

THE EFFECTIVENESS OF ADMINISTRATIVE CONTROL IN FACING HARASSMENT OF WOMEN IN IRAQ

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ABSTRACT--States shall endeavor to achieve security and order in society and, for that purpose, may follow certain measures aimed at establishing order and security in society as well as providing the necessary services to citizens and the public interest. The State shall, through its legislative, executive and judicial powers, exercise an activity aimed at achieving stability under the public order and its elements related to public security, public health, public tranquility and public morals. If such activities or procedures are pursued by the authorities of the State as a whole, the laws are the responsibility of the executive branch as its bodies carry out duties that are in touch with daily life and behavior of individuals. Therefore, the administrative control bodies, specifically the Ministry of the Interior, are the closest to achieving what is called administrative discipline in the special sense. good law enforcement and confront crimes and phenomena contrary to morality or disrupt public order in the event of their increase and the phenomenon of its example harassment of women.

Keywords-- The effectiveness of administrative control in facing harassment of women in Iraq

I. INTRODUCTION

The purpose of ensuring proper implementation of the law is to maintain public order with all its elements, and although the elements of public order may differ from one community to another, therefore the role of administrative control bodies shows responsibility for preserving those elements in society as a whole and reducing negative phenomena that may constitute a serious crisis facing Society, including the phenomenon of harassment, which may begin with verbal harassment and end with physical harassment and then sexual harassment. The exacerbation of this situation in a society led many to search for its causes and results and prompted us to search also for the relationship between the administrative control authorities in Iraq and the concept of harassment and what are the methods used to reduce this phenomenon against women in particular and how to deal with the texts contained in Iraqi laws with our full belief that the role The most important thing is the executive authority, specifically the Ministry of Interior, and its cooperation with academic, educational, and media bodies to limit the exacerbation of this phenomenon and its increase in a way that makes it a crisis for Iraqi society.

The importance of research: The importance of research appears as a result of the increase in the phenomenon of harassment in society as a result of the development of social media and the rush of individuals around drugs and alcohol and the absence of a social and legal deterrent to limit their exacerbation.

Research problem: The lack of a specific concept of harassment in Iraqi law, as well as the lack of a standard to distinguish between verbal harassment with words and the offensive act of modesty and sexual assault.

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Research methodology: The study relied on the methodology of scientific and legal analysis of the texts contained in Iraqi laws.

The first topic

The link between administrative control and harassment

Explaining the link between administrative control and one of the most dangerous manifestations leading to a violation of human rights in general and women in particular represented by harassment requires clarifying the concept of administrative control as well as explaining the concept of harassment, so this topic will be divided into two requirements: the first to explain the concept of administrative control, and the second requirement we will address includes the concept of harassment.

The first requirement - the concept of administrative control.

Control is defined in its general sense by the organization of the state, an organization that maintains its structure and works for the safety of its society. It is also known as a set of legislative, administrative and judicial measures that the state takes to maintain order in society, its safety and stability, and to provide the necessary services to citizens in order to achieve the public interest.

It is defined as the goal pursued by the state authorities. It is thus divided into general control, which includes the procedures of the three authorities (legislative, executive and judicial) and the specific control of its narrow meaning, which is the focus of our study, as it relates to procedures issued by administrative bodies that affect public freedoms for the purpose of maintaining security and maintaining public order and these authorities or bodies operate according to the constitution. It stipulated that a law cannot be enacted that contradicts the fundamental rights and freedoms contained therein. It also stated that the freedom, dignity and safeguarding of a person. And as long as the function of administrative control is one of the most important and most dangerous functions of the state, as it constitutes a social necessity and an aspect of the state's sovereignty, and it is thus linked with an important link with the phenomenon of harassment, which works to violate the freedom of women and attack their dignity, and this matter which is one of the tasks of the administrative control bodies.

In Iraq, administrative control bodies are embodied in the narrow sense of what is mentioned in the provisions of the Constitution and the Law of the Ministry of Interior, as well as the Law of Governorates that are not organized in Region No. 21 of 2008 amending and thus include:

- 1- The President of the Republic and the Prime Minister.
- 2- The Minister of Interior.
- 3- The mayor and governor of the district.

According to the constitution, the president represents the symbol of the nation's unity and the sovereignty of the country and works to ensure adherence to the constitution and to preserve the independence, sovereignty, unity, and territorial integrity of Iraq, while the prime minister is directly responsible for the state's public policy and management of the cabinet, as the ministers work with him side by side to plan and implement public policy and plans. General of Ministers and the issuance of regulations, instructions and decisions by the Council chaired by the Prime Minister. And if the President of the Republic and the Prime Minister exercise the task of

administrative control in light of their work within its general framework within the state, we find that one of the objectives of the Ministry of the Interior represented by its Minister is to maintain internal security and ensure the safety of citizens and it works through its administrative bodies, for example the agency of the Ministry of Police Affairs, which was established under Ministerial Order No. 3100 on 2/5/2004 It operates according to the Ministry of Interior Law No. 20 of 2016 in force for the purpose of performing the task of creating a safe society and working to reduce crimes and consolidate public order and protect the lives of people and their public and private freedoms and any danger that threatens them as well as to prevent All crimes or legal actions are taken against the perpetrators.

Maintaining order and security is not confined to the Baghdad governorate only, but it extends to the other governorates of Iraq and it is the responsibility of the governor, the governor, and the director of the district, as the highest executive officer in their administrative units and their owners.

In spite of the multiple administrative control bodies in Iraq, we find that the greatest burden falls on the Ministry of the Interior with its bodies represented by the community police and the ministry's agency for police affairs as it is in close contact with the community and it is the closest to individuals and it is possible to overcome any phenomenon spread in society through the cooperation of these agencies With the rest of the ministries in society and local civil society organizations in a way that does not restrict public freedoms but rather using modern methods through awareness and information to avoid actions and sayings that threaten the security and safety of society and is represented by the phenomenon of harassment, the role of these bodies is not limited to the necessity Iron hand, but it requires the face of this phenomenon in the present and the future through awareness that start from the end of the young and adults.

The second requirement - what is harassment.

To show what harassment is, it is necessary to expose it to its definition and distinguish it from other similar acts.

In his definition, Dr. Amjad Hadi holds that sexual harassment is an aggressive behavior issued by a person with the intent to attack the dignity and freedom of the victim woman without her consent, which creates feelings of confusion, discomfort or disgust that affect her performance in study and work and disturb her thinking. It is also known as ((those unwelcome words or acts of a sexual nature that violate the body and the feelings and privacy of the victim with which the victim feels uncomfortable, safe, fearful, insulting, insulting and other negative feelings)).

It is also known as the shameful acts against the modesty of a male or female that are committed in public or private.

As for a law, the Iraqi legislator did not provide a specific definition of harassment, and did not mention the word harassment at all, but rather included it among the crimes against morals and public morals that fall within the shameful act that violates the modesty, as he indicated that it includes requesting things that violate etiquette from another male or female, or may include exposure to a female in A public place with words, deeds or references to a face that offends its modesty. It is the subject of our research, and the definition of sexual harassment was mentioned in the provisions of the current Iraqi Labor Law No. 37 of 2015, as the third chapter containing the basic principles of the law indicated that sexual harassment

((Any physical or oral behavior of a sexual nature or any other sex-based behavior that affects the dignity of women and men and is undesirable, unreasonable and insulting to those who receive it and leads to the refusal of any person or his failure to submit to this situation expressly or implicitly to take a decision that affects his job)

From the previous definitions, we find that harassment is a broad concept that jurisprudence and law did not agree on developing a comprehensive definition for it, in addition to being against both women and men, except that it was related to the subject of our research that we concluded that harassment against women is the sum of words and actions that violate ethics and which are exposed to it. Women, whether in the street, school, job, restaurants, public or private places, and even within the family, as it may be located by relatives or acquaintances, which violates her dignity, physical integrity, and offends her modesty.

The problem of confusion between the concept of sexual harassment and physical assault appears, as there are many who confuse the concept of sexual harassment and physical sexual assault, but there is a difference between the two concepts, so harassment, as mentioned above, includes a set of behaviors that are difficult to describe and that is contrary to what happens in cases of physical assault that also occurs Within the concept of crimes against morality and public morals, but it includes the crime of rape, female, and the crime of indecent assault, as well as a flagrant act against shame that falls under the concept of harassment. Rape is a sexual and physical assault against a female or is known as the (unlawful sexual intercourse of a female with knowledge of the absence of her consent) Also sodomy is defined as the practice of sexual act with a male or female and it is consistent with the crime of indecent assault, which may constitute an assault on a male or female offer except They differ from the crime of rape, which occurs only on a female.

From the above it is clear to us the following:

1- Harassment is similar to physical sexual assault, that both fall within the concept of crimes against morals and public morals against women.

2- Both sexual harassment and sexual assault affects the dignity of a woman and constitutes an insult to her feelings and body.

3 - The victim is in harassment, sodomy, and indecent assault, both female and male, except that he is the victim in physical sexual assault (rape).

The second topic

Administrative control means to reduce harassment of women

The means of administrative control vary to limit harassment of women according to what is stated in the law. Therefore, stating the position of Iraqi law and its procedures requires it through two requirements: the first demand we will deal with legal means, but for the second demand we will address the reasons for achieving administrative control.

The first requirement - legal means.

It is represented in the application of legal texts, as Article (402) of the Iraqi Penal Code No. 111 of 1969 stipulates the following:

1- He shall be punished with imprisonment for a period not exceeding three months and a fine not exceeding thirty dinars, or one of these two penalties.

A - Whoever requests immoral matters from the last male or female.

B - Whoever subjected a female to a public place with words, deeds or references in a manner that violates her modesty

2- The penalty shall be imprisonment for a period not exceeding six months and a fine not exceeding one hundred dinars, if the offender returns to committing another crime of the same type as the crime for which he was ruled within a year from the date of the previous judgment.

As for the Iraqi Labor Law, it stipulated in the second paragraph of Article (11) of it that ((He shall be punished with imprisonment for a period not exceeding six months and a fine not exceeding one million dinars, or one of these two penalties) Whoever violates the provisions of the articles in this chapter related to child labor and discrimination Forced labor and sexual harassment according to each case)).

The above legal texts dealt with limiting harassment against men and women in general, and women in particular, through the administrative control bodies that are concerned with the law's legislation, implementation and accountability.

Whether harassment by words or deeds in a manner that offends the woman's modesty and violates public morals and morals, and if the penal law is concerned with limiting the actions and behaviors under the concept of harassment, whether it is in public places such as the street, school, restaurant or private places, we find that the labor law emphasized fighting these behaviors except that the scope of its application is in the work environment and affects both women and men. Thus, we find that Iraqi law fought these unacceptable behaviors, but we find that these behaviors have become a threat to society, as cases of harassment of women in Iraq have increased in recent times despite D The legal texts dealt with in order to limit its spread We see that the penalties stipulated in the law are tightened and the amount of the fine imposed on the harasser is increased and we find that the labor law imposed a financial fine of up to one million dinars, while the penal law which is the law that deals with harassment is still limited to The amount of the fine imposed on the harasser does not exceed thirty dinars, and this is not commensurate with the role of the law and the reasons for its legislation in limiting crimes against human dignity and honor in general and the female in particular.

The second requirement - the reasons for conducting administrative control.

The positive reasons for conducting an administrative seizure against the harasser are the conditions that must be met in order to achieve the crime of harassment and which the Iraqi Penal Code referred to in Article (402) that harassment is achieved in the event that things that violate public morals are demanded from the male and female or the exposure of a female in a public place by words or deeds Or references in a way that offends modesty, and from this text, we find that the conditions for achieving harassment are the general conditions for crimes against morals and public morals.

1- The physical pillar - which is the female's exposure, and for the harassment to happen, it is required that the victim be present (alive), male or female, with the absence of the victim's consent.

2- Public place - the law requires harassment as an act that violates modesty in a public manner, that is, the law has accustomed to the place in which it is located, except that it left the definition of the concept of publicity to the competent court to extract it from the circumstances surrounding it, which indicates that the act committed violates female modesty and has determined The Penal Code means public means that include works, signs, or movements if they happen in a public road, in a public forum, or a permissible or forbidden place, or exposed to

the attention of the public, saying or shouting, as well as the press, publications, and other means of advertising and publishing, as well as writing, drawings, pictures, signs, films, and the most recent AI which is criminalized by law, whether positive or negative unless stated otherwise.

3- Moral pillar - and is intended as a criminal intent, that is, that the will of the perpetrator will be diverted to bring about the act knowing that it would scratch the female's modesty, but if the act occurred accidentally, then the harassment does not happen.

If the harassment act is achieved, the administrative control bodies represented in the Ministry of Interior will arrest the harasser and hand him over to the judicial authorities to obtain his punishment. If the elements of the harassment crime are completed, the responsibility of the harasser is fulfilled and the punishment imposed on him, which the legislator (in violation) of the prison sentence for a period not exceeding three months, must be imposed. And with a fine not exceeding thirty dinars or one of these two penalties, the crime is a misdemeanor in the case of recidivism, as the penalty is imprisonment for a period not exceeding six months and a fine that does not exceed one hundred dinars if the harasser commits the crime within a year from the date of the previous judgment.

II. CONCLUSION

At the conclusion of our research, we reached a number of findings and recommendations as follows:

First / Results:

1- The legislator mentioned administrative control bodies to preserve public freedoms and public security, but the existence of these bodies does not achieve the purpose of its work as long as the legislation fails to achieve full maintenance of public freedoms.

2- The legislator mentioned administrative control bodies in the broad sense represented by the three authorities (legislative, executive and judicial), but the greatest responsibility rests with the executive authority to confront the harassment of women and this does not mean separating the work of the authorities without the presence of cooperation between them as they must work side by side to achieve security And public order in society.

3- The Iraqi legislator's lack of attitude in dealing with harassment under the Iraqi Penal Code No. 111 of 1969 amended, while the Iraqi Labor Law No. 37 of 2011 mentioned treatment of harassment much better than what was mentioned in the applicable penal law.

4- Exercising the activity of administrative control bodies should be within the scope of the constitution, laws, regulations, and directives in force.

REFERENCES

1. The necessity of amending the legal text contained in the Penal Code regarding the inclusion of harassment within acts against shame and defining legal texts that address harassment in general and harassment against children and women in particular.

2. Increasing the penalties stipulated in the Penal Code against the harasser, as the absence of a deterrent to the beginning of this phenomenon makes it gradually exacerbate into sexual harassment and may end in a murder, especially against children and women.
3. Emphasizing the seriousness of this phenomenon in light of educational and social curricula and plans, as it requires increasing training programs for the purpose of highlighting the seriousness of this situation on the public order in society.
4. Emphasizing on media awareness, as the media plays an important role in community awareness through cooperation between the Ministry of Interior and Information bodies to educate towards avoiding this negative phenomenon.
5. Academic cooperation between universities, civil society organizations and administrative control bodies for the purpose of raising awareness and setting up academic courses for university and institute students to reduce this phenomenon.
6. Qualifying juveniles and minors, and sensitizing them to stay away from this phenomenon by emphasizing its negative consequences. Margins:
7. Dr. Mahmoud Helmy, Summary of Principles of Administrative Law, Arab Union for Printing, Cairo, first edition, without a year printed, p. 81.
8. Dr. Muhammad Ali Bdair and Dr. Mahdi Yassin Al-Salami and Dr. Essam Abdel-Wahab Al-Barzanji, Principles and Provisions of Administrative Law, Al-Atak for Book Production, Cairo, Legal Library Distribution, Baghdad, 2011, p. 211.
9. Dr. Muhammad Sharif Ismail, Administrative Control Powers in Exceptional Conditions, A Comparative Study, Journal of the State Council, Cairo, 1962, p. 10.
10. Article 2 / First / C of the Constitution of the Republic of Iraq for the year 2005 in force.
11. Article (37 / First / A) of the effective constitution of the Republic of Iraq for the year 2005.
12. Dr. Issam Ali Al-Debs, Administrative Law, What is Administrative Law, First Book, Dar Al-Thaqafa for Publishing and Distribution, Amman - Jordan, First Edition, 2014, pp. 454-455.
13. Article 66 of the Constitution of the Republic of Iraq in force in 2005.
14. Article (3) of the Ministry of Interior Law, No. 20 of 2016 published in the Iraqi Al-Waqa'iq newspaper, Issue 4414, on 29 August 2016, the fifty-eighth year.
15. Article (23) of the Provincial Irregularities Law No. 21 of 2008 published in the Iraqi Al-Waqa'iq newspaper, issue number 4070, on 3/31/2008, as amended.
16. Article (80 / First / Third) of the effective constitution of the Republic of Iraq for the year 2005.
17. Ministry of Police Affairs website on mol. Gov. iq / indox. Php.
18. Article (23) of the Provincial Irregularities Law No. 21 of 2008 published in Iraqi facts No. 4070 on March 31, 2001.
19. Hussein Omran, the phenomenon of sexual harassment, an investigation published in Al-Mada newspaper number 3079 dated 13/5/2014, published on the website almadapaper. Net ..
20. Sexual harassment in violation of body and feelings, research published on Feedo .net under the auspices of the Egyptian Computer Company (EBM).
21. Dr. Ahmed Fathi Sorour, Mediator in the Penal Code, Special Section, Third Edition, Dar Al-Nahda Al-Arabia, 1985, p. 662; see also Dr. Mahmoud Mahmoud Mustafa, Explanation of the Penal Code, General Section, 9th Edition, Cairo University Press, 1974, p. 328.

22. Judge Nabil Abdul Rahman, Penal Code No. 111 of 1969 and its amendments, revised fifth edition, 2011, Legal Library, Baghdad, p. 143.
23. The third paragraph of Article (10) of Law No. 37 of 2011 published in the Iraqi Al-Waqa'iq newspaper, Issue 4316, on 9/11/2015, p. 7.
24. Dr. Maher Abd Shwish Al-Durrah, Explanation of the Penal Code, Special Section, Al-Atak for Book Production, Cairo, Legal Library, Baghdad, without a year of printing, p. 104.
25. Dr. Abdul-Muhaimin Bakr Salem, Special Section in the Penal Code, Arab Renaissance House, 1976, 1977, p. 674.
26. Dr. Mahmoud Mahmoud Mustafa, previous source, p. 308.
27. Iraqi Penal Code No. 111 of 1969 as amended.
28. Labor Law No. 37 of 2015 published in the Iraqi Al-Waqa'iq newspaper, Issue No. 4386 on 9/11/2015, p. 8.
29. (Dr. Omar Al-Saeed Ramadan, Explanation of the Penal Code, Special Section, Arab Renaissance House, Cairo, 1977, p. 330. Article (19) of the Iraqi Penal Code, Ibid.
30. Dr. Maher Abdul-Shwish, previous source, p. 127.
31. Dr. Ahmed Fathi Sorour, Mediator in the Penal Code, Special Section, Third Edition, Dar Al-Nahda Al-Arabia, 1985.
32. Dr. Issam Ali Al-Debs, Administrative Law, What is Administrative Law, First Book, Dar Al-Thaqafa for Publishing and Distribution, Amman - Jordan, First Edition, 2014.
33. Dr. Abdel-Muhaimin Bakr Salem, Special Section in the Penal Code, Arab Renaissance House, 1976, 1977.
34. Dr. Omar Al-Saeed Ramadan, Explanation of the Penal Code, Special Section, Arab Renaissance House, Cairo, 1977.
35. Dr. Maher Abd Shwish Al-Durrah, Explanation of the Penal Code, Special Section, Al-Atak for Book Production, Cairo, Legal Library, Baghdad, without a year of printing.
36. Dr. Muhammad Sharif Ismail, Administrative Control Authorities in Exceptional Conditions, A Comparative Study, Journal of the State Council, Cairo, 1962.
37. Dr. Muhammad Ali Bdair and Dr. Mahdi Yassin Al-Salami and Dr. Essam Abdel-Wahab Al-Barzanji, Principles and Provisions of Administrative Law, Al-Atak for Book Production, Cairo, Legal Library Distribution, Baghdad, 2011.
38. Dr. Mahmoud Helmy, Summary of Principles of Administrative Law, The Arab Federation for Printing, Cairo, First Edition, without a year printed.
39. Dr. Mahmoud Mahmoud Mustafa, Explanation of the Penal Code, General Section, 9th Edition, Cairo University Press, 1974.
40. Judge Nabil Abdul Rahman, Penal Code No. 111 of 1969 and its amendments, revised fifth edition, 2011, Legal Library, Baghdad.
41. Hussein Omran, the phenomenon of sexual harassment, an investigation published in Al-Mada newspaper number 3079 dated 13/5/2014, published on the website almadapaper. Net
42. Sexual harassment in violation of body and feelings, research published on Feedo .net under the auspices of the Egyptian Computer Company (EBM).
43. Ministry of Police Affairs website on mol website. Gov. iq / indox. Php.