

## The Role of Legislative Justice in Ensuring the Governance of Legislation

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### Abstract

Legislative justice is one of the most important legal goals of the state because legislation is the main tool for achieving economic, political, and social goals that may involve public interests or private interests of individuals. These legislations do not reach their goals except by applying them fairly into reality in a fair manner, which will only be done through good formulation that expresses the content of the ideas and visions that crystallize in the mind of the legislator and transferring them to the realm of physical existence in a clear and accurate way, which should be away from the impurities and defects that impede the fair application of the law and cause legal instability in the state. Therefore, the standards of legislative governance are the legislator's path towards legislative justice as they are the main justification for the legislator's dependence on this type of standards as they are the essential pillar in modern legislation through which states seek to improve their legal system, which embodies the mirror that is reflective of the state's philosophy and the ideologies of religious and social thought along with The political and economic orientation of the state, so ensuring the governance of legislation is achieved through its justice from the start.

**Keywords:** Governance, legislative justice, inflation of legislation.

### Introduction

The relationship between legislative justice and governance is complementary. There is no way for the legislator to reach legislative justice except through the application of governance standards, which will inevitably lead to fair legislation. The legislative policy that aims to reach the stage of "legislative governance" must be fair from the start Modern and developed societies, which seek to develop their legal system and advance society in all its political, economic and social conditions and levels, have realized that the justice of legislation in the distribution of benefits and burdens is the most important guarantee established in favour of their rights and freedom, just as the state itself will not be able to achieve its public interests without taking into account Justice in the legislation issued by it, so the legal state rises through the justice of legislation, not the legislation itself. This desired justice needs high-quality legislation in order for it to also be realistic and effective and characterized by transparency and clarity to ensure that it is free from imperfection and ambiguity to ensure that it is free from deficiencies, ambiguities, and contradictions, and that it is easy to access and understand by those who address it, and so that the accelerations are in this way for quality. With this level of justice, the legislative institutions must follow exemplary standards for drafting legislation with quality and effectiveness in order to ensure

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its survival for long periods of time away from the amendment and repeal. Thus, they can bypass the most prominent problems of legislation, which is the phenomenon of inflation.

Therefore, the research problem arises in the absence of governance standards for the drafting mechanisms in the Iraqi legislation and for the mechanisms for determining its content and objectives.

Hence, the significance of this study, which aims to clarify the role of legislative justice in ensuring the governance of legislation, since if the legislator wants to reach fair legislation that gains the confidence of individuals and crystallizes the legislative policy of the state, he must follow the strategy of legislative governance, which aims to create a parliament and representatives with a degree of efficiency. And the ability to create laws characterized by justice, which represents the ideal goal for every legislator and in every piece of legislation. There is no room for talking about the governance of legislation now if the legislator has produced fair legislation, which will only be achieved through standards of global quality governance.

In order to delve into this topic, it will be discussed in three sections. Section one is devoted to the definition of legislative justice and legislative governance. Section two tackles the standards of legislative governance. Section three tackles the role of legislative governance in addressing the inflation of legislation.

## **Section One**

### ***Definition of legislative governance and legislative justice***

Both terms are among the modern concepts in the arena of law. They are the product of intellectual development in society. Individuals seek stability as much as they seek well-being. In order to define the basic concepts in this study, legislative governance and legislative justice should be defined so that the details of the complementary relationship between them can be addressed as follows:

#### ***First: Definition of legislative governance***

Legislative justice does not aim at issuing legislation by the competent authority according to a traditional legislative formulation. It rather seeks to ensure the quality and governance of legislative outputs. Governance is a term that means control or commitment through the development of strict and disciplined rules and standards and a rational vision with a conscious awareness of reality. It is a concept that often revolves around methods and means of achieving quality in performance by following standards that are characterized by transparency and justice. The modern management of the legislative process is an intertwined process that seeks to reach legislation that is characterized by quality and clarity in a way that does not raise any problem in application (Al-Badri, 2019).

As for legislative governance, it means good or rational legislation. This can be achieved by subjecting legislation to more typical standards that direct the legislator to formulate impartial, balanced, applicable and fair legislation, in order to mitigate cases of failure in practicing his legislative competence, deficiencies, or excessive generality of texts, which empties it of its content and allows for interference in the legislative work (Al-Badri, 2019).

It also guarantees the effectiveness of legislation, which means the society's conviction and acceptance of the legislation, which ensures its survival for a long period of time, thus reducing the cases of inflated legislation. But if the citizen is not convinced of the efficiency

of the legislative process, then he/she loses confidence in the legal system and seeks to evade the application of the law by various means, such as trickery, mediation, and intercession, so the phenomenon of legislative exceptions increases, which loses it the advantage of justice and balance, so the legislation is born dead or is afflicted with the defects of the legislative drafting, such as error, deficiency, ambiguity, and inconsistency (Abdulhameed, 2021).

### ***Second: Definition of legislative justice***

As for the idiomatic definition of justice, it is a multipolar concept that differs according to historical eras and societal values. The concept of justice has moved from the definition based on absolute equality in ancient times, which is based on distinction on the basis of social and political classes, to the contemporary concept of justice, where justice no longer means equality in rights and duties among individuals, but it also does not mean the chaos of difference. There is a control for the distribution of wealth, powers, rights, and freedom represented in the balance and reasonableness between the contents of the law. Hence, justice is manifested in its contemporary sense. The difference between justice and its absence is in the extent of adherence to rules that control the differences between classes or sects. Justice means Reasonable management of differences. It provides a special model of equality and reciprocity between groups who belong to the same reference, i.e. they belong to the same social class. Thus, rights in modern countries have become enacted based on the criterion of justice in their distribution, organization, and restriction.

Moreover, the concept of justice differs with the different philosophical and cultural frameworks. For example, according to Plato, the concept of justice crystallized as a sense of consistency, appropriateness, moderation, and competition, all of which exist in the universe in general. The individual's performance of his/her duties according to his/her competence and ability, which is appropriate to his/her mental and natural instinct, is what determines his/her rights. Justice is the proportionality achieved between the duties of each individual based on his/her competence and ability, and the rights accruing to him/her that are consistent and compatible with it. Justice is a supreme value that maintains the balance and harmony of society. In his book (*Spirit of Laws*), Montesque states that justice does not go as rain drops in the texts, but in their spirit. The justice presented by (Montesque) is embodied in what the mind perceives and is not just judgments and texts. If the text is devoid of an explicit reference to justice, this does not mean its absence, as it is a value embodied in the spirit and purpose of the text (Aziz, 2018).

According to Aristotle, justice is introduced from another angle and it is defined as equality between men, free citizens. Aristotle considered it not fair to equal men to women, even if they were free, nor between free people and slaves, even if they were residents of one city. Justice is defined as varying, not equality, which is fairness in the distribution of benefits and burdens among individuals, taking into account the environment of the citizen and his/her social status. This led to the creation of two forms of justice, distributive justice and corrective justice. Distributive justice means distributing benefits, burdens, and wealth in proportion to the capabilities of the individual and his/her contribution to society, and not necessarily equal to others. Aristotle states that the origin of tendencies is that equal obtain unequal things and that unequal obtain equal things. The just is proportional, but the unjust is the one that goes out of proportion. As for corrective justice, it is judicial justice, as it searches for the middle to correct the increase or decrease in the share of the individual. The role of the judge is a mediator looking for the middle between the unequal individuals in exchange for equality or unequal in the For shares. Justice means mediating between excess and negligence (Butarfa, 2020).

While Descartes linked justice with the principle of rationality and reason, and considered justice to be what the mind and the laws of nature accept. In the same direction, Emmanuel Kant considered justice to be the manifestation of laws characterized by absolute rationality.

As for justice in contemporary philosophy, the American philosopher John Rawls formulated it as the principle based on reason and reasonable choice. It is the criterion by which the needs of society are regulated. It is the final arbiter in all disputes due to its ability to change with the change and development of societies and with the rulings and their applications. He considered that justice is an established principle on fairness, which is the ideal way through which basic interests in society are distributed. They include rights, freedom, and wealth. Therefore, the necessity of justice for Rawls appears in being a principle that benefits each individual according to his/her position in society.

Al-Farabi had another concept of justice embodied through proportionality and balance between individuals and the state. He expressed the just city as the city in which balance and cooperation prevail between the classes of society.

The principles of Islamic law have contributed to establishing the meanings of optimal justice in society, so justice from the perspective of reason means fairness, and fairness is actions based on equality and far from hypocrisy and linked to virtues, not to worldly benefits, and that justice is intended for itself, not fear of punishment or fear of authority (Al-Tonji, 1993). Justice is a necessity for the society to become an ideal in which rights are balanced and grievances are remedied through striving to achieve justice in deed and word because justice is a concept known by reason before the rule of Sharia.

Therefore, legislative justice means the issuance of legal rules from an authority that is competent to legislate within the constitutional contexts and in a manner that is consistent with the reality of individuals, their circumstances, and needs in a manner that fulfils the requirements of society's progress and development, in addition to its observance of prevailing societal values and principles. In fact, justice is one of the most important values ingrained in the conscience of individuals in their convictions. The legislation's deviance from this value, through abstention or omission, was due to be cancelled or amended to include legislative justice between its contents and objectives.

## **Section Two**

### ***Standards of Legislative Governance***

Legislative justice, which provides an ideal model of "friendly" legislation for addressees and judges, does not only seek to control legislation within the parameters and standards of traditional legislation, but rather requires more accurate standards that are closer to the universal concepts, which is known as (ISO), which are the first letters of the International Standards Organization. It is a global organization that undertakes the task of standardizing standards in the government and private sectors in various fields. These standards are often formulated in the form of laws through international treaties or agreements. These standards are distributed on several basic concepts. The concept of legal drafting requires special skills to be available in the legislator on the first place and assumes a good quality in the material of the legislation Secondly.

If the legislator wants to achieve legislative justice, then he must apply the standards of legislative governance because of the solutions they contain to the problems of conflict and

inflation in legislation. The quality of legislation means the quality of the relationship between individuals and law. In this section, the most important standards of legislative governance will be addressed as follows:

***First: Special skills in legislative drafting***

The quality of legislation also depends on the legitimacy of legislation in terms of form and objectivity, but there is no doubt that the legislative process is affected by the way parliaments are formed and the political majority that contributes to the approval of legislation, and that this majority, albeit as a result of a democratic electoral process, where elections are the main means of participation in the political process. In most democratic regimes, as in Iraq, Egypt, and Algeria, but this does not mean that its interests prevail over the interests of society, so the legislative authority must maintain that the legislative process does not deviate into a distorted manner that may empty it of its legitimate content. Therefore, the constitutions and internal regulations for the work of parliaments included conditions for choosing Representative. but they focus on age, lack of conviction of crimes, and nationality without focusing on the scientific or academic level that is commensurate with the enormity of the legislative tasks. Hence, the selection of the candidate must be through accurate and developed criteria that ensure the selection of the most efficient and capable legislator in a manner that advances the legislative process, as the competence of the candidate merges with the competence of the legislation.

The moral responsibility of the legislator is based on an essential basis that he realizes the need to pay attention to the positive and negative impact of legislation on reality, so this responsibility requires him to study the situation or the social phenomenon that is the subject of legislation with interest and accuracy, with the availability of an element of impartiality and objectivity. He must also take into account that the legislation does not conflict with the principles of justice and conscience that is the supposed goal of every legislation in order to avoid the large number of amendments to the legislation later, or the issuance of new legislation that may regulate the same situation, or there may be effective legislation with the same content, which causes the emergence of the phenomenon of "legislation inflation", which is considered one of the most serious problems facing legislation and its fair application. Therefore, parliaments form specialized committees or a technical body specialized in legislation, which is the (Legislation Department), which is concerned with studying and analysing legislation before submitting it to Parliament. Although the House of Representatives and the Legislative Department in it have adopted the standards of legislative governance and declared their intention to adopt them as a mechanism for legislation, but the Iraqi legislation still suffers from defects in legislative drafting and has not entered the sphere of governance, which makes it the subject of accusations of unconstitutionality. Therefore, it is hoped to activate the role of the Council of Representatives that is equipped with specialized staff to practice its oversight role on the drafting of legislation in a more professional and efficient manner, with the obligation of the House of Representatives to present laws to the State Council. Otherwise, the legislation is considered unconstitutional because it violates one of the constitutional contexts. The amended Law of the State Council No. (65) of 1979 included an indication that the opinions of The Council is a legal study that is not binding on the government. Without the presence of the obligatory characteristic, the Iraqi legislation remains oscillating between the individuals' rejection of it and the challenge of its unconstitutionality, and its failure to achieve the public interest, so its presence is merely an inflation in the legislation.

***Second: Choosing the material of the legislation***

The drafting of legislation is like any craft or industry that needs, for the quality of its final product, that the raw materials be of high quality, which contribute to achieving the quality

of the results. In the craft of legislative drafting, there are many raw materials, but they are mainly: facts and targets, including the legal objectives that are intended to be achieved, such as amending a law to serve a specific goal, or adding text to address a legal or factual situation that the applicable text did not address. When the targets are defined accurately and clearly by the legislator, it becomes easier for him to deal with them by dressing them in the textual dress that befits them and that highlights their features well, and covers their details from all aspects without deficiency or defect.

As for facts, they mean actions, behaviours, and the course of reality of individuals and their needs, in addition to the political, social, and economic pressures, and the conflict of private and public interests that face the legislation at the time of its manufacture. Therefore, the legislator must arrange these facts in a manner that is characterized by rationality, impartiality, and integrity, through studies and scientific methods based on sound logical deduction that is characterized by generality in terms of realities of society and avoidance of problems and phenomena through a vision that is clear of the beliefs and special affiliations of the legislator. This identification of the raw materials subject to legislation ensures the greatest balance between protecting the interests of individuals and the considered interests of society. It also enables legislation to confront negative phenomena now and in the future in a rational manner that achieves its justice. And it secures compliance with its provisions, pursuant to the rule of “motivating self-conviction in legislation” by individuals. Therefore, the legislator must encompass all aspects affecting legislation. He must also take into account the legislative policy of the state and the philosophy in which members of society believe and that the state adopts in its general policy so that legislation does not come at odds with Religious and social data of society. Otherwise, the legislation is incapable of achieving its goals.

The legislator must also take into account the modernity of legislation in the external environment and its transition from the national stage, which means relying on the cultural and social subjectivity of society to a global legislative stage, i.e. relying on common human values, ideas and principles in order to organize the international community. This transformation is caused by many negative phenomena affecting In society. It is no longer issued from a local scope only, but it has become of a regional or global source. Therefore, it is the responsibility of the legislator to ensure the identification of these phenomena and measure the extent of their impact on his society and the appropriate solutions to them. The legislator should also respond to the challenges of globalization of legislation, which imposes a huge responsibility on the legislator in achieving it without transgressing the boundaries of the constants of religion, societal values, and moral principles prevalent in society while preserving national identity and public interests, so the justice of legislation requires harmonization between national legislation and the globalization of legislation without the latter causing the absence of the patriotism feature from legislation.

Accordingly, legislative justice has become not only seeking to make legislation a tool for regulating behaviour within society, but also directing its attention towards participation in confrontations with global challenges. There have been crimes and transnational phenomena as the technological and economic development such as the Internet and satellites has led to the diversity of criminal activity and the widening of its criminal effects, which It transcends the territorial borders of the state, such as the trade in arms, drugs, antiquities, artefacts, trafficking in human beings and human organs, and money laundering, which left its effects on the economic and social development of states and threatens international security and stability.

***Third: The role of legislative governance in addressing legislative inflation***

The inflation of legislation is the result of the lack of clarity of the legislative texts or their contradiction in addition to the legislative instability, so the fruits of this stage are the futility of applying these texts, which prompts the competent authority to issue more legislation, which led to the emergence of the phenomenon of legislative inflation. Due to the importance of this phenomenon, this section is devoted For means of dealing with legislative inflation and the position of Iraqi legislation regarding it as follows:

***First: Means of dealing with legislative inflation***

Before talking about ways to deal with legislative inflation, the phenomenon of inflation must first be defined, and then means of dealing with it should be explained.

***First: The definition of legislative inflation***

Inflation means the existence of a large number of legislative texts that govern a specific issue. These texts may be in one law or in different laws. They may exceed the original text of this rule, so this inflation causes the law not to reach its goal. It causes conflicting legislation or the fact that they are similar laws with different wording that is difficult for the courts to interpret. The political elite has a major role in legislative stability. In countries that suffer from political confusion and radical political or social transformations, this instability is reflected in the legislation issued in light of that crisis, which suffers from gaps and contradictions, as well as defects in legislative drafting due to the speed of legislative procedures and the change of these procedures with the change of political orientations.

***Second: The influence of legislative justice on addressing the issue of inflated legislation***

The role of legislative justice is evident in addressing the issue of enlarged legislation by obligating the legislator to enact legislation in which legal certainty is achieved through clarity, ease of access, and fair application, in addition to applying international standards in drafting to reach the governance of legislation. It is a system that guarantees the rights of individuals and the public interest and achieves security and stability in society. In addition, it achieves the principle of justice in a balanced manner according to facts and directions it imposes on the legislator to abide by, so some attribute the cause of inflation in legislation to the lack of legislative justice, which makes the legislation difficult to implement and unstable because of which acquired rights and stable legal positions are disrupted and legal security is lacking, so the legislator seeks legislative alternatives that increase the chances of inflation, whether in the form of repetition of texts or unexpressed abolition of them and the provision of texts that crowd previous texts despite the similarity of topics, so legislative justice narrows the imposition of inflation.

Therefore, after the exacerbation of the problem of inflation and its conflict with legislative justice, countries seek to codify their scattered legislation in a document issued by an official authority that guarantees easy access to legal texts and allows the possibility of developing and amending them through an in-depth study of the legislation and the problem for which it was issued and arranging these legislations within a unified structure in an appropriate manner that ensures knowledge of addressees.

***Second: The position of Iraqi legislation on inflation***

The application of legislative governance standards is reflected in controlling the legislative process by setting standards that aim at achieving the quality and effectiveness of legislation. The legislation has elements that make it acceptable and society is convinced of applying it and adhering to the controls it imposes so that this legislation will continue for a long period of time. The quality of the legislation is matched by the quality of the relationship

between the citizen and the legislation. If it loses this feature, people may ask for amending it because the legislation has lost the advantage of justice and has not achieved the required balance.

***The base of legislation in force until 2019 included (7808) laws, (889) decisions of the Council of Ministers, and (787) internal regulations***

As for Iraq's position on legislative governance, the World Bank's classification in the field of governance was that Iraq at the back of the classification, as it was the fourth worst country in the world among 170 countries according to the World Bank's classification in (2016). This indicator is very important because it includes many criteria such as transparency, accountability, justice, efficiency, protection of citizens' rights, and administrative corruption. In the same regard, International Transparency issued its report on (February 22, 2018), which included (180) countries in the world that were included in the evaluation according to a scale (0-100), as countries that are close to zero represent the highest corruption, and the closer we get to (100), ) be less corrupt, and among the Arab countries, the first country was the United Arab Emirates, with its global ranking (21), followed by Qatar, with its chant (29), then Jordan (59), while Iraq was ranked at the bottom of the list (169), and it got a score of (18) ( )

In the context of this conversation, it is good to refer to the legislation related to the salaries of state employees as a sample of the impact of legislative justice on the legislative process. Distinction between the categories of state employees whenever its system guarantees fairness in the distribution of salaries and obtains the satisfaction of employees for their job conditions. Justice in distributing salaries and reducing differences in job salaries, starting with the failure of the (dissolved) Coalition Provisional Authority Order No. (39) on 8/9/2003, which was cancelled by the issuance of the amended State and Public Sector Employees' Salaries Law No. (22) for 2008 ( ) because the aforementioned law did not achieve the principle of justice among employees, taking into account the disparity in educational qualifications, job position, risk, geographical location and years of service, which prompted the Council of Ministers to issue the appropriate decision No. (352) for 2013 regarding amending the salaries of state and public sector employees, which includes adjusting the salaries of employees from the tenth to the fourth grade to reduce the impact of the high inflation rate on the standard of living of employees who are given these grades.

Following these laws or legislative amendments issued to amend the salary scale for the aforementioned period of time reflects the inability of the legislator to estimate the fairness of the distribution of financial allocations, taking into account the political and economic conditions and all the variables that can affect the employee's income and its limitations in exchange for the changing economic situation due to the weakness of the legislator's competence and capabilities in the scope of legislation, so the legislation was repeated without achieving any goal. The legislator must thus rely on the standards of legislative governance and determine the sound legislative frameworks with regard to allocations and salaries in a way that ensures the achievement of distributive justice and the reduction of differences between job salaries. Without this mechanism, legislation remains suffering from inflation, conflict and imbalance, which prevents laws from achieving their ideal goal, which is justice.

## **Conclusion**

Legislative justice is no longer a tool for developing the law in a way that suits the local reality, but rather it transcends it to the regional and global scale because the individual is part of his surroundings and influences it, so he needs legislation that protects him from the risks of

the external environment and provides him with its advantages at the same time. This depends on the quality of the subject of the legislation and its quality. It also reflects the competence of the legislator and his ability to choose the subject of the legislation and measure its impact on the situation and the future.

Therefore, the government must focus on applying governance standards and establishing a special body for governance in order to develop effective treatments for the reality of Iraqi legislation that is unable to achieve the purpose of the law and has become mere accumulated and inflated legislation without any positive effect.

In addition, the success of legislative justice in the quality of the outputs of laws and their governance depends initially on the competence and capabilities of the legislator and the extent of his awareness of the dimensions of the legislative process because the skill of the legislator is the most important criterion for legislative governance and the success of the second criterion depends on it, which is the selection of the raw material of the legislation, i.e. the raw material that forms the core of the legislative subject, so that The success of legislation in reaching justice requires amending the conditions for candidacy for membership in the House of Representatives, especially since many groups of people have obtained higher degrees in various specializations, and some of them have graduated in career stages and gained many experiences. These characteristics must be taken into account when regulating the candidacy law for parliament elections.

In addition to the openness of society to the outside world and contact with it, there has become wide knowledge of the level of the legal system in regional countries and others. Public opinion issued many calls to benefit from the legal experiences of other countries, especially Arab and Islamic countries. The large number of laws does not necessarily mean that the legislative process is significant. It indicates satisfactory phenomena such as conflict, ambiguity, deficiency, and the most dangerous phenomenon, which is inflation.

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