio-Economic Survey - IHSES-2007' shows that "Almost 23 percent of Iraqis are illiterate and quarter of the female population is illiterate" [29]

Pre 2003, UNESCO estimated that primary schools in Iraq had nearly a 100% gross enrollment attendance rate in the 1980s and much of the 1990s. Thus, Iraq was awarded The United Nations Educational, Scientific and Cultural Organization (UNESCO) prize for eradicating illiteracy in 1982. [30]

Education is one of the key elements to achieve ideal social development in Iraq, and therefore Iraqi government is responsible to consider the education as a key priority, especially at the present time. Thus, promoting and evolving this field would create an educated generations can contribute to the rebuilding of Iraq and achieve progress.

#### 5. Lack of Management System

The Iraqi Government System is incapable of managing the state and its facilities. Administrative system is still lags behind and dose not rise to the level of technological sophistication of the administration, so-called e-governance or in the administrative affairs of the government.

## 6. The Financial And Administrative Corruption

Despite the existence of the General Inspectors in each ministry and government facilities, but they did not take significant measures against corruption and bribery. Moreover, Iraqi Parliament has not taken an active oversight role in addition to the legislative task end to the scourge of corruption. Also, Media has a responsibility of censorship in tackling corruption rampant in all state institutions and lack of transparency.

# E. Solutions for Better Social Justice in Iraq

- 1) Spreading the concept of citizenship as a basic principle. An Iraqi citizen has to feel the affiliation in his own country where he has a right to enjoy complete freedom, and has rights and duties in governmental institutions in which are committed to serving the citizens and be liberated from authoritarian.
- 2) Stand firm against political sectarianism and adopt the principle of citizenship in building a democratic civil state.

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- 3) Building a democratic civil state based on law and constitutional institutions. This could achieved by promoting the separation of powers principle and the peaceful transfer authority. Also, to respect the will of citizens to exercise their rights and freedoms without any form of restrictions. Moreover, prohibit the human rights violations and any kind restrictions on citizens without a warrant.
- 4) Adopting an economic strategy based on sustainable development aims to develop the economy and activate all other productive sectors. Also, to come up with a strategic oil plathat would contribute the development of the Iraqi economy.
- 5) Set sustainable a program to combat unemployment and create jobs.
- 6) Starting an effective program to crack down the official corruption, as it is another face terrorism. The Commission of Integrity (COI) in which is the leading anti-corruption body; Iraq showed in a report that has prepared by United Nations Office on Drugs and Crime the "The number of criminal investigation cases under the (COI) climbed from 786 in 2004/5 t 6,779 in 2009 and 11,671 in 2011. As a result of those investigations, the number of people referred to court for corruption charges increased more than five-fold, from 1,084 in 2009 t 5,682 in 2011, while the number convicted for corruption offences increased more than six fold, from 257 in 2009 to 1,661 in 2011, of which about half (867 in 2011) were convicted in person and their sentence actually carried out." [31]

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