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The Right to Proper Administration of Justice in the Arab Constitutions

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ABSTRACT

The aim of this article is to consider to what extent human rights are protected and recognized in Arab Constitutions. It aims to analyze Articles 2 (3), 14 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Further, it examines some of the rights related to fair trial, equality before the law and protection against discrimination, presumption of innocence, the right to defense and public hearing.

It argues that there are many provisions and changes in ways that Arab Constitutions implement these provisions and therefore, there are changes in the practice and the manner of expressing and adopting these Articles in Arab Constitutions.

This article will also address the presumption of innocence under the provisions of ICCPR and its implementation by the different Arab Countries and the approach, with which these provisions are implemented in their Constitutions.

The study concluded that Arab Constitutions guarantee human rights in broad phraseology leaving it for the law to decide or regulate such rights and that most of the rights fall short of the ICCPR standard protection.

Keywords: (ICCPR), Constitutions, Arab States.

1. Introduction

Major changes have been occurred in the jurisdiction and constitutions of Arab countries particularly after the revolutionary transformation of constitutions in many Arab Countries since 2000. Revolutionary wave of political, social and constitution transformations resulted in further changes in the constitutional system of many Arab states especially in the Libya, Tunisia, Egypt, where the new constitutions were established under the democratic and independent states. Under the revolutionary wave of Arab Spring, the exploitation of the human rights and suppression of citizens, were some of the major problems for the Countries in the Asian and African continents. Majority of people were suffering under the judicial injustice and violation of basic human rights.

This resulted in bringing positive changes in the social and political and the constitutional system of the countries in the Arab region. There have been many changes in the constitutional consideration about the fair trial and the provisions of the right of individuals. There have been many changes and variations in the provision

of the Article 14 under ICCPR and its implementation in the Arab Constitutions. However, it is to be noted that if a certain right is not mentioned in the constitution, it does not mean that this right is not guaranteed in the state's national legislations as it will be explained in the following paragraphs. As it is known, all Arab States with the exception of Comoros, Palestine, Saudi Arabia, UAE, Qatar and Oman ratified the (ICCPR).

Analysis of the implementation of Articles 2 (3), 14 and 26 of the International Covenant on Civil Political Rights (ICCPR) reveals that there are many differences in the proactive and implementation of the provisions of human right under ICCPR, in the Constitutions of Arab states. Under the different constitutional system of different countries, it is clear that there are many provisions and changes in ways that Arab constitutions implement provisions of Articles 2 (3), 14 and 26. There are changes in the practice and the manner of expressing and adopting these Articles in constitutions.

2. Equality before the Law and Protection against Discrimination

2.1 Equality before the Law

Article 14(1) of the ICCPR provides that 'All persons shall be equal before the court and tribunals' (Article 14

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of the ICCPR). The international conventions and standards of human rights were aimed to ensure that these basic aspects of human rights must be followed by every country. ICCPR mainly emphasize on the importance of adopting the international standards for the protection of human rights. For this reason, it also plays an important role in highlighting and determining the measures associated with the legislative system in different countries. Worth noting is the comprehensive Article 6 of the ECHR. According to which the individual is to be treated innocent before, he is proved guilty.

All of the Arab Constitutions guarantee the principle of equality before the law. In the language of Qatari Constitution, this provision is straightforward, and stipulates that all people, members of a particular nationality, or all people, are equal before the law. (Article 35 of the Qatari Constitution of 2003). Article 21 of the Tunisian Law also presents the provision of equality before law, under the newly established constitution of democratic state. According to Article 21 of the Tunisian constitution, every citizen has the right of equality before the law. The Article also includes the word 'citizen' and clearly expresses on the equality of 'male and female' citizens before the law (Article 21: Tunisia's Constitution of 2014). According to this article, the freedom is granted to all individuals and they are provided with the equality before law, without any discrimination (Ibid).

2.1.1 Provision of Rights to Citizens

According to the provision of Article 14 (1) of ICCPR, it is important that the constitutions must express the idea of equality before courts and tribunals, which is further elaborated in the Article 14 (3) that also included the individuals with criminal charges to be treated equally. As defined under the Constitution of the Arab Republic of Egypt 2014, Article 4 of the Egyptian Constitution accurately represents the standard phraseology used in most Arab constitutions that promotes equality of all citizens (Article 40 Constitution of The Arab Republic of Egypt 2014). The aforementioned Egyptian constitutional clause also represents the clearest Arab constitutional provision with reference to equality before law (Article 40 Constitution of The Arab Republic of Egypt 2014). Article 9 of the Egyptian Constitution also emphasize on the provision of equality of rights before the law without any discrimination. Article 11 of the Egyptian Constitution

highlights the equality without discrimination on the basis of gender. Article 27 of the Egyptian constitution expresses the provision of equal economic opportunities for all. Article (53) of the Egyptian Constitution is very comprehensive and explains that 'All citizens are equal before the Law' and they are provided with the equal rights of freedom. According to Article 53, every citizen is equal in rights, freedoms and general duties, without form discrimination. Article (81) of the Egyptian Constitution emphasize on the provision of the equality of rights in terms of political context. This clearly reveals that the Egyptian Constitution also allows for the integration of equality, justice and equal opportunities for all individuals without discriminations.

In Bahrain, equality and equal opportunities are advocated 'for citizens are the pillars of society' (Article 4 of the Bahrain Constitution 2002). Article 18 of the said Constitution elucidates 'People are equal in human dignity before the law' in its preamble, Mauritania's Constitution makes a commitment to the principles of Islam and to the Universal Declaration of Human Rights. The preamble also guarantees the right to equality. Many other Arab countries have the provision of equality in the constitutions such as Omani Basic Law provides that the citizens are equal before the law. In addressing the concept of equality before the law the constitutions of Somalia, Syria, and Tunisia follow the same pattern. Article 6 of the Somali Constitution affirms the equality of all the citizens without any discrimination. Under the Article 21 of the Tunisian Constitution every citizen has the right of equality before the law, the freedom is granted to all individuals, and they are provided with the equality before law, without any discrimination. The Constitution of Yemen states that every individual has opportunity of equal right and obligation and the Constitution of Yemen provides a more explicit provision, guarantees the protection of law to prevent individuals from the any kind of discrimination.

2.1.2 Provision of Rights According to Nationality

Article 6(i) of the Jordanian Constitution provides that 'Jordanians shall be equal before the law' (Article 6 the Constitution of The Hashemite Kingdom of Jordan). The said Article emphasize on that the Jordanian Constitution, like previous Jordanian Constitutions, does not recognize the rights of non-Jordanians and suggests that the status quo be changed so as to include such rights by changing the title of the Constitution, which deals with 'Rights and

Duties of Jordanians'. There are many other Arab countries, which use the nationality as the discriminating factor although treating all the citizens based on equality, but these constitutions separates the non-citizens because of nationality. For example, in many Arab countries, there is clear discriminating factor in the name of nationality, which reflects the segregation in among the nationals and other residents. Some of the examples, where the constitutions of Arab Countries clearly reveal the discrimination on the basis of nationality are the constitutions of Lebanon, Morocco and Libya.

In the constitutions of these Arab Countries, the equal rights and opportunities are only provided to all Lebanese, Moroccans and Libyans. The Basic Law of Saudi Arabia respects the rights of every individual and favors the universal provision of rights, but there are different provisions and level of acceptance for the rights of individuals and the acceptance of the individual rights in accordance with the provision of international and national law. For example, the Constitution of Djibouti, the law guarantees the equality of rights before law, but there is no written acceptance or provision for the acceptance of universal provision of rights. Djiboutian Constitution also accepts the provision of rights and equality for all citizens as declared under the Article 1 of the Djiboutian Constitution.

2. I.3 Universal Provision of Rights

As compared to the provision of equality on the basis of nationality in the Arab countries such as Jordan, Lebanon, Morocco and Libya; many Arab states provides the universal provision of rights in order to ensure the equality of all, before the law. For example, the Constitution of Tunisia clearly provides in the preamble that the constitution is based on the Islamic law and the standards of human rights, which promotes the equality of all individuals in the eyes of law. The preamble of the said constitution express that the Constitution safeguards the right of every individual in accordance with the universal principle of the human rights. The law clearly includes 'all citizens' under Article 21, which expresses the universality of the law of equality for all citizens, although it does not include non-citizens.

The Constitution of Djibouti is based on the motto of "Unité - Egalité - Paix" (Unity - Equality –Peace) as expressed in the Article 1 of the Djibouti constitution, which highlight the equality of law for all without any kind of discrimination (Article 1 Djibouti's Constitution

of 1992 with Amendments through 2010). In Djibouti, two Constitutional provisions guarantee universal 'equality before the law' (Article 1 Djibouti's Constitution of 1992 with Amendments through 2010). First provision is defined under the Article 1 of the Djiboutian Constitution and the Article 10 of the aforementioned Constitution guarantees, among other rights, equality before the law. The article adds that 'All human beings are equal before the law' (Article 10 Djibouti's Constitution of 1992 with Amendments through 2010). The Constitution of Djibouti uses the phrase "all human beings" under Article 10, which clearly express the provision of the universality by including all individuals without any discrimination. Kuwaiti Constitution also expresses the provision of the discrimination as it is also associated with the provision of universality.

The Kuwaiti Constitution clearly express in the Article 29, that 'all people' are to be treated equality and they are to be provided with equal rights. The Kuwaiti Constitution also includes under the Article 29 that every individual is equal in the human dignity and they should be provided with the equal rights and duties without any kind of discrimination. The authors of the Kuwaiti Constitution use the phrase 'all people' which implies that equality before the law is guaranteed for both 'citizens' and 'non-citizens'(Article 29 Kuwaiti Constitution <https://www.kuwait.gov.kw>). In a similar fashion, the Saudi Basic Law provides that every individual is required to be treated equally before law without any discrimination. The Saudi Basic Law also includes the provision of the equality of all with the use of "citizen" that clearly guarantees rights to every individual without any kind of discrimination. There are many other Arab countries, which express the importance of universality of law for every individual. This includes the equality of law for all individuals based on the idea of universal approach including all such as the constitutions of Algeria, UAE, Iraq, Mauritania and Morocco.

Prohibition from Discrimination

Under the article 53 of the Egyptian Constitution, it is clearly explained that every individual is provided with the equal rights and freedom, without any discrimination on the basis of "religion, belief, sex, origin, race, color, language, disability, social class, political or geographic affiliation or any other reason" (Article 53 of the Constitution of The Arab Republic of Egypt 2014). This article also emphasize on the role and responsibilities of

the states to eliminate any kind of discrimination and to ensure the equality among all the individuals before law, without any discrimination. Under Article 18 of the Constitution of Bahrain, no discrimination is allowed on the basis of sex, origin, language, religion or creed. The Constitution of Jordan also clearly expresses the prohibition from any discrimination on the basis of race, language or religion, under Article 6 (i) (Article 6 The Constitution of The Hashemite Kingdom of Jordan). The Constitution of Djibouti also prohibits the discrimination on the basis of language, race, sex, religion. Comparison of Constitutions among Arab countries on the basis of different grounds for the prohibition of discrimination reveals that different country has different criteria for the prohibition of discrimination. The non-discrimination clause in Article 26 of the ICCPR provides prohibitions on discrimination on a number of different bases. Arab Constitutions are generally consistent with this article, with few slight variations in phraseology rather than substance.

The ICCPR includes additional prohibitions on discrimination on the bases of political, origin, race, or any other grounds (*OHCHR* 1996-2015). Some of these prohibitions are found in six of the Arab Constitutions such as Algeria, UAE, Mauritania, Oman, Sudan, and Iraq. The Constitution of Algeria, Article 29 provides that there is clear discrimination on the basis of birth, race and gender and every individual is to be treated equally before law. The constitution of UAE also prohibits any kind of discrimination. The analysis clearly reveals that majority of the Constitutions in the Arab Countries, prohibits discriminations, although there are different types of discriminations mentioned in different Arab Constitutions. The constitutions of Morocco, Saudi Arabia, Syria, Tunisia and Yemen while providing for equality before the law, do not specify non-discrimination as a particular additional criterion.

Although the Basic Law of Saudi Arabia contains a provision related to equality before the law; the said Law does not include the word or phrase prohibition neither it express the criteria for the prohibition of discrimination, but it express that the equality shall be granted to the citizens on the basis of Sharia. Many other constitutions provide the provision that the discrimination is not allowed under the law and there must be equality without any distinction or discrimination. A similar provision to the Omani Basic Law is found in the Djiboutian Constitution, which provides that equality is granted to

all individual without any discrimination on the basis of gender, language, origin etc. These kinds of provisions in the Arab Constitutions sets certain criteria for the discrimination, for example, the Djiboutian Law does not include non-discrimination in the basis of race and language.

The Djiboutian Constitution fails to mention discrimination on the ground of language in the same article but does so in a separate provision. The Constitution of Bahrain includes the grounds to avoid discrimination on the basis of race, origin, language, religion or belief, but unlike Oman Basic Law, it does not include color, sect, and social status to avoid any kind of discrimination. Despite popular belief among international human rights scholars that Arab States- and indeed Sharia contain structural discrimination against minorities and women. This observation raises the question of the status of Sharia ah in Arab Constitutions, which is not the subject of this study. While the existence of these prohibitions on discrimination in the Constitutions is insufficient proof of non-discrimination, practical or otherwise, nevertheless expresses a point of principle accepted by most of the Arab States and affirmed by their Constitutions. As illustrated by the Table above, among the Arab Constitutions, which include a 'non-discrimination' clause, only nine of those include 'non-discrimination' clause on grounds of gender. The Constitutions are those of Algeria, Djibouti, Iraq, Libya, Mauritania, Oman, Qatar, Somalia and the Sudan.

3. Presumption of Innocence

According to Article 14 (2) of ICCPR, every individual is required to be treated as innocence, even charged with the criminal offence, until they are proved guilty (*OHCHR* 1996-2015). It is an 'absolute and immediate' obligation under the Covenant, Article 33 which may be derogated from only in special circumstances threatening 'the life of the nation,' as strictly circumscribed by Article 4(1) of the Covenant. There are many complications with the implementation of this Article in the Arab Constitution. Some Arab constitutions agree with this provision with the exception of Jordanian, Lebanese, Libyan, Moroccan, and Saudi Arabian Constitutions. For example the Constitution of Algeria agrees with the provision that every person is to be treated as innocent and they are also subject to all the guarantees required by the law, until they are proved guilty.

The Constitution of Bahrain is also in accordance

with the provision that every individual has right to be treated and presented as innocent until the guilt is proved against them. Among other guarantees, Article 10 of the Djiboutian Constitution is also in accordance with the provision of innocence. The Constitutions of Egypt and Iraq also accepts the provisions of the innocence. According to Article 96 of the Egyptian Constitution, the accused person is also to be considered as innocent until they are proved guilty. Article 96 of the Egyptian Constitution also emphasize on the important aspect of the fair trial. Under this Article, it is important that the accused person must be proved innocent though fair legal trial. Under this Article, it is clear that Egyptian Constitution also provides right to the accused individuals to prove themselves as innocent as they are provided with the right to defend (Article 96 Constitution of The Arab Republic of Egypt 2014).

Article 34 of the Kuwaiti Constitution also accepts the provision of innocence and right to trial for the accused person. This article also provides the right to defend to the accused person and to provide necessary guaranteed to the individual (Article 34 Kuwaiti Constitution). Many other Arab constitutions also agree with the provision of innocence and to be treated under the fair legal trial. Arab Constitutions such as constitution of Iraq, Mauritian, Oman, Qatar, Somalia, Tunisia, UAE and Yemen, where, the Constitutions clearly provides that; even accused has the right to be treated as innocent and should be provided with the basic rights under the law, unless they are proved guilty. As mentioned before, some Arab Constitutions do not guarantee the presumption innocence of the accused. Article 20 of the Lebanese Constitution, however provides some limitations to the judicial guarantees.

The Lebanese Constitution contains no specific guarantees for the accused except as may be found in legislation. The Jordanian and Moroccan Constitutions, on the other hand, are completely silent on the presumption of innocence of the accused. Article 206 (a) of the Jordanian Code of Criminal Procedure provides that there are many criminal cases, where the departments of the Public Prosecution is associated with the provision of treating offenders as innocent, before they are proved guilty. One can conclude that Jordan fails to mention presumption of innocence as proscribed by international human rights instruments. It is noteworthy that the principle of presumption of innocence is not explicitly stated in the Moroccan Code of Criminal Procedure. The Saudi Basic Law and the Libyan GGCHR also fail to

provide for the protection of this right.

4. The Right to Defense

Article 14(3)(c) of the ICCPR includes the right to defend oneself in person, to have authority and choice to select one's own counsel, and to be provide with the right to choose legal assistance. In most Arab Constitutions, the right to defense is guaranteed as part and parcel of the presumption of innocence clause and the right to a fair trial, which is usually found in one article or even in one sentence. The formulation in some constitutions is that proof of guilt must be rendered in a court where the defendant is granted the right to defend himself personally or through an agent. For example, Article 96 of the Egyptian Constitution clearly expresses the provision for the opportunity of every accused person to defend himself. Under Article 96, every person who is accused of crime has right to have counsel for his defense, in order to "to defend himself" (Article 96 Constitution of The Arab Republic of Egypt 2014). Some constitutions require a trial.

For example, Article 96 of the Egyptian Constitution and Article 20 (c) of Bahrain provides that a legal fair trial is the condition to prove the person accused with the crime shall be treated as innocent. Kuwaiti Constitution, Algerian Constitution, and the Omani Basic Law also provide the provision of fair and equal trial. As compared to these provisions, there are also a number of different other conditions, which clearly provides that there are different conditions for the implication of the provision of innocence in Arab Constitutions. Several Constitutions defer to the law the definition and specification of these principles and guarantees, but still with insufficient guidance such as Constitutions of Algeria and Lebanon. Other constitutions such as Article 10 of the Djiboutian Constitution guarantees right to fair trial, but there is no mention of the fair trial.

Some constitutions more specifically assure the right to defense by requiring the appointment of counsel 'with the approval of the accused', such as in the constitutions of Bahrain, Egypt, and Sudan. A number of Arab States do not include the right of defense in their constitutional provisions. Those States are Jordan, Lebanon, Libya, Mauritania, Morocco and Saudi Arabia. Worth noting are the Jordanian and Moroccan Constitutions, which do not refer to the presumption of innocence or the right to defense beyond the 'nondiscrimination' and 'equality before the law' clauses.

5. Right to a Fair Trial

The right to a fair trial is at the core of human rights doctrine. Articles 14-16 of the ICCPR guarantee a number of essential legal rights and explain in detail the exceptions. In accordance with these articles, the rights of the individual charged in a court of law include five constituent elements, as stated in Article 14(1), which provides that every individual is required to be treated fairly under the provision of law, and every individual charged with the criminal offense has the right to be treated under the fair trial. In light of this clause (ICCPR 14(1)), one finds upon further examination of Arab Constitutions, that these guarantees are sorely lacking. In fact, some constitutions provide very few tangible guarantees of judicial standards for individuals facing trial this sense, it is necessary to turn to the specific procedural and penal laws of each state in order to better grasp the rights and status of the individual in a variety of Arab courts of law. For example, the Constitutions of Bahrain, Qatar, Sudan and UAE provide that the provision of fair trial is essential. Article 14(1) of the ICCPR provides that every individual has the right of fair trial and public hearing. Although nine constitutions (those of Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Oman, Somalia and Yemen) stipulate that trials and judgment must be public, they also provide for certain exceptions to that rule.

The Constitutions of Iraq, Oman, Egypt, and Somalia appear to be the only ones containing restrictions consistent with the standard detailed in Article 14(1) of the ICCPR, which spells out the circumstances under which, the press and the public may be excluded from trials (*OHCHR* 1996-2015). Some of the special circumstance listed in the ICCPR includes moral reasons, national security, protection of lives, and interests of justice. One does find, however, articles which guarantee the independence of the judiciary in all of the constitutions. These guarantees are formulated in general terms and would seem to indicate statements of principle rather than enforceable guarantees of any kind, especially since all of the constitutions defer the organization and implementation of these principles to the law. Nearly *all* of the Arab Constitutions deal with the independence of the judiciary by using three provisions as independence of judiciary, obedience of law by judges, and no interference of authorities in the judiciary procedures.

Article 14-16 of the ICCPR provides that every individual accused of the criminal offense has the right to

access to the free trial (Article 14-16). This provides that every individual has the right to choose counsel for his defense and they are to be treated equally before law without any discrimination. It is provided that every individual even if charged with the criminal offence should be treated in accordance with the standards of human rights. Under Article 96 of the Egyptian Constitution even, the person accused with the criminal offence is provided with the rights to fair trial, under independent judiciary, in accordance with law (Article 96 Constitution of The Arab Republic of Egypt 2014). The Algerian Constitution, Kuwaiti Constitution and Constitution of Bahrain also provide that every person accused with the criminal offence has the right to access to the fair trial without any influence or power upon judiciary.

Article 71 of the Djiboutian Constitution has a different scope to that of other Arab constitutional provisions. The aforementioned article specifies that the judicial power is independent of the legislative power and executive power. The article adds that the judiciary is to exercise its power under the Supreme Court and the other courts and tribunals. Under different Arab Constitutions, the independence and power of judiciary is explained in accordance with the structure and constitutional framework of the judiciary. The judicial powers and approaches of the constitutional development in different countries, clearly provides that in some Arab countries, the judiciary in under the influence of King, or works in accordance with the decision and influence of President. Some Arab Constitutions also works in accordance with the legislative and executive powers etc.

As compared to this condition, many constitutional changes have resulted in granting the freedom and independence to the judiciary in many countries such as Lebanon, Djibouti, Morocco, Oman, Tunisia, Egypt, UAE, Syria and many other Arab Countries. These provisions clearly provides that the major constitutional changes and improvements in the system of Judiciary. In the constitutions of Lebanon, Djibouti, Morocco, Oman, Tunisia, Egypt, UAE, Syria and many other Arab Countries, it is clearly mentioned in the said constitutions that the judiciary is the independent body, without any influence. After the Arab Spring 2011, it is clearly mentioned in the constitution of many Arab Countries (Choudhry, S). Constitutions of these countries such as Tunisia, Egypt, UAE, Libya, Iraq, clearly states that the judiciary is separate from the legislative and executive

branches, thus, there is no influence of legislative and executive branches on the judicial procedures.

6. Right to a Judicial Remedy and Appeal

The International Covenant on Civil and Political Rights (ICCPR) stipulates, in Article 2(3) that each State Party to the present Covenant needs to undertake that the every person, whose rights and freedom are violated must be provided with the effective remedy (*OHCHR* 1996-2015). The article further provides that every individual have remedy under the competent judicial, administrative or legislative authorities (*OHCHR* 1996-2015). Under Article 2 (3) everyone should have the right to an 'effective remedy' by a competent national tribunal, without violation of any rights. The clearest constitutional provisions dealing with the individual's right of recourse to the courts and judicial remedy are found in the Egyptian, Djiboutian, UAE, and Yemeni Constitutions.

The four aforementioned Constitutions come closest to the standard as articulated by the Covenant's Article 2(3). Other Arab Constitutions treat the matter in a broader 'right to litigation' manner, which may be interpreted simply as a right of recourse to the judiciary in civil disputes between individual citizens. One needs to look into the law and jurisprudence of the courts in order to determine the provisions of civil rights against public authorities are included in these provisions. The 'right to litigation' clause can be found in other constitutions under slightly different phraseology. Article 46 of the Saudi Arabia Basic Law guarantees the right to litigation 'to citizens and residents' of Saudi Arabia 'on an equal basis.'

With respect to the right of appeal to a higher judicial authority, the provisions in the Arab Constitutions also fail to reach international standards as articulated in the ICCPR(*OHCHR* 1996-2015). The ICCPR standards in respect of the right to appeal are widely abused in the Arab region. Not one Arab Constitutional provision explicitly guarantees the right to appeal. As discussed earlier, the Lebanese Constitution defers all judicial guarantees the Jaw in a general fashion, in which the law may include a right to appeal. Although most Arab Constitutions do not explicitly refer to the right to appeal, they include provisions, which specify the structure of the courts.

7. Conclusion

As far as the Arab Constitutional provisions are concerned, three major questions arise with regard to the

protection of rights examined; primarily, the failure of a number of constitutions to mention certain rights. Second, Arab Constitutions guarantee human rights in broad phraseology leaving it for the law to decide or regulate such rights. Third, most of the rights fall short of the ICCPR standard protection.

The vast majority of the Arab Constitutions contain a non-discrimination clause. It is worth noting that although the Basic Law of Saudi Arabia contains a provision related to equality before the law, it does not include a prohibition against discrimination, but Article 8 of Basic Law in a rare formulation guarantee 'equality in accordance with Sharia'. The Arab Constitutions, with the exception of the Jordanian, Lebanese, Libyan, Moroccan and Saudi Arabian Constitutions, provide for the presumption of innocence up to the point of establishment of guilt by 'trial', 'regular court' or a 'legal trial.' A number of Arab States do not include the right of defense in their constitutional provisions. Those States are: Jordan, Lebanon, Libya, Mauritania, Morocco and Saudi Arabia. Worth noting are the Jordanian and Moroccan Constitutions which make no reference to the presumption of innocence or the right to defense beyond the 'non-discrimination' and 'equality before the law' clauses.

In light of the ICCPR Article 14(1) one finds, upon further examination of Arab Constitutions, that these guarantees are sorely lacking. In fact, some constitutions provide very few tangible guarantees of judicial standards for individuals facing trial. In this sense, it is necessary to turn to the specific procedural and penal laws of each state, to better grasp the rights and status of the individual in a variety of Arab Courts of Law. Arab Constitutional guarantees for individuals to be tried by a 'competent, independent, and impartial tribunal' as required by Article 14(1) of the ICCPR. Provisions, which guarantee the independence of the Judiciary, are found in all of the Arab Constitutions. These guarantees are formulated in general terms and would seek to indicate statements of principle rather than enforceable guarantees of any especially since all of the constitutions defer the organization and implementation of these principles to the law. Nearly all of the Arab Constitutions deal with independence of the Judiciary by using three provisions to stipulate, for example, 'the judicial authority is independent,' and that judges 'shall obey the law' or judicial work without interference of any authority. Thus, with respect to the right to appeal to a higher judicial

authority, the provisions in the Arab Constitutions also fail to international standards as articulated in the ICCPR. The ICCPR standards of the right to appeal are widely

abused in the Arab region and not one Arab Constitutional provision explicitly guarantees this right.

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حق اقامة العدل في الدساتير العربية

ابراهيم مشهور الجازي*

ملخص

تهدف الدراسة إلى معرفة إلى أي مدى تعترف الدساتير العربية بحقوق الإنسان وتكفلها، كما تتعرض للمواد 2 (3) و 14 و 26 من العهد الدولي للحقوق المدنية والسياسية، ومدى توافق الدساتير العربية مع هذه الاتفاقية، وتتعرض أيضاً لبعض الحقوق القانونية كمبدأ المساواة أمام القانون وقرينة البراءة والحق في محاكمة عادلة واستقلال القضاء وغير ذلك، علماً أن البحث تناول معظم الدساتير العربية؛ لغايات المقارنة والشمولية. ويهدف البحث إلى تسليط الضوء على مبدأ قرينة البراءة المنصوص عليها في العهد الدولي، وكيفية تطبيقه من قبل الدول العربية المختلفة.

خلصت الدراسة إلى أن معظم الدساتير العربية -ورغم أنها تضمنت قدراً كبيراً من حقوق الإنسان وحياته المنصوص عليها في العهد الدولي للحقوق المدنية والسياسية- تركت تنظيمها للقوانين، وبالنتيجة فإن معظم هذه الدساتير لم ترق إلى المستوى المطلوب في الاتفاقية الدولية.

الكلمات الدالة: العهد الدولي للحقوق المدنية والسياسية، الدساتير، الدول العربية.

* كلية الحقوق، الجامعة الأردنية. تاريخ استلام البحث 2015/3/24، وتاريخ قبوله 2015/8/22.