

## **Constitutional And Criminal Basis for Restrictions on Media Freedom**

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### **Abstract**

The subject matter of media and press freedom is of tremendous interest to states due to the fact it's far associated with the subject of freedom of expression, that is one of the simple human rights. Therefore, countries, especially democratic ones that believe in freedom of expression and thought, have resorted to including freedom of the press in their constitutions, including the constitution of the Republic of Iraq 2005. It stipulates in Article (38) that (the state guarantees what does not violate public order and morals: Second - freedom of the press, printing, media and publishing). However, media freedom cannot be absolute. Therefore, constitutions and laws have resorted to placing some restrictions in order to protect other interests and rights.

**Keywords:** media, freedom, restrictions, press.

### **Introduction**

Media freedom is one of the fundamental rights of great significance in building a democratic society. Freedom of the media is one of the oldest human rights stipulated in the constitution, but the great evolution that has taken place in the media field, especially after getting into the world of the internet and satellite channels, has led that press information is easily accessible to all. All this led the media to play a major role in influencing public opinion and state policy and colliding with the rights of society and the citizen. However, the media cannot play role if it does not have a degree of freedom. Therefore, countries resorted to incorporating in their constitutions the principle of freedom of the press and stipulating it in this important document, which is considered the supreme law in the state. Freedom of the press is one of the basic human rights. Through it, the citizen can deliver his voice and present his problems. However, freedom of the press cannot be effective if there is no freedom of expression and freedom of access to information. These freedoms are considered the backbone of the media, but media freedom cannot be absolute. Therefore, constitutions and laws have resorted to placing some restrictions to protect other interests and rights.

### **The Importance of The Topic**

The significance of the topic is due to the fact that one of the basic requirements of modern society is the observance of rights in freedom of obtaining information, especially with regard to freedom of expression and freedom of access to information. However, this freedom cannot be absolute and unlimited, in addition to the constitutional and legal guarantees that emphasize the freedom of the media. There must be a organization of the media work through

issuing a law that stipulates setting certain restrictions on the freedom of the media, in order not to misuse the freedom of expression in the media so as to lead to a violation of the rights of the state, society and the citizen. The principle is the freedom of the media to express opinion and access data. The restrictions are treated as an exception. Therefore, it must be carefully organized and not expanded, and in clear terms that do not let the jurisprudence of the state authorities.

### **Research objectives: This research aims at**

- 1- Providing a systematic analysis of the constitutional and criminal legal rules that constitute the sources of restrictions on media freedom.
- 2- Setting a criterion for separating the permitted and not permitted materials in the media.
- 3- Achieving a balance between freedom of information and restrictions on this right.
- 4- Making recommendations that we find important for the work of the press and not to cross the red lines that affect the interests of citizens, society and the state.

### **Research problem**

The research problem is about the extent to which a balance occurs between freedom of the media and the restrictions imposed on this freedom. Do these restrictions affect the independence of the media work?

**Research Methodology:** The nature of the study requires using the analytical method to describe the constitutional and criminal texts related to restrictions on media freedom, in addition to the comparative approach.

**Research plan:** Through the pre-mentioned, we deal with the topic (the constitutional and criminal basis for restrictions on media freedom) through two topics: In the first topic, we address the constitutional organization of restrictions on media freedom. As for the second topic, it is devoted to the criminal organization of restrictions on media freedom. We conclude our research with a conclusion reviewing the most important results that we have reached and make recommendations regarding the research topic.

#### ***Constitutional organization of restrictions on media freedom***

The topic of media and press freedom is of vast interest to countries because it is related to the topic of freedom of expression, which is one of the basic human rights. Therefore, countries, especially democratic ones that believe in freedom of expression and thought, have resorted to including freedom of the press in their constitutions, including the constitution of the Republic of Iraq for the year 2005. Article (38) stipulates that (the state guarantees what does not violate public order and morals: Second: (freedom of the press, printing, media and publishing). However, the constitution deals with this right in short and simple terms and leaves the matter of its regulation to ordinary laws, considering that the constitution cannot address all the details, especially with regard to freedom of the media. Freedom of the press means (the freedom to impart ideas, opinions, and information without governmental restrictions, with the aim of encouraging the transmission of ideas that allow easy and accurate decision-making about public affairs and the interests of society). Through this definition, it becomes clear that freedom of the media includes (freedom of expression, freedom of access and circulation of information). (Hamouda, 2008)

However, media freedom, as mentioned previously, is not absolute, but rather is

restricted by constitutional and legal restrictions. These restrictions are concentrated in a set of obligations imposed on the media. The objective is either to protect the interests of the state, the citizen or the community. These restrictions act in constitutional legislation as an indicator that allows determining the degree of freedom, protecting the individual and maintaining a balance of interests of the individual, society and the state. Thus, the restrictions that are contained in the legal rules are constitutional restrictions because they are contained in laws issued on the basis of the constitution. As a consequence, the legal restrictions related to freedom of information imposed by laws. If it is not in accordance with the state constitution, it will be considered legally void. So, restrictions on media freedom must comply with the state constitution to exercise the right to freedom of expression and to seek, receive, impart, produce or distribute information. These restrictions aim to ensure the protection of the legitimate rights and interests of citizens, as well as the interests of society and the state. These restrictions should not unduly detract from the freedom of the media. Therefore, restrictions on media freedom must meet the following conditions:

- 1- It must be established in accordance with laws issued by the legislative authority.
- 2- It should be centered on the foundations stipulated in the state constitution.
- 3- It should be proportional to the constitutionally important goals and the threats to the rights and interests of the state, society and the citizen.
- 4- It should be formulated with sufficient clarity and not in rubbery terms that are subject to the jurisprudence of those in power.
- 5- It should not conflict with international treaties related to human rights in general.

Based on the aforementioned, we divide this topic into three demands: In the first requirement, we deal with restrictions on media freedom related to public order. As for the second requirement, we deal with restrictions on media freedom related to the right to express opinion. The third requirement is devoted to restrictions on media freedom related to the right to information.

### ***Restrictions on media freedom related to public order and morals***

The Iraqi constitutional legislator stipulated in Article 38 of the constitution of the Republic of Iraq for the year 2005, guaranteeing freedom of the press, provided that it does not violate public order and morals. This is the only constitutional restriction on media freedom. The constitution entrusted the regulation of the media and the restrictions imposed on freedom of the media to the relevant laws. The question that arises is “what is meant by public order and morals? Public order and morals are among the flexible concepts that are difficult to define because they differ from one society to another and from time to time. Some have gone to say that there is no specific definition of the concept of public order. However, it includes legal, and material guarantees of freedom, security and comfort, which are among the necessary requirements for individuals to live in society. (Camus, 1952).

As for the French jurisprudence, it was held that (public order) includes the material and moral aspect. Public order means the set of conditions necessary for security and public morals that are indispensable for the establishment of sound relations between citizens. (Burdeau, 1952). As for the Egyptian jurisprudence, it holds that the system includes the material public order only, that is, security, public health and public tranquility, and it has nothing to do with the moral and spiritual condition of society. (Al-Jali, 2019). As for the position of Iraqi jurisprudence, some have defined it as (the concepts and beliefs on which society is based, whether they are social, economic or political, that prevail in the state with the movements of the development of conditions of time and place). (Al-Thahir, 1997)

No matter how different opinions are about the definition of public order, public order remains an objective that has constitutional value over the exercise of some freedoms. Thus, the maintenance of public order constitutes a goal with constitutional value. Therefore, the legislator must strive to preserve it and reconcile public order with the exercise of some rights. (Guillaume, 2015)

Authorized public order is associated with the interest protected by the laws issued. This link leads to the necessity of placing restrictions on the exercise of some rights, including freedom of the media. A journalist or pressman must comply with the principles of public order and not publish or distribute any article or information that leads to exposure to public order. (Al-Mashaikhy, 2019)

As for public morals, it means those values and principles that people in a particular society are acquainted with to respect and abide by, and to preserve public morals. These are within certain limits within the agreed upon goals of administrative control, knowing that the legislation did not specify the definition of public morals, but rather the task of that was entrusted to jurisprudence. Western jurisprudence has defined it as (what can be realized or applied only through conscience or principles of good behavior without man-made laws). As for Arab jurisprudence, it defined it as (the preservation of moral and ethical values, because it may be a cause for disturbing the public order, and others considered it part of the public order as it is the most special moral aspect of the public order).

So, the journalist must practice his work in a way that does not violate public order and morals. This is what it stipulated in the Iraqi Constitutional Law - Article (16/7) of the Iraqi Publications Law No. 53 of 1964. It stipulated (it shall not be published in the periodical publication .... 7- that is considered a violation of the sanctity of morals and public moral values). Therefore, it is insufficient for the pressman to respect the rights and freedoms of individuals, but rather he must respect the moral and ethical values of that society as a whole. However, restrictions on media freedom should not be expanded in the name of public morals and should remain within acceptable limits. Therefore, the journalist is prohibited from exercising his freedom in the event of a breach of public order and morals, because this causes moral damage to feelings and human conscience.

### ***Restrictions on media freedom related to freedom of expression***

The significance of expressing an opinion lies in the effect it has on society and in making political decisions. Therefore, the constitution was keen to guarantee freedom of expression and the freedom of the press, media and others that falls under it. This is stipulated in Article (38) of the Iraqi constitution that (the state guarantees, in a manner that does not violate order and morals, freedom of expression of opinion by all means). (Ashamari, 2018)

The right to express an opinion is considered one of the fundamental human rights, as it is one of the basic rights. It also contributes to defending other rights and freedoms. In order to achieve this freedom efficiently, facilitating the means of communication requires facilitating the exchange of ideas, opinions and information. This requires attention to the media environment, because it provides the main platforms for expressing opinion. (Al-Namir, 2019)

So, media freedom is one of the components of the right to express opinion, and the protection of this right is impossible without the state protection for independent media. Freedom of expression is not absolute. Rather, it is subject to a set of restrictions stipulated in constitutions and ordinary laws. These restrictions are related to (public order, morals, personal

freedoms, state secrets, and other restrictions). The Iraqi constitution and other constitutions stipulate that the exercise of freedom of expression is guaranteed by the constitution, provided that it does not violate order and morals. The regular laws also stipulated a set of restrictions that prevent the journalist from exercising his right to express his opinion, including the Iraqi Journalists Syndicate Law No. 178 of 1969. This law prevented the journalist from doing the following: (1) insulting the reputation of the profession and disclosing its secrets. The press family, 3- Threatening citizens by any means or method of the press, 4- Defamation or hinting at what would benefit a hostile party, 5- Undermining confidence in the country, 6- The independence of the press publishing means of slander or defamation or accusing citizens without right). Other restrictions are included in Article (25) of the Iraqi Journalists Syndicate Law. These restrictions are considered necessary in some cases because the media often publish information containing scenes of violence, cruelty, or obscene words that pose a threat to the psyche of citizens and their moral awareness.

### ***Restrictions on the pressman's right to receive information***

The freedom of the media and its continuation to perform its work in the required manner is required to allow the pressman or journalist the freedom to access, circulate and publish information. The right to information is a constitutional right. Some countries have enacted this right in their constitutions and considered it one of the basic rights of the citizen. Other countries have passed special laws addressing this principle. Sweden is the first country in the world to pass a law giving citizens the right to obtain information. This right was stipulated in the Constitution of the Arab Republic of Egypt for the year 2014 in Article (68), which stipulates (information, data, statistics and official documents belong to the people, and disclosing them from their various sources is a right guaranteed by the state to every citizen.). (Abdalbar, 2019)

As for the constitution of the Republic of Iraq for the year 2005, it was devoid of a text on this right despite Iraq signature of the International Covenant on Civil and Political Rights of 1966, which stipulated in Article (16) of it (the freedom to seek, receive and impart information and ideas of all kinds without regard to borders, whether verbally, in writing, or in print, in an artistic form, or through any other medium of choice. The Iraqi Journalists' Rights Law No. 21 of 2011 stipulates in Article (4/first) that (a journalist has the right to obtain information, news, data and statistics that are not prohibited from their various sources and has the right to publish them within the limits of the law). Information means (the activity that is capable of conveying to the public some facts or opinions through remote or audio means that include intellectual messages to them. It is a form that has an economic value from the viewpoint of the public who desires it. The important thing is that the form of information be according to what the law describes). (1). French jurisprudence defined it as (the abstract transfer of certain facts obtained from multiple sources). Despite the accelerating trend of countries regarding openness and access to information, most countries do not allow the right to obtain information to be worked without restrictions. (Vasseur, 1983).

These countries set some restrictions on the journalist's exercise of the right to obtain information, as they made the key restriction that access to information be within the limits of the law. (Muhsin, 2018). Through reviewing both the Jordanian and Yemeni Right to Information Law and the Iraqi Right to Information Bill, it becomes clear that these laws restricted this right in terms of (information related to the military field, information related to the state foreign policy, and information related to individual's personal freedoms or private life, in addition to a set of restrictions related to information of a commercial, industrial, economic or financial nature.

### ***Criminal regulation of restrictions on media freedom***

In addition to the restrictions in national constitutions and ordinary laws for journalists or pressmen, there are restrictions in the event of a violation by the journalist. These restrictions could be treated criminally punishable offences. The Criminal Law is a set of restrictions on freedom of the media. Indeed, some crimes, if committed by a journalist, are considered an aggravating circumstance. These restrictions may be intended to protect the state, society or citizen. We also know that one of the functions of the Penal Code is to protect the rights of society and the citizen, as it aims to protect society in a way that ensures security so that citizens can fully exercise their rights and freedoms. In this way, the Penal Code guarantees, with the criminal penalties it imposes, the protection of human rights in the face of various types of behavior that are considered infringing these rights. (Alwaan, n.d.). Therefore, the journalist or pressman will be exposed to the criminal issue if his media activity leads to a violation of the personal rights of individuals, the religious feeling of a particular sect, or the disclosure of a state secret. For example, based on the foregoing, we divide this study into three sections:

- The criminal regulation of restrictions on media freedom related to the interest of the country.
- The criminal regulation of restrictions on media freedom related to the interest of society.
- The criminal regulation of restrictions on media freedom related to the interests of individuals.

### ***Criminal regulation of restrictions on media freedom related to the interest of the country***

The criminal legislator listed a set of restrictions on media freedom, which, if violated, would be considered a crime. Some of these restrictions are intended to protect the interest of the state as a whole. We deal with it in three branches, which are as follows:

#### ***Non-compromising the internal security of the country***

The journalist must refrain from publishing any news, information, or matter that would prejudice the internal security of the state, including inciting to overthrow the regime, or recruiting and promoting sects that aim to change the basic principles of the constitution or the system. The Iraqi criminal legislator explicitly addressed crimes against the internal security of the state that can be committed through the media in Articles (210, 211, and 212) of the amended Iraqi Penal Code No. 111 of 1969. Article (210) states: "A person who willfully disseminates false and tendentious news, statements, or rumors, or broadcasts sensational propaganda, shall be punished by imprisonment and a fine, if leads to disturbing public security, spreading terror among the people, or harming the public interest". As for Article (211), it stipulates: "Whoever publishes false news..... if it is likely to disturb public security or harm the public interest shall be punished....." As for Article (212), it stipulates that (a person who incites, by any means of publicity, the commission of felonies which would disturb public security, and whose incitement did not have results) shall be punished by imprisonment. Through these articles, it becomes clear that the journalist is restricted in his freedom that his activity does not result in the commission of one of the crimes stipulated in the mentioned articles.

#### ***Non-disturbing the external security of the country***

Crimes affecting the state external security are defined as (crimes that involve assault, damage, or prejudice to the state independence, sovereignty or national interests). The main element of these crimes is that the perpetrator fails to recognize the duty of honesty towards his country in acts of treason, espionage, and illegal links with the enemy directed against the

homeland. (Al-Rakaby, 2018)

The direct objective of these crimes is to protect the basic interests of the state (political, economic and military), in addition to protecting public relations and interests that guarantee the protection of state sovereignty, territorial integrity and defense capacity of the state from external threats. Secrets of the state, which are information that the state protects with regard to its military activities, foreign, economic, intelligence and counterintelligence policy, are all considered crimes related to the state external security. If the work and activity of the media leads to the commission of a crime related to the external security of the state, the penalty stipulated in the Iraqi Publications Law or the Penal Code, whichever is more severe, will be imposed on him. He cannot uphold his right to media freedom. This freedom is restricted, not absolute. This restriction was stipulated in Article 19 of the Iraqi Publications Law No. 206 of 1969 in which it states (it is prohibited to distribute publications from abroad in Iraq if they contain the following matters: – 4- Defaming the reputation of the armed forces or disclosing their secrets or movements). Article (6/17) also stipulates that (it may not be published in the publication without the permission of the competent official authority: - 6 - Orders of the movements of the armed forces, the police, or any other national force, or what is related to its formations, organizations, weapons or mobilization). As for the Iraqi Penal Code, Article 178 of it stipulates: “Whoever discloses or discloses in any way a defense secret shall be punished with imprisonment for a period not exceeding ten years.” The punishment shall be more severe if this crime was committed during the war.

### ***Crimes affecting the course of justice***

The judiciary has an instrumental and significant role in establishing the principles of justice in society. Without a fair and just judiciary, there can be no just and legal state, as British Prime Minister (Winston Churchill) said (when I learned that the British state judiciary is fine, I realized that Britain has become good). The Iraqi criminal legislator surrounded the judiciary with criminal protection by dedicating a special chapter under the title (crimes against the course of justice). According to these crimes, the Iraqi legislator prohibited everything that would prejudice the functioning of the judiciary and influence its rulings, including what is related to the publication of any news or information by the journalist that leads to a breach of judicial rulings. This is what was stipulated in Article (16/8) of the Iraqi Publications Law, whereby according to this article it is prohibited to publish anything that affects the rulings regarding the lawsuits they are considering. The Penal Code also stipulates in Article (235) that a journalist shall be punished if he publishes matters that may influence judges.

### ***Criminal regulation of restrictions on media freedom related to the interest of society***

Several provisions were included in the Penal Code and the Iraqi Publications Law aimed at protecting society and its interests. According to these texts, the pressman or journalist who publishes news or information that may affect social relations and the bonds of brotherhood and love among members of the same society are punished. If it leads to affecting the health or morals of society, especially societies consisting of multiple religious sects, it will be easy to target it by inciting sectarian strife or inciting to spread hatred and hatred among members of society. Among these restrictions are the following:

### ***Restrictions related to the health and public morals of the society***

The Publications Law stipulates that it is impermissible to publish what is considered a violation of the sanctity of morals and public moral values, as well as what affects the health of citizens. Public morals are one of the basic things in society, because without morals there can be no stable and secure society, as the law alone is not sufficient for the welfare of society. In addition to the law, there must be penalty, otherwise the society will pervade chaos and the

private interest will prevail over the public interest. As for health, members of society have the right to obtain real and correct information about health matters. Therefore, any false news or information published by the journalist that harms the health of members of society, fights public morals, or targets the unity of society must be met with the most severe punishment, especially if the media are used to commit these crimes because of the great effect of such means on people. The journalist must verify his information and the news he intends to publish in his media outlets.

### ***Restrictions related to sedition and incitement to hatred***

The legislator stipulated the commission of the crime of publicly inciting sectarian or racist strife. Publicity, in the context of these crimes, means (publishing prohibited or criminal statements verbally or in one of the media or radio). (Fahmy, 2012). As for incitement to hatred, it is intended to call for attacking a specific group because of a difference in religion, belief, race, language, or any other reasons of discrimination in order to isolate these people from the society in which they live and deprive them of their political, social and economic rights. These crimes are committed in the event that some, especially the media, abuse freedom of opinion and exploit the media, especially after the spread of social networking sites and the Internet in committing these crimes. (Al-Qassas, 2020). Based on the foregoing, the Penal Code stipulates in Article (273) that (he shall be punished by imprisonment for a period not exceeding three years or a fine not exceeding three hundred dinars. 1- Whoever assaults by any means of publicity a belief of a religious sect or degrades its rituals). Through this article, it is forbidden for a health care provider to publish any news if the result of publishing such news or information is to stir up sectarian strife or incite hatred and hatred among members of the same community.

### ***Criminal regulation of restrictions on media freedom related to the individuals' interests***

The law aims at regulating the rights and freedoms of individuals and protect them from any abuse they may obtain. Therefore, the constitutional and legal texts that restrict some rights are found to protect other rights, including the restrictions on media freedom to protect the rights and freedoms of individuals. Freedom of the media ends if it leads to encroachment on the individual's rights. The media has no right to transgress the right of individuals to privacy, dignity or honor, under the pretext that media freedom is constitutionally guaranteed. Certainly, freedom of the media is constitutionally guaranteed, but it is not absolute, but rather restricted by not violating the rights of individuals. This is what we will discuss in this requirement by dividing it into three branches, as follows:

- Section one: Restrictions on the freedom of the media to protect the right of individuals to privacy.
- Section two: Restrictions on the freedom of the media to protect the right of individuals to reputation and dignity.
- Section three: Restrictions on the freedom of the media to protect the right of individuals to the sanctity of the home.

### ***Restrictions on freedom of information protection individuals' right to privacy***

The right to privacy is one of the natural rights of the human being, which is guaranteed by the constitution and international covenants. The Constitution of the Republic of Iraq guarantees the citizen's right to privacy and personal and family secrets, as it stipulates in Article (17/first: - Everyone has the right to personal privacy in a manner that does not conflict with the rights of others to achieve this). According to this article, the journalist is not entitled to collect and publish information about the private life of any person without his consent.



There is often in the media, especially through the Internet, deliberate publication by some people of pictures, videos, messages and personal secrets. In many cases, this publication tarnishes the reputation of the citizen, especially the citizen who belongs to a particular political party or party. Many pressmen or journalists who have tendencies contrary to the directives of the politician resort to publishing matters related to his private life or the life of his family. This is a violation of the right to privacy, even if it is for political reasons. It is within the privacy of the individual to keep his personal secrets and prevent their publication or broadcast without his consent. Man, by his nature, has his personal secrets, personal feelings, special connections, and distinct characteristics. He can only enjoy these features in a closed framework, preserve and prepare them for survival. (Ahmed, 2006)

Articles 437 and 438 of the Penal Code stipulate the crime of disclosing family secrets. Article (437) stipulates: "Anyone who, by virtue of his position, industry, art or nature of work, becomes aware of a secret and discloses it in cases other than those authorized by law, or uses it for his benefit or the benefit of a person, shall be punished by imprisonment for a period not exceeding two years and a fine not exceeding 200,000 dinars, or by one of these two penalties." However, there is no punishment if the person concerned is allowed to divulge the secret, or if the disclosure is intended to inform about a felony or misdemeanor or to prevent its commission). As for Article 438, it stipulates that (he shall be punished by imprisonment for a period not exceeding one year and a fine not exceeding 100 dinars, or by one of these two penalties): 1- Whoever publishes by any means of publicity news, pictures or comments related to the secrets of the private or family life of individuals, even if they are true. If publishing it would offend them. Thus, the pressman bears the penal responsibility for disclosing, publishing or broadcasting secrets that are considered among the personal or family secrets. This leads to a violation of the right to privacy. Of the foregoing, it becomes clear that the right to privacy is one of the important restrictions on media freedom.

### ***Restrictions on media freedom to protect the individual's rights of reputation and dignity***

The right to reputation and dignity is one of the most precious rights attached to the human being. The most precious thing for human is his reputation and dignity. It is one of the rights stipulated in international charters and national constitutions, including the Constitution of the Republic of Iraq, which stipulates in Article (37 / I / A) that (human freedom and dignity are inviolable). The Iraqi constitution dealt with dignity and did not address human reputation. However, the Iraqi Penal Code considered the attack on human reputation and dignity a punishable crime under the name (defamation and insult crimes).

Defamation or slander is defined as attributing a matter to a person, even if in doubt and questioning, that affects his honor and dignity. (Rizkallah, 2013). Article (433) of the Penal Code stipulates: "Defamation is the attribution of a specific fact to others by one of the public means, which, if true, would necessitate the punishing the person to whom it is attributed or despised by the people of his country. Whoever defames another shall be punished by imprisonment and a fine or by one of these two penalties. If the defamation occurred by way of publication in newspapers or publications or by any other means of media, this shall be considered an aggravating circumstance. As for insult or slander, it is throwing at others something that offends their honor or dignity or hurts their feelings, even if it does not include attribution of a specific fact. The criminal legislator shall punish any person who attributes a specific fact to others by one of the public means in Article (434) of the Iraqi Penal Code (and whoever insults another shall be punished with imprisonment for a period not exceeding one year and a fine not exceeding one hundred dinars, or one of these two penalties. If the insult occurred by way of publication in newspapers or publications or by any other means of

information, this shall be considered an aggravating circumstance. In order for the crime of slander or insult to be realized through the media, it is required that it refers to a specific person himself and address him with expressions that are offensive to dignity and consideration. It is required that this is published in a media outlet.

### ***Restrictions on the freedom of the media to protect the right of individuals to the domicile inviolability***

The inviolability of domicile is one of the rights stipulated in international charters and national constitutions. The constitution of the Republic of Iraq has stipulated in Article (17/Second) that domiciles are inviolable, and they should not be entered, searched, or interfered with except by a judicial decision and in accordance with the law). Domicile is defined as (the place that is considered a place of rest and shelter for a person, even if he does not reside there permanently). (Aziz, 2017)

Since the right to housing is of great importance to a person, the necessary legal protection must be provided to its owner against violations that may occur against him from others, especially the media. It is known that the journalist seeks in various ways to obtain and disseminate information. If the journalist obtains some information from the residences of individuals in a different manner, such as recording the personal conversations of a person in his residence or taking pictures and the journalist has published them in the media, this is considered a crime punishable by law, even if the journalist's entry to the residence was with the consent of the owner of the residence. This does not give him the right to infringe on the personal rights of individuals and violate the sanctity of the home.

## **Conclusion**

After finishing the subject of study entitled (the constitutional and criminal basis for restrictions on media freedom), a set of conclusions and recommendations were reached:

### **First: Results**

- 1- The restrictions imposed on freedom of the media are constitutional restrictions in origin and on the basis of which the state has the right, as a legitimate representative of society, to place legal restrictions on this freedom to the extent necessary to protect rights and interests.
- 2- Restrictions on freedom of information provided for by ordinary laws must be in conformity with the constitution. The constitution guarantees freedom of the media, and the law may not confiscate this freedom in the name of restrictions except to the extent necessary to protect the recognized values, public order and morals. Freedom is the principle whereas restrictions are the exception.
- 3- Media freedom is one of the necessary freedoms on which freedom of expression and the right to obtain information are based.
- 4- The pressman's violation of the right to freedom entails criminal responsibility if this freedom harms the internal and external security of the state, the conduct of the judiciary, stirs up sedition and incites hatred, violates the privacy of individuals, or offends a person's reputation and dignity.
- 5- The journalist's record being in the crimes of defamation or insult is considered an aggravating circumstance for the punishment imposed for these crimes.

### **Second: Recommendations**

- 1- Amending the journalists' rights law by adding texts specifying the restrictions imposed on the journalist, which he must adhere to and not exceed under the pretext of exercising media freedom.
- 2- Expediting the issuance of a law (the right to obtain information) by the Iraqi legislative authority, because of the significance of such a law in determining the information that the media has the right to obtain and the information that he is not entitled to.
- 3- The penalty for the offense of offending the person's reputation and dignity stipulated in the Iraqi Penal Code should be more severe.
- 4- Abolishing the prison sentence stipulated in Article (225) of the Iraqi Penal Code, which is related to insulting the President of the Republic or his representative for fear of using it as a means to restrict the journalist's right to express opinion.
- 5- Adopting the principle of good faith for the journalist in the event that he commits the crime of defamation and insult. The journalist shall not be punished for it if his intention was sound, and he did not intend to offend a specific person.

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