

ABSENCE OF THE REQUIREMENT OF MORAL ELIGIBILITY IN THE CANDIDATE FOR THE LEGISLATIVE ELECTIONS

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ABSTRACT

There is no doubt that most democratic people look at the legislative authority as a kind of holiness and respect, because of this constitutional institution with the role it plays and the possibility, rights and powers through which it is able to push the country forward or lead it backwards. One of the most important constitutional principles that the democratic state is keen to apply and adhere to its content in its general elections is to embrace the principle of freedom of candidacy, under which, The father of the competition to win the votes of the voters in front of the largest number of candidates for membership seats in the parliaments, but this does not mean in any way that the right to nominate is devoid of legal conditions that regulate it, and since the task of the deputy is more important and accurate than the task of the voter, and therefore it was natural that the conditions required by the legislator in the candidate are more severe than in the voter, that is, the candidate must be available to start The conditions of the voter, taking into account the strictness required by the legislator for the candidate, provided that he has moral competence, even if it is under different names such as, good character and commendable biography, or good reputation or good conduct within the conditions based on a rule that requires the legislator to be in the highest levels of morality.

INTRODUCTION

There is no doubt that legislative elections are one of the most important means known by various democratic systems, as the constitutions of countries stipulate the right of citizens to run for election through a set of guarantees and mechanisms to protect this right and enjoy it equally without any discrimination in their actual exercise of it in a democratic manner according to conditions, most notably nationality, age and academic achievement. Moreover, it stipulates the cases that result in depriving him of the right to stand for election when he is disturbed by his moral competence by denouncing the minimum level of honour and honesty that he is supposed to enjoy by committing it pursuant to which the legislator stipulates its criminalization, due to the size of the tasks entrusted to the legislative authority, including the enactment of laws, the monitoring of the work of the Government and the monitoring of independent bodies. Some constitutions of countries also included an explicit provision for the requirement of moral eligibility, including implicitly referred to and left the rest of the conditions to legislation, and if the electoral process consists of a set of constitutional and legal procedures aimed at selecting members of the legislative authority, as the wisdom of the requirement of moral competence of the candidate is reflected in the maintenance of society and the protection of the legislative institution of the state from those with unvalued behavior because a person's enjoyment of a bad reputation and sentencing him to criminal penalties makes him an unsafe member of the legislative authority and Then he becomes dependent on her by his creation and reputation.

First: The importance of research: The importance of the research lies in the fact that the issue of the moral competence of the candidate in the legislative elections is a vital topic that is largely related to the candidate of the legislative authority and its ability to continue to enact laws, monitor the work of the government, monitor independent bodies and gain the confidence of the local and international community.

Second: The research problem: The research problem is the good reputation of the candidate for the legislative elections through a set of constitutional guarantees and mechanisms to ensure the protection and immunity of the legislative institution from people with unethical behavior because a person's enjoyment of a bad reputation and sentencing him to criminal penalties makes him an unsafe member of the legislative authority and then becomes dependent on it with his morals and reputation.

Third: Research Methodology: Based on the analytical method by analyzing constitutional texts, legislation, laws, jurisprudence and the position of the Iraqi legislator.

Research plan: We will study this research on two sections, we address in the first section what the absence of the condition of literary eligibility in the candidate for elections, and in the second section the constitutional and legislative basis for the requirement of literary eligibility in the candidate for elections.

PART ONE

WHAT IS THE ABSENCE OF THE REQUIREMENT OF MORAL ELIGIBILITY IN THE CANDIDATE FOR ELECTIONS

The freedom to run for elections is one of the important pillars and basic guarantees of the right to vote, as this freedom, which is enshrined in most constitutions, is often regulated through electoral laws, which set the conditions on which candidacy is exercised within the scope of respect for the constitutional text, and its values, and since candidacy for political office is one of the most important issues that require the attention of the legislator, we find him intervening to work to surround him with a set of guarantees related mainly to the age of the candidate, his nationality, and the extent to which he enjoys his political rights, and that he has not been prevented from Barriers to his candidacy (Al-Eid, 2012: 27).

Requirement One

The Concept Of The Absence Of The Requirement Of Moral Eligibility In The Candidate For Elections

Section One

The Concept Of Elections

Elections are the most important democratic means of attributing power in modern states, and this topic has received special attention from the constitutional legislator in those countries. Therefore, the majority of constitutions have tended to lay the constitutional basis for its organization and control it by setting the general principles that govern it, and left it to the relevant laws to regulate it and practice it in detail (Al-Lemon, 2016: 210).

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The researchers also differed in their briefing on the subject of elections and trying to define it according to their different knowledge and cultural and historical affiliations. Where it is said in the language toast, that is, elected the thing he chose and elected the thing snatched by taking his elite, and the elite what he chose from him, and the elite of the people and their elite: their choice Al-Asma'i said: It is said that they are the elite of the people, and it is said that it came in the toast of his companions, that is, in their choice and election: selection and selection, and from it the elite and they are the group chooses from men and they arep them. The terminological meaning of elections is defined in the political dictionary as follows: Election is the selection of a person among a number of candidates to be a deputy representing the group to which he belongs, and the name of the ballot is often given to a specific name (Zola, 2014: 2). Some electoral laws have defined it as taking the opinion of voters in accordance with the Constitution and the law to choose the head of state or governors or for membership of the National Assembly or for membership of state councils or local councils or for the mandate of any position or membership of any body for which the Commission takes opinion, and it was also defined as (the exercise of citizens in local bodies their right to conduct their public affairs themselves) and defined as the exercise of the people's right to elect the President of the Republic and elected Appoint its representatives in the House of Representatives, local councils and any other general elections in a free, direct, secret and equal manner. Ballot is when the voter casts his vote in any general election or referendum, meaning that the ballot is more meaningful than the election. Election means approving the presidency of the ruler or representing the deputy, or even choosing judges in some countries, but in Islamic law the term (allegiance) is used and means to sell Man himself belongs to God Almighty and agrees to the presidency of the president or the installation of the king with a pledge to him to help him in the truth and deter him from falsehood. The term (Shura), which was mentioned in the Holy Qur'an, is also used to consult the people or the centers of power in it, which are called the people of the solution and the contract in some cases without obliging the ruler to apply the outcome and does not oblige him to apply the principle of Shura itself if he does not want it. There are those who believe that Shura, which is one of the most important pillars of Islamic

governance, should include all areas, including the presidency of the government or the election of deputies (Al-Asadi, 2011: 21).

Election is the primary and only means of attributing power in the contemporary democratic system on the one hand, and achieving the right to participate in political life on the part of the people on the other. Election is a method whereby qualified candidates are selected for a particular position of State, and the selection process is carried out by the people. A state, whether it is political jobs or service jobs. Some private sectors follow the system of election for their jobs, especially when it comes to leadership positions in those sectors. It is clear from all the previous definitions that the means of election in representative democracies are based in essence on the selection, selection and selection of the best members of the nation in order to represent it, represent it and express its will to manage the public affairs of the country. This method is not only used to select heads of state and government (presidential elections) and members of general parliaments, but also to select officials in many popular organizations such as associations, professional unions, political parties, sports and social clubs, and public and private institutions and companies as well (Bahri, 2016: 8).

In line with the foregoing, we believe that the election is a legal mechanism organized by the legislator in accordance with the development of society in all areas of life, and therefore it is not permissible to abuse the law as a tool to deprive individuals of the exercise of political rights. This machine is determined in the interest of the individual and the group, and therefore there must be a balance and proportionality between these two interests. It is not correct to deprive the individual from participating in political activity on the pretext that the election is decided in the interest of the group, nor to leave this contribution loose. without regulation under the pretext that the election is decided in the interest of the individual (Khaled, 2010: 58).

Section two

Definition of the absence of the candidate's moral eligibility requirement

The condition of good reputation is intended for a set of qualities enjoyed by the candidate for membership of the parliaments and appear through his dealings today with individuals so that he becomes a subject of trust within society, and most of the legislation concerned with assuming public office is racing to require good reputation and sometimes expressed by good conduct and behavior, who assumes a certain job or a high position, and is characterized by the condition of good reputation according to the advanced concept of the condition of non-conviction in that the latter is disbursed to the mandatory not to be the candidate for membership of the parliaments Convicted of a felony or misdemeanor involving moral turpitude, while the condition of good reputation is that there are no plankton or suspicions hovering around the candidate based on convincing or sufficient physical evidence, which means that all the two conditions are independent, as they are two consecutive conditions that are not inseparable or similar (Obeid, 2016: 647).

Literary eligibility or good reputation is defined according to the concept recognized among the public, as those good or bad impressions that result from the nature of the human being in his words and behavior, in the social or practical environment in which he moves, and through this behavior and the saying that prints the human personality, others take root over time specific

opinions related to his personality, and come as a changeable outcome of his movement and his practical and intellectual product in his surroundings in which he practices various behavioral or intellectual activities, the human being often lives. The more a person is keen on his reputation with his actions and behavior, the better the impression of him is good and encouraging to get closer to him and deal with him, and vice versa is of course true (Al-Dhafiri, 2016: 166). Reputation has a set of elements related mainly to the prevailing social traditions and the rules of religion, morals and custom, and therefore the criterion of bad reputation is a departure from the prevailing traditions, public custom and the teachings of Islamic law. A good or bad reputation is only the product of good or bad human behavior, good behavior entails a good reputation, while bad behavior only results in a bad reputation. The employment laws and regulations stipulate at the commencement of the appointment of an employee a basic and important condition, which is that he must be of good conduct and good character. In order to win the appreciation of the people, the community, or those dealing with the government agency to which he works or belongs (Arafah, 1999: 48).

The main goal of running for parliamentary councils is to speak on behalf of the people and defend their interests, which requires including the text in the law regulating the electoral process, which stipulates that the elected must have good conduct and behavior, thus achieving the principle of equality between citizens in accordance with what is stipulated in the constitutions and laws thereof. Requiring such a condition for candidates for administrative positions necessarily calls for it to be required for candidates for legislative positions, first of all, due to its importance. Likewise, requiring good character and behavior for those wishing to run for candidacy is consistent with the constitutional text that stipulates that jobs in state institutions cannot be a source of wealth or a means of serving private interests. The candidate for the parliamentary councils must be of good conduct and good reputation, reflecting on the parliament itself a sense of dignity and prestige commensurate with his prestigious position among the various state authorities, as the condition of reputation and behavior fulfills two basic goals. The first goal is that the nomination process achieves a preventive aspect, which is represented by the emergence of people around whom there are suspicions and who aspire to accessing parliamentary seats to achieve their personal goals and exploit influence by thinking carefully before nominating themselves in order to achieve protection for the electoral process and parliamentary performance. The second goal is to achieve democratic protection by excluding every candidate on the basis of his lack of reputation through the electorate, in addition to the necessity of the candidate's competency being linked. By academic qualification (Bennini: 290). Constitutions and election laws, in addition to the enjoyment of civil rights to exercise political rights, including the right to vote, require that the individual be entitled to moral rights, that is, that he must not be among those who have lost his reputation and honor, that he must not have committed a specific crime that violates honor and reputation, such that his invitation to participate in the management of affairs is not valid. Ruling in the state or obtaining the honor of enjoying it (Al-Khazraji, 2004: 237).

The requirement of good reputation preserves the dignity and prestige of the parliaments. It also keeps it away from the places of slippage and deviation if it is assumed by deputies of good conduct, and thus improves its performance by accounting and control the administration, integrity, professional biography, good values and spotless professional record of the

requirements of assuming public affairs in Islamic law, which is often seen in some constitutions to embrace and stipulate them as a basic source of legislation (urgent, 2016: 648).

Requirement Two

The Difference Between Civil Capacity And Political Capacity

Section One

Civil Capacity

The word legal capacity is one of the widely used terms. Legal capacity is used in language, jurisprudence, and law, in addition to our widespread use of it. The best word in which we find the use of the term eligibility is the Holy Qur'an, in the words of God Almighty (And adhere to them the word of piety, and they are more deserving of it and its people, and God has knowledge of all things), where jurisprudence scholars interpreted it as "validity" in the subject intended in the noble verse, just as eligibility is defined linguistically as entitlement, so it is said. So-and-so is worthy of this, that is, he is liable to it. It is said that he deserves it. Capacity, according to scholars of the principles of jurisprudence, means the authority to do a specific thing, meaning that an individual has the authority to do a work in order for it to be considered legitimate. As for the definition of capacity in legal terms, jurists of positive law have defined it in multiple forms, but they are united in the intended meaning of it, due to the clarity of the meaning of legal capacity and its significance, and it defines capacity. Legally, it is (the person's ability to acquire rights, assume obligations, and exercise legal actions). It is clear from this definition that capacity means the legal ability or license that enables him to acquire rights for himself, bear the obligations that arise from him, and exercise all legal actions (Saeed, 2016). Capacity can be defined as a person's capacity to have rights and obligations and his capacity to issue legal actions in a reliable manner. Jurists distinguish between two types of capacity: capacity to obligate and capacity to perform. Competence to be obligated: It is a person's ability to have rights and obligations. In other words, his ability to be obligated to have legitimate rights, and therefore, in reality, it is a matter for the person himself and is viewed from a legal perspective. This is because the person, whether natural or a legal person, is viewed by the law on the one hand because he has He has rights and duties, and these powers are established for him from the time of his birth and even before that when he is a fetus in his mother's womb until his death and the liquidation of his estate and the payment of his debts. If the natural or legal personality is absent, the capacity to be obligated is lost, such as a fetus born dead, a company after it is liquidated, or a dead person after his debts are paid. If a person dies and is He has debts and has rights. His personality is supposed to continue until his rights are received and his debts are paid. That is, the law recognizes the continuation of his legal capacity until his rights are received and his debts are paid. It must also be noted that the obligation capacity of the fetus is incomplete, as it is limited to establishing rights for it without obliging it to any obligation, and because the obligation requires the issuance of a voluntary act or a physical act, this obligation is reversed, and both of them are inconceivable that it is issued by the fetus. Likewise, the fetus's ability to acquire rights is limited to those rights. Which arise from the law or from the unilateral will of others. Accordingly, it is valid for the fetus to acquire a right through inheritance and through a will (Al-Bakri, 2011: 293).

Performance capacity: It is the human competence to practice behaviors whose legitimate consideration depends on reason.

Performance eligibility is divided into two parts:

(a) Imperfect performance capacity, and this is proved by the deficient ability of the mind, as in the case of a discerning and imbecile boy.

(b) Full performance capacity and proven by the full capacity of the mind, as in the case of an adult who is not a fool.

Therefore, the eligibility to perform is not for the non-distinguished child, but for the distinguished child, and it was estimated by the jurists at seven and above to be a disciplined description (Tayseer, 2008: 5).

Thus, the capacity to perform differs from the capacity of obligation, the capacity of the obligation is the authority of the person to prove his rights and therefore the capacity to perform is the authority to use the rights enjoyed by the consequence of the possibility of a person enjoying the capacity of the obligation only or both capacities and the mandate of the capacity to perform is discrimination it revolves with him existence and non-existence If the discrimination is complete the capacity is complete and if the discrimination is incomplete the capacity was incomplete and if the lack of discrimination with him the capacity to perform (Bakri, 2011: 294).

Section two

Literary eligibility (political capacity)

Moral capacity means the completeness of consideration for the individual, and the person loses his moral capacity in the event of conviction for committing major crimes, or crimes affecting honor and consideration such as theft, fraud and others, in this case he is deprived of exercising his rights until he is rehabilitated, and thus this deprivation carries the meaning of the penalty for committing illegal acts, and constitutions and election laws almost collect that it is necessary for the individual to enjoy the right to participate in elections must have moral capacity, but it does not expand in this area, but rather limits it In a narrow scope, legislation in this regard differentiated between the types of crimes committed, in the case of committing a felony, he is deprived of exercising his political rights in a perpetual manner and by force of law without the need to stipulate them in the judgment, while misdemeanors are not deprived of political participation except when stipulated in the judgment and thus the deprivation is temporary, but violations do not result in deprivation of electoral participation, in all cases this deprivation disappears in the case of comprehensive amnesty for the crime committed or if Rehabilitation by judicial procedure (Abd al-Raouf, 2010: 114). The moral capacity of a person also disappears when a judgment is issued against him by a competent court because of his commission of a crime against honor, honesty or good reputation, because it is proven that he committed such crimes becomes untrustworthy and considerable, and some legislation has greatly expanded the requirement of moral capacity and deprived of exercising the right to vote for everyone against whom any penal sentence of imprisonment for a certain period, even if it is short, such as what the Jordanian legislator went to, where he was deprived of exercising the right to vote everyone who ruled He shall be sentenced to imprisonment for a period not exceeding one year for a non-political crime and has not been pardoned, and some legislation

stipulates that to deprive a person of exercising the right to vote, he must have committed a felony or misdemeanor involving moral turpitude and dishonesty or some special crimes related to the national economy (Al-Khatib, 2006: 295).

As this leads to depriving him of the exercise of his political rights, and therefore if no judicial ruling is issued that affects the honor or reputation of the voter or candidate, he enjoys moral capacity, but some electoral laws regulate the issue accurately, specifying the types of crimes against honor that lead to deprivation of the right to vote and be nominated, such as crimes of bribery, theft, embezzlement, bankruptcy, forgery and breach of trust, which is what the Maghreb legislator went to (in Algeria, Tunisia and Morocco) in regulating the conditions of moral eligibility (Tawfiq, 2020: 57).

In Iraq, the law did not provide for such cases, which calls us to refer to the general rules of the Penal Code No. 111 of 1969, as amended, which dealt with the issue of Preventing the convicted criminal from being a voter or elected in certain cases as a complementary or ancillary penalty, as the case may be. Preventing him from exercising the right to vote may result as an effect of a sentence against a person by a competent court with a penalty of deprivation of liberty that entails depriving him as a consequential penalty of the right to vote in addition to depriving him of other civil and political rights during the period of execution of the original penalty, if he is sentenced to life imprisonment or temporary, the deprivation here follows the original judgment by force of law without the need for the judge to stipulate it in the sentencing decision. The death sentence also entails depriving the convicted person of these rights from the day the sentence was handed down until the time it was carried out (al-Bayati, 2015: 30). However, not everything that affects moral values reaches the rank of a criminal offense and not every criminal offense reaches the rank of a moral crime, but each of the two crimes has an independent entity that works in it as a branch on that, as the behavior may have the status of a criminal offense and the character of a moral crime such as theft, and the behavior may have the status of a criminal offense without reaching the rank of a moral crime that prevents candidacy for parliaments such as traffic crimes. Thus, there is a distinction between criminal offences and moral offences so that the existence of one of these two types does not necessarily entail the existence of the other, but rather depends on the availability of conditions for the fulfilment of each. In some cases, however, the legislature makes the commission of a criminal offence a presumption of loss of reputation and good behaviour, and therefore prohibits those who commit the offences from exercising certain functions, such as holding public office or running for Parliament. On the basis of this, the Kuwaiti legislator considered that the sentence of a felony or a crime against honour and trust is a presumption that the individual is unfit to exercise his representative function, and therefore refrains from running on the grounds that he has lost the condition of good reputation and therefore has been proven dangerous.

However, disqualification for political reasons was decided only on an exceptional basis and in special circumstances. France decided it in 1944 for members of parliament who in 1940 issued a mandate to General Pétain, as well as for those who collaborated with enemies during the occupation, and Yugoslavia and Bulgaria in 1945 for those described as fascist or enemies of democracy, as did the Soviet Union Constitution of 1928. In 1924, landlords, the kolak class,

the clergy and so-called employees of the former era were forbidden, but such provisions had been abolished since the 1936 constitution (al-Khatib, 2006: 297).

Requirement Third

The condition of literary capacity in Islamic law glue

Islamic law urges glue to adhere to good morals and good reputation until this commitment has become one of the important principles of behavior on which the life of a Muslim in general, and reputation has a set of elements mainly related to the prevailing social traditions and governed by the rules of religion, morals and custom, and then the criterion of bad reputation is a departure from the prevailing traditions and public custom and the teachings of Islamic law glue (custom, 1999: 48). Where there was a dispute in the circles of Islamic jurisprudence about the origin of the idea of elections, as it has no origin in Islamic law when some who assign governance and take over public matters to the method of appointment and cite what happened in Ghadir Khum during the life of the Prophet (peace be upon him), Where there was a dispute in the circles of Islamic jurisprudence about the origin of the idea of elections, as it has no origin in Islamic law when some who assign governance and take over public matters to the method of appointment and cites what happened in Ghadir Khum during the life of the Prophet (peace be upon him), while others believe that it deceives under the idea of Shura and invokes what happened in the shed of Bani Saadah after his death and away from this dispute, the glue Sharia established governance in Islam on the conditions are Islam and reason And masculinity, justice and science, and includes the condition of justice on honesty and justice, as it came in the saying of the Almighty (one of them said, O father, hire him that the best of hired strong faithful), as the Holy Qur'an linked between power and honesty to perform the tasks entrusted to the ruler in preserving the rights of people. Islam also forbade obedience to the unjust ruler in the words of the Almighty: "Do not bow down to those who have wronged, and the fire will seize you, and you will not be victorious without Allah, and then you will not be victorious" (Obeid, 2016: 650).

As for the conditions that must be met by the person who assumes the succession,

- 1- Justice that includes its conditions, and justice in this place means piety and piety.
- 2- Knowledge leading to ijtehad.
- 3- The safety of the senses from hearing and sight.
- 4- The safety of members from a deficiency that prevents the fulfillment of movement and the speed of advancement
5. The opinion leading to the policy of the parish and the management of interests.
6. Courage.

Perhaps the purpose of the necessity of meeting these conditions in the Caliph is the ability to bear the burdens of governance and take care of the interests of people and lift the harm from them understand consciously of the Book of God and the Sunnah of His Messenger (peace be upon him) so as not to deviate in his work from either way.

As for the conditions that must be met by those who are among the people of the solution and the contract, they are:

- 1- Inclusive justice for its conditions.
- 2- The knowledge by which he reaches the knowledge of who deserves the Imamate according to the conditions considered therein.
- 3- The opinion and wisdom leading to the choice of who is the most suitable imam and by managing the interests I stand and know and these conditions are intended to enable the group of the people of the solution and the contract to choose the good imam who must manage the affairs of the nation honestly and firmly (Khaled, 2010: 28).

Part Two

The constitutional and legislative basis for the requirement of moral eligibility in the candidate for elections

Most comparative constitutions usually stipulate the most prominent conditions that must be met by a candidate for parliament, and then refer the text of the rest of the conditions to ordinary laws, including, the absence of the requirement of moral competence in the candidate for elections. Other constitutions explicitly stipulate the conditions that must be met by the candidate, including the absence of the requirement of moral competence in the candidate for elections.

Requirement One

The constitutional basis for the requirement of moral eligibility in the candidate for elections

The constitutional provision on the right of individuals to be nominated for membership of parliaments aims to clarify the extent to which the state officially accepts or rejects the exercise of this right, as well as to confer recognized legal protection to other constitutional texts and their position in the ladder of the legal structure of the state in general in a way that ensures the difficulty of attacking it on the one hand, and shows on the other hand the extent of the strictness or lightness of the restrictions placed by the highest legal document in the state on the exercise of individuals' rights and freedoms (Bayati, 2011).

Section One

Constitutions that implicitly stipulate the conditions that must be met by a candidate for parliament

The text of the French Constitution of 1958, including its amendments until 2008, in Article (25) thereof: "The duration of each House of Parliament, the number of their members, their remuneration, the conditions for candidacy, its impediments, and cases of conflict with membership shall be determined by an organic law" (Article 25). The Syrian Constitution issued in 2012 stipulates in Article 60, paragraph 1.

1. The system for electing members of the People's Assembly, their number and the conditions to be met by candidates shall be determined by law (Article 60). As well as the Constitution of Iran issued in 1979, including its amendments until 1989 in Article (62) thereof: The Islamic Consultative Assembly is composed of the representatives of the people directly elected by secret ballot. The law shall determine the characteristics of voters and elected persons and the manner of elections (Article 62). Article 102 of the Egyptian Constitution of 2014 also specifies: The House of Representatives shall be composed of no less than four hundred and fifty members

elected by universal, secret and direct suffrage. The candidate for membership of the Council is required to be an Egyptian enjoying his civil and political rights, with at least a certificate of completion of basic education, and not less than twenty-five years of age on the day of opening the candidacy. The law shall specify the other conditions for candidacy, the electoral system, the division of electoral districts ... etc. (Article 102).

The Constitution of India 1949 provided for the age requirement and referred the other requirements to law or by law, as well as the Constitution of Italy of 1947. As for the Constitution of the Republic of Iraq in 2005, it stipulated in Article (49) that (the candidate for membership of the Council of Representatives must be a fully qualified Iraqi. Third: The conditions of the candidate for membership of the House of Representatives and everything related to elections are regulated by law) Thus, the constitutional legislator stipulated the availability of the conditions of nationality and the perfection of eligibility and referred the rest of the conditions to an ordinary law, so the House of Representatives Elections Law No. 45 of 2013 (Obaid, 2016: 648). His approach was criticized for not specifying the conditions specifically, and did not leave them to the law completely, making them broadcast in the constitution and the law at the same time, and added a third condition in Article (135/III) that stipulates that members of the House of Representatives are not included in the provisions of the de-Baathification law, and made this condition linked to the survival of the Supreme National Authority for De-Baathification. This created two types of conditions, the first fixed by the text of the Constitution that the ordinary legislator can not exceed except in the case of violation and violation of the Constitution, and this requires the annulment of the legislative text. The second is of a lower rank than the first, governed by the observance of the general principles contained in the Constitution so that its provision does not constitute a violation that requires a ruling of unconstitutionality. The importance of regulating the right to stand for election is that if the origin of any human group is freedom and restrictions may only be imposed incidentally to ensure the achievement of a vital interest or necessity, and that accuracy must be exercised when imposing them, but the question of regulating the exercise of these rights and freedoms remains necessary, to the extent that when they remain unregulated they are considered mere promises. The fact that its legal regulation is what introduces it into the field of factual reality, provided that it does not take a means to waste or detract from it (Al-Bayati, 2011).

Section Two

Constitutions that explicitly stipulate the requirement of moral competence for the candidate in the elections

The Jordanian Constitution stipulates the conditions for nomination for membership of the Senate and Representatives issued in 1952, amended in 2016, in article 75/1 thereof:

He shall not be a member of the Senate and the House of Representatives.

Any person who has been convicted of bankruptcy and has not regained legal consideration.

Whoever was interdicted and the interdiction was not lifted.

Anyone who has been sentenced to imprisonment for a period exceeding one year for a non-political crime and has not been pardoned.

Paragraph (3) of the aforementioned Article also stipulates: If any case of ineligibility stipulated in Paragraph (A) of this Article occurs for any member of the Senate and House of Representatives during his membership or appears after his election or if he violates the provisions of Paragraph (2) From this article, his membership is automatically dropped and his position becomes vacant, provided that the decision, if issued by the Senate, is submitted to His Majesty the King for approval (Article, 75, of 1952). Likewise, the amended Constitution of Turkey issued in 1982 stipulates in Article 76: Every Turk over the age of twenty-five is eligible to hold a deputy seat. Those who have not completed their primary education, those who have been stripped of legal capacity, those who have not performed compulsory military service, those who are due to join the public service, those who have been sentenced to imprisonment for periods totaling one year or more, with the exception of unintentional crimes, or those who have been convicted of A sentence of aggravated imprisonment, and those who were convicted of crimes against honor, such as embezzlement, corruption, bribery, theft, fraud, forgery, breach of trust, and fraudulent bankruptcy, and those who were convicted of smuggling and tampering with bids and public procurement, and those who were convicted of crimes related to disclosing state secrets or for their involvement in terrorist acts, or incitement or encouragement of such activities, even in If a general amnesty is issued for them. The judiciary, prosecutors, members of higher judicial bodies, teaching staff members in higher education institutions, members of the Higher Education Council, workers in public institutions and bodies who hold the status of government employees, other workers in the public service who are not considered workers by virtue of the services they perform, and members of the armed forces are not permitted to run for elections. They are no longer eligible to hold a deputy seat unless they resign from their positions (Article 76, 1982).

Requirement two

The legislative basis for the requirement of moral eligibility in the candidate for elections

Constitutions refer the issue of regulating conditions and restrictions for candidacy to the legislator to regulate them by law, as the law is the only legislative tool that can regulate rights and freedoms (Al-Bayati, 2011). In accordance with the Algerian legislator, this condition is prohibited from exercising the right to vote unless they are rehabilitated, and anyone who has been sentenced to imprisonment for misdemeanors in which the right to vote is prohibited in accordance with Articles 9, 9 bis 1 and 14 of the Penal Code, and anyone who has declared His bankruptcy was not restored, and he was interdicted (Al-Eid, 2012: 18). The Egyptian legislator also stated that persons who are deprived or suspended from participating in voting do not have, a fortiori, the eligibility for nomination, and to them is added those against whom a ruling was issued depriving him of nomination to parliamentary assemblies, and that is one of the penalties that the court may impose on those whom it is trying to deprive of nomination for membership in assemblies. Parliament for a period not less than six months and not exceeding five years. The moral eligibility requirement also raises an issue of great importance. In France, fulfilling the condition of enjoying civil and political rights for candidacy is a given as long as the candidate is required to meet the conditions of a voter according to the rule that every candidate is considered a voter. Accordingly, persons who are deprived of the right to vote are not eligible for nomination in accordance with Article (5) of the French Electoral Law. Examples

of this include: persons who have been convicted and permanently deprived of registration in the electoral roll, as well as persons placed under guardianship. There are also some The additional restrictions that prevent those who fall under them from running for office are mentioned in the French electoral law, which are: Persons who have been deprived of registration in the electoral list may not nominate themselves except after double the period stipulated for depriving them of registration in the list has passed. Some penalties may also result in deprivation from being elected. Nomination by court ruling without resulting in deprivation of the right to vote. And persons sentenced to conviction in application of Articles (106-109) of the Election Law, whereby Article (106) punishes tempting voters and wooing them with gifts and donations in order to obtain their votes, or making promises to them and obtaining gains or advantages, and Article (107) punishes the practice of violence. Threats and intimidation during voting. Article (108) punishes attempts to influence the electorate or part of it, while Article (109) stipulates doubling the penalty if the perpetrator of the act is a public employee (Nabil, 2020: 302). The Algerian legislator also adopted the same conditions as a voter for a candidate, as Article 92 of the Algerian Penal Code No. 10/16 of 2016 regarding the election system stipulates that the candidate must be a voter: that is, he must meet all the conditions for acquiring the status of voter, because it is not possible for a citizen to nominate himself while he is He cannot exercise the right to vote (Nouna, 2019: 143). Likewise, the Bahraini House of Representatives and Shura Law No. 15 of 2002, Articles 11, 3, and 12, and the Egyptian People's Assembly Law No. 38 of 1972, which specified the conditions for a candidate for membership in Article (5) thereof, and the Egyptian Shura Council Law No. 12 of 1980 (Articles 6-13).), and the Local Government System Law in the Arab Republic of Egypt No. 43 of 1975 (Articles 75-76), and Article (46/Moroccan Election Code stipulates the following:... Nominations submitted in violation of the provisions of this law or submitted by a candidate will not be accepted. Or candidates who are not legally qualified for election... Article (106/C of the Palestinian Elections Law) stipulates the following: Anyone who commits any of the following acts is considered to have committed a crime: He knowingly made any false statement in the nomination application, announcement, or date of submission. Or the date of its registration, and Article (42) B of the Law on Election of Members of the Jordanian House of Representatives stipulates the following: If any of the appointed committee members commits any of the following acts, he shall be punished by imprisonment for a period of no less than one year and no more than three years or a fine of no less than Five hundred dinars and not more than one thousand dinars, or both penalties, if he provides a false statement in the nomination application or in its announcement or a statement from the data contained therein or on the date of its submission (Al-Asadi, 2011: 237). But nomination is governed by strict conditions relative to those that govern voting. The rule requires that every candidate is a voter, but the opposite is not true. The legislator requires conditions in the candidate that guarantee the suitability of applicants for membership in Parliament for the tasks that will be placed on them, as they are the representatives of the people and the expressions of their will. The reason for the difference in these conditions is due to the difference in the function that the voter performs from the candidate. The former's job ends in parliamentary systems by casting his vote for the candidate he chooses, while the latter, if he wins, will have the authority to express the will of the people (Al-Bayati, 2011).

This requires that the candidate be responsible, have good morals, commendable conduct and satisfactory behavior, be free from suspicion and away from fingers and not take an act that leaves behind his fault in his honor. The provision learned from the legislator's requirement that those who hold public office be of good morals and not convicted of one of the crimes stipulated by the legislator, but reveals the legislator's desire to prevent the appointment of persons sentenced as a result of committing crimes (Obaidi, 64).

Third Requirement

The position of the Iraqi legislator on the condition of moral eligibility in the candidate for elections

If we return to the repealed Iraqi Legal Registration Bureau's Resolution No. (145) dated 9/30/1978, we find it defining good morals as "a set of qualities that a person possesses and that inspire confidence and reassurance in him and his actions in the job and not committing anything that affects or degrades his status in the environment in which he lives." (Al-Bayati, 2011) The Iraqi legislator also explicitly stated the condition of good reputation and expressed it as a condition of good conduct and behavior by stipulating it in Article (8/Third) of the House of Representatives Elections Law No. 45 of 2013, the text of which is stipulated as follows: (A candidate for membership in the House of Representatives is required to In addition to the conditions that must be met by the voter, the following are: Third: He must be of good conduct and conduct and not convicted of a crime against honor. The meaning extracted from the applicant refers to two facts. The first is that the legislator referred to the condition of good conduct and conduct independently of the condition of not being convicted. The second is that it is possible to exclude candidates simply by Proof of bad conduct and conduct, even if he was not convicted of a crime against honor.) The sign of this is that the legislator has connected this condition with the conjunction (and) to the condition of not being convicted, and thus they are two independent conditions separate from each other and do not complement each other. Based on the above, part of the The correct jurisprudence is that the candidate for membership in the House of Representatives must forever enjoy good conduct and reputation in social circles, and this is relied upon provided that this candidate has not had judicial rulings issued against him that support his poor social conduct. This aspect confuses the condition of good reputation with the condition of not being convicted, despite the legislator's distinction between them, as the law does not require proof of bad conduct through the issuance of judicial rulings in crimes against honor (Ajel, 2016: 650). However, he amended this condition on 8/22/2018 by issuing the first amendment to the Law on Election of Members of the House of Representatives No. (1) of 2018, in which the first part related to the candidate being of good character and behavior was canceled and Paragraph (Third) of Article (8) remained with some changes. To stipulate that: The candidate must not be convicted of a non-political felony or a misdemeanor involving moral turpitude. The benefit of the above is to deprive the perpetrators of crimes against honor from being nominated for membership in the House of Representatives on the grounds that their political eligibility has been damaged by the vileness of the crime committed by them, so it no longer has any value that gives them the right to represent the people. The purpose of the requirement is that no final criminal judgment against honor be issued against the candidate for membership. The House of Representatives, because it cannot be trusted with the public

interest for fear that it will be sacrificed for the sake of its own interests (Al-Kaabi and Talib, 2020: 380).

CONCLUSIO& SUGGESTIONS

This study examined a very important topic, which is the absence of the moral eligibility requirement in the candidate for the legislative elections, and reached a set of conclusions and suggestions, the most important of which are.

First: Conclusions:

- 1- Elections and candidacy are basic human rights and are one of the most important political rights as they are the real mirror that reflects the honest image of the democratic political system of any society, and then it was necessary to remove any candidate who lost the condition of moral eligibility from the elections.
- 2- The good reputation of members of legislative councils is a strong guarantee of recognition of the principle of legitimacy and a place of confidence for voters.
- 3- The good reputation of the candidate achieves fair institutional guarantees for the legislative authority based on the rule that the legislator must be in the highest degree of morality.

Second: Suggestions:

- 1- We propose to add the condition of good conduct and good reputation among the conditions required for the candidate in the legislative elections in an explicit legal text so that the candidate is trusted and considered without any defects in his biography.
- 2- We propose to amend the Constitution by adding an article prohibiting the amendment of the electoral law at the end of the last legislative term before the elections to ensure that candidates who lack moral capacity are not manipulated.

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