Iraq: Present Legal System

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I. Historical Framework

A. Iraq and Early Written Laws

Iraq encompasses the region that was once known as Mesopotamia, a Greek word meaning the land between the two rivers. The legal history of Iraq is a very rich one, starting several thousand years before the advent of Christianity. Archeological discoveries in Iraq have confirmed the existence of written laws dating back to the years 3000 B.C. The famous Hammurabi Code was not the first law in that land. It was certainly, however, the most comprehensive and complete code that was found, almost in its entirety, carved on a stone discovered early in the 20\textsuperscript{th} century.

B. Iraq As Legal Center for Islamic Law

Iraq is the home of the first schools of Islamic thought in Kufa and Basra that led to the development of the Islamic law based on the Shari’a. The Hanafi School of Islamic law claims the most adherents in the Islamic world today and dates back to the Kufian School. During the rule of the Abbasid dynasty of the Islamic state, Iraq played a great role, not only in the formulation and interpretation of the legal Islamic tradition, but also in the establishment of the office of Qadi, the judge that was responsible for the application of Islamic law. It was in Iraq where the Islamic state first created the office of “Qadi al-Qudat,” meaning the Judge of Judges or Supreme Judge, whose authority included advising the Caliph, the head of the Islamic state, on all matters related to the Judiciary.

Islamic law is based on the Shari’a, which consists of the teachings of the Koran and the traditions of the Prophet Mohammed. Muslims consider the Shari’a to be sacred and divine and the path through which human beings can reach ultimate salvation. No human individual or other earthly authority can change, add, alter, or amend the Shari’a. God manifested his will to mankind through direct revelation and guidance to the Prophet Mohammed. Access to the will of God had been closed since the death of the Prophet whom Muslims believe to be the last messenger sent by God.

Islamic law has grown and developed through the work of pious Islamic thinkers whose main objective was to discover the will of God from its original sources, namely the Koran and the traditions of the Prophet. The historical development of Shari’a went through three stages. In the first stage the influence of Islamic thought on the law was minimal and limited to the specific reforms introduced by the Koran. In the second stage the pious Muslim scholars started to scrutinize the law under the ethical and moral dictates of the Islamic religion. In the third and final stage, religious, moral, ethical, and legal rules became elements of a single Islamic legal system. In all of these stages the schools of Islamic thought of Iraq played a very significant role.
C. Islamic Law and Modern Constitutional Principles

It is useful to examine the relationship that exists between Islamic law and the state to determine the place of constitutional law in the Islamic legal system. Islamic political theory was shaped by the concept of “Umma” and its historical manifestations, especially during the early periods of Islamic expansions.

1. The Concept of Umma

“Umma” has several meanings, a nation, a community, or a people. In its Islamic and historical context Umma is the community of all those who believe in the oneness of God and the teachings of the Prophet Mohammed. Its purpose is to defend the word revealed to the Prophet and enforce the divine commands. The members of the Umma are tied together by the strength of their faith, not by their tribal, family, or other connections, as was the case in pre-Islamic Arab societies. All Muslims within the Umma are equal in the eyes of God.

The Koran speaks to the believers saying you are the best Umma given to mankind, and the most pious among you is the most exalted before God. A tradition attributed to the Prophet quotes him, as saying there is no preference of an Arab over a foreigner, except on the basis of piety. The Umma was not a separate and distinct religious or civil entity within the state; the Umma was itself the state. In 622 AD, when the Prophet left his city of birth, Mecca, and immigrated with the limited number of his followers to the town of Yathreb (later renamed Medina, a shortening for “Medinat al-Nabi” or the city of the Prophet), the manifestation of the Umma came into historical reality with the Prophet holding absolute temporal and spiritual authorities over the new community or state.

2. Church and State

The Islamic religion and the Islamic state grew up together. They are manifestations of the same historical reality that is often expressed in saying that Islam is a religion and a state at the same time. Therefore, the separation between religion and state is an idea that is totally alien to Islamic thought. It is also of interest to mention that in Islam there is no organized church and no priesthood. In fact the Muslim specialists, scholars, or theologians who influenced and shaped Islamic thought were private individuals who did not even have any official position within the Islamic state. The great Islamic jurists after whom the four schools of law in the Sunni branch of Islam have been named, Abu Hanifa, Malek, Al-Shafi’I and Ibn Hanbal, are the most striking example of this phenomenon.

Islamic law has evolved through the work of these jurists and their many disciples over a stretched period of time. And despite disagreement among the various schools on certain issues of law, they came to accommodate and accept each other through a natural and gradual process of interaction that was left undisturbed by the political authority of the state. The basic tenets of the Shia’a schools of Islam do not differ much from the other schools except with respect to the role of the Imam. The Shia’a consider that the succession of the Prophet in managing the affairs of the Umma belongs to Imam Ali, the cousin and son-in-law of the Prophet, and to his descendants after him.

3. Power to Legislate

Islamic law was, as previously mentioned, the outgrowth of the work of individual jurists without the interference of the state or the sanction of a recognized religious institution. Two questions therefore
come to the forefront: What was the nature of the jurists’ work in the development of Islamic law and what role did the Islamic ruler play with respect to this law?

**a. Nature of the jurists’ work**

One of the five pillars of Islam is the profession that there is no God, but God and that Mohammed is the messenger of God. This means that the teachings of the Prophet Mohammed were not his own, but rather the commands of God. The role of the Islamic jurist was to understand and identify the rules and duties that these teachings from God had imposed upon the believers. These rules and duties were not limited to legal duties per se but included ethical, ritual, and other duties as well. It has long been settled in the orthodoxy of Islamic thought that all rules and duties governing Muslim life should exclusively find their sources in the divine will of the Almighty God.

**b. Legislation by the Ruler**

Since Islamic law is to be founded exclusively on the divine will, then no earthly authority has the power to legislate or impose its own law. There is of course no question in any Muslim’s mind about the nature of the words of the Koran. For the Muslims they are the direct and very words of God, and they constitute the original source of Islamic law. In addition to the Koran, the orthodoxy of Islamic thought has accepted the traditions of the Prophet, including his sayings, direct actions, and formal or tacit approval, as being divinely inspired and representing another source of the divine will.

After the death of the Prophet in 632 AD, Islamic legal theory needed to address the continuity of the Islamic State beyond the person of the Prophet. The companions of the Prophet, those who emigrated with him from Mecca and those who joined him in Medina, swiftly agreed to select a ruler to manage the affairs of the newly established state with the title of Caliph, the English word for “Khalifat” or “Khalifat Rasoul Al-Lah,” meaning the successor of the messenger of God. Islamic orthodoxy is also well established to the effect that the role of the Caliph, or the ruler of the Islamic state, is to enforce, not formulate, the rules of Islamic law. The functions of the Caliph in managing the affairs of the state and enforcing the rules of Islamic law are strictly temporal and do not include a doctrinal dimension. The ruler is, like any other member of the community, subject to these rules of Islamic law.

When the institution of the Caliphate lost its real power during the extended period of the Abbasid rule, the Caliph became only a religious symbol or a symbol of the lost unity of the Islamic state. This dilution of power kept the actual role of the ruler outside the effective sphere of influencing the law. Legal matters became by then the exclusive responsibility of the schools of jurisprudence that came into existence as a result of the hard work of private, independent specialists of the Islamic law.

**II. Legal System in Iraq Under Ottoman Rule**

Iraq became a part of the Ottoman Empire in the year 1534 when Suleiman the Magnificent conquered Baghdad. Islamic law, as applied in the Ottoman Empire, became the law of Iraq. Iraq continued to be ruled by the Ottoman Empire until the end of World War I. At the end of that war, Iraq became an independent monarchy under colonial British mandate.
III. Constitutional Framework in Present Day Iraq

A. Constitution of 1925

In 1923, the British prepared a draft constitution for Iraq that was presented to the Iraqi National Assembly in 1924, where it was adopted with minor changes. This first constitution, known as the Iraqi Organic Law, was officially promulgated in 1925, establishing a hereditary constitutional monarchy in Iraq with popular parliamentary representation. The British mandate ended officially in 1932, and Iraq became a member of the League of Nations, the predecessor to the present United Nations Organization. In 1945, the Arab League was created, and Iraq was one of its founding members. In 1958, a military coup took place, overthrew the monarchy as a corrupt remnant of the colonial imperial powers, and declared Iraq as a popular republic. The main features of the first constitution may be summarized as follows:

1. Equality before the Law

The constitution guaranteed protection of the law to all Iraqis irrespective of the differences of race, religion, or language.¹

2. Personal Freedom

It guaranteed the personal freedom of all Iraqi residents against interference and aggression. It specifically provided that no resident be arrested, detained, forced to change residence, subjected to restrictions, or forced to serve in the military forces except in accordance with the law. It further provided that the torture and expelling Iraqis outside the kingdom of Iraq were absolutely forbidden.²

3. Private Ownership

The rights of private ownership were to be protected. No forced restrictions, attachment of personal or real property, or confiscation of such property was to be allowed except in accordance with the law. Forced unpaid labor and the confiscation of movable or immovable property were to be absolutely prohibited. No appropriation of property was to be allowed, except for reasons, from the Constitutions of 1958 and 1970, of public interest, and only if conducted in the manner and under the circumstances prescribed by law and after just compensation.³

4. Freedom of speech

Iraqis will have freedom of opinion, press, assembly, and formation of and participation in associations within the bounds of the law.⁴

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¹ 1925 Constitution, art. 6.
² Id. art. 7.
³ Id. art. 10.
⁴ Id. art. 12.
5. Freedom of religion

The constitution named Islam as the official religion of the state and provided that its worship rituals, in accordance with its various denominations, as are customary in Iraq, will be respected without any infringements. It further guaranteed to all the inhabitants of Iraq the freedom of belief and the freedom to practice their worship rituals in accordance with their traditions, provided such traditions are not against security, public order, or public morals.5

6. Privacy

The constitution also provided privacy protection for all postal, telegraphic, and telephonic communications that were to be kept secret and protected against surveillance and interception, except in the manners and under the circumstances prescribed by law.

B. The Second Iraqi Constitution of 1958

The military authority of the 1958 revolution issued, shortly after the success of the coup, an interim constitution to replace the 1925 Monarchical Constitution. This second Constitution of 1958 was intended to be temporary until a new National Assembly, elected by the people, approved a new permanent constitution. This interim constitution also guaranteed, in more general terms and with slight modification, the same basic freedoms as the first constitution.

C. The Constitution of 1970

In 1970 a new interim constitution was promulgated and again contained many of the basic rights guarantees for all Iraqis. However the Constitution of 1970 gave the Revolutionary Command Council, a non-elected body, supreme power as the representative of the will of the people of Iraq. This constitution ended in 2003 with the occupation of Iraq by the coalition forces led by the United States. At present Iraq is governed in accordance with a transitional law called “Law of Administration for the State of Iraq for the Transitional Period” in preparation for electing a representative government that will prepare for the adoption of a permanent constitution.

IV. Civil Code

The Iraqi Civil Code was prepared by the late Egyptian Jurist, Abd al Razzak al Sanhouri, and approved by the Iraqi legislature in 1951. The law divides the general rights into two main categories. The rights emanating from the obligations owed (rights in personam) and the rights that are attached to a specific property real or movable (rights in rem). The first category is generally known as obligations. There are five sources of obligations: contracts, unilateral volition, unlawful acts or tort, enrichment without cause, and the law.

A. Contracts

The freedom to enter into contract within the limits of the law is a basic principle in the Iraqi legal system. Contracts are either defined or undefined. Those defined by law are the contracts of sale, gift, partnership, loan and annuities, settlement of disputes, lease, loan for use, craftsman and

5 ibid. art. 13.
manufacturing, providing public utility, employment, agency or representation, deposit or trust, life annuities, insurance, and guarantee or surety.

Article 25 of the Iraqi Civil Code gives the parties to a contract the right to choose the law they want to apply to their contract. If they do not make a choice, the law of the state where the act takes place applies. The will of the parties to a contract can create any type of obligation, as long as it does not contravene the public mores or the obligatory provisions of the law. This principle is well established in Islamic law and expressed by the quotation confirming that the contract is the law of the parties.

B. Unilateral Volition

A unilateral promise does not bind the promisor except as provided for in the law. The provisions applicable to contracts apply to a unilateral promise except those requiring the existence of exchanged promises as a necessary condition to create the obligation. The one who unilaterally promises to give valuable consideration to whomever performs a specific act is legally obligated to give such consideration upon performance even if the performer acted irrespective of the promise.

The promisor may revoke his promise if he did not set a term. Such a revocation will not affect the right of the one who performed prior to the revocation. But a lawsuit to collect on the promise will be extinguished if not brought within six months of the date that the revocation was announced.

C. Unlawful Acts

Unlawful acts that give rise to civil obligations may be defined as acts that cause injury to the interests of a person other than the actor and are not permissible under the law. Acts that ordinarily are legally permissible will also be considered unlawful when committed for unlawful purposes or for harming others, or when the benefit to the actor resulting from the act is insignificant in comparison with the harm caused to others.

V. Commercial Laws

Article 1 of the Interim Constitution of 1970, which was in force until the end of the Saddam Hussein regime, provides that the establishment of a socialist system is an essential goal of the state of Iraq. Article 12 provides that the state assumes the responsibility for the planning, directing, and leading the national economy in order to establish a socialist system based on scientific and revolutionary criteria and realize Arab economic unity.

The constitution also provides in article 13 that the people own the natural resources and the essential means of production. Article 16 stipulates that private ownership is a social function to be exercised within the objectives of society and state planning in accordance with the law. Furthermore, article 18 prohibits ownership of real estate by non-Iraqis. Within these limits, Iraq has enacted several

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6 Art. 184 of the Civil Code.
7 Id. art. 185.
8 Id. art. 7.
9 Id. art. 16
laws relating to the conduct of trade and commerce, including a commerce code, private and public sector companies’ law, and a commercial agency law.

**A. Code of Commerce**

The most recent Iraqi Code of Commerce was enacted in 1984 as Law Number 30. It proclaims the basic tenets and scope of the law to be the organization of the economic activities among the socialist, mixed, and private sectors in accordance with the requirements of the development plan, making the role of the mixed and private sectors complementary to the activities of the socialist sector, and giving the legal relation prominence over the contractual relation.

1. **Commercial Activities**

   Article 5 of the Code of Commerce defines the activities that are considered commercial unless proven otherwise. They include the purchase or renting of properties, movable or non-movable, for re-rent or re-sale; the supply of goods and services; the import and export of goods and services; industrial activities; operation of extracting raw materials; publishing, printing, photographing and advertising; construction undertakings; the services of hotels, restaurants, theatres, tourist offices and other entertainment activities; banks operations; and the use of negotiable instruments, among others.

2. **Merchants or Traders**

   Articles 7 to 37 define who is a merchant or trader and what are his duties. A merchant is any person, natural or juristic, for whom commercial activities are his profession. The duties of a merchant include registration in the commercial register, keeping commercial records, and adopting a commercial name.

3. **Commercial Instruments**

   Articles 39 to 185 of the code deal with commercial papers and discuss in detail the bill of exchange, the promissory note, and the check. Articles 186 to 238 address three specific commercial contracts, the commercial mortgage, the deposit in public depot and the current account. Articles 239 to 293 describe the requirements and conditions of the following bank operations: money deposits, lease of safe deposit boxes, banking transfers, lines of credit, documentary lines of credit, discounts, and letter of guarantee. Finally articles 294 to 330 discuss in detail the international sales contract.

**B. Companies Laws**

Iraq has enacted two companies’ laws allowing for the establishment of private sector companies, public sector companies, and mixed companies.

1. **Private Sector and Mixed Companies**

   Law No. 21 of 1997 regulates the formation, functioning, and dissolution of private sector or mixed companies in Iraq. Article 6 allows the creation of four types of companies:
a. The Stock Company

The formation of the stock company will consist of no fewer than five people, and shareholders will share subscriptions in a public offering. Their liability for the debt of the company will be limited to the nominal amount of the share to which they subscribed.

b. The Limited Liability Company

The formation of the limited liability company will consist of no fewer than two people and no more than twenty-five, who subscribe to the shares and become liable for the debts to the extent of the nominal values of their subscribed shares. Under the Coalition Provisional Authority order 29 of February 2004, CPA/ORD/29 February 2004/64, article 6 was amended to reflect that a limited liability company can be formed with one owner only.

c. The Partnership Company

A partnership company consists of at least two, but no more than ten people, each of whom owns a part of the partnership and all of whom are jointly and personally liable for all the partnership obligations.

d. The sole enterprise

A sole enterprise is a company owned by one person who is liable personally for all the company’s obligations.

2. Public Sector Companies

Law No. 22 of 1997 regulates the formation, functioning, and dissolution of companies that are owned totally by the government. Such companies, however, form one economic entity, which has juristic personality, enjoys financial and administrative independence, and functions on a purely commercial basis.

3. Foreign Corporations

Under article 12 of Law No. 21 of 1997, ownership of companies is limited to Iraqi citizens and Arab nationals, and no juristic entity is allowed to become a partner in a company unless the entity itself is of an Iraqi nationality. Paragraph 13 of CPA Order 29 of February 2004 amended this article and provided that a juridical or natural person foreign or domestic has the right to acquire membership in Iraqi companies whether as a founder, shareholder, or partner. Foreign corporations may open a branch or a representative office if they must carry out business activities in Iraq pursuant to a contract concluded between such corporations and the Iraqi governmental entity or with certain mixed Iraqi companies.

C. Commercial Agencies

Law No. 51 of 2000 regulates commercial agencies activities carried out in Iraq by an Iraqi agent who is acting on behalf of a natural or juristic person who is from outside Iraq. Article 2 requires the agent to obtain a special permit allowing him to act as a commercial agent. It further requires the registration of commercial agencies in a special registry.
The Public sector entities in Iraq are not allowed to deal with commercial agents under any pretenses and should deal directly with the companies themselves (article 14 of Law No. 51 of 2000.)

D. Intellectual Property Laws

Iraq enacted several laws to protect intellectual property. Law No. 21 of 1957, as amended, protects trademarks, Law No. 65 of 1970 protects patents and industrial designs, and Law No. 3 of 1971 protects copyrights.

In order for the trademark to be protected it must be registered with the special registry at the Ministry of Commerce. Anyone has the right to request the registration of a trademark. If more than one person requested the registration of the same or similar trademarks, the registrar may halt the registration until all the requesters agree or the court issue an order determining the person in whose name the trademark shall be registered (article 8). A trademark is considered the property of the person who requests its registration, and no claim against him will be accepted after its use for a continuous period of five years from the date it was duly registered (article 3). The validity of the registration continues in effect for a period of fifteen years, and it is renewable.

VI. Family Law

A. Marriage and Divorce

The codified Islamic family law called Personal Status Law provides that its provisions should apply to all Iraqis except those exempted by law. Those exempted are the Christians, Jews, and other religious minorities. Iraq is the place where the Hanafi School of Islamic law originated. The Hanafi School is followed by most Muslim Sunnis. It differs in many ways from other Sunni schools. It also differs from the Jaafari school which is the school followed by the great majority of the Muslim Shiis.

In 1959, Iraq codified an Islamic family law based mainly on the Hanafi and Jaafari schools. This law has certain provisions that are considered pro-women’s rights. It requires that both the man and woman be 18 years of age to enter into a marriage contract. However, a person under age 18 may obtain the permission of the court to marry provided that the person is physically fit to do so, is at least 15 years old, and has the consent of his guardian. The consent of the guardian should not be unreasonably withheld. The law has specific provisions that if the marriage is compulsory, the marriage contract will be void or voidable.

While the law does not make polygamy completely illegal, it does require the husband to obtain the court’s permission if he is to marry another wife. The court has discretion to refuse permission if it determines that the husband has no sufficient financial means of support, that there is no legitimate reason for a second marriage, or that there is a fear that the husband may not be able to maintain just treatment for his wives.

The law also requires the contract of marriage to be duly registered with the court. The wife has the right to file for divorce if the husband violates any lawful condition included in the marriage contract or if the situation becomes impossible for the couple to live together. The court may refer the case for reconciliation before acting on the request for divorce. The husband, however, has the right to divorce his wife without the interference of the court if he chooses to do so.

The husband’s impotence, detention for a certain period of time, affliction with a serious illness, or abandonment of his wife without a reason for a specified period constitutes a legitimate basis upon
which a wife may file for divorce. Another basis upon which a wife may file for divorce is if the husband fails to provide for the maintenance of the wife. The wife may also file for divorce if the marriage has not been consummated, provided she is willing to return to the husband the dower and any expenses he incurred because of the marriage. With respect to the custody of children, Iraqi law gives the mother the right to keep the children until the age of ten, a period that may be extended until age fifteen when the children may choose for themselves whether to continue living with the mother or not.

B. Inheritance

The Islamic Personal Status Law generally follows the Islamic law of inheritance, as was applied prior to the promulgation of the Personal Status Law of 1959. However, this law introduced some variations taken from various Islamic schools.

With respect to the rights of women, the Iraqi law adopted the Jaafari Shii School position under which the daughter of the deceased who left no sons is eligible to receive the totality of the estate without having to compete with a male agnate. This applies to all Iraqis who are Muslims, regardless of whether they are Shiis or Sunnis. The new law gave also the testator the right to bequeath up to a third of his estate to whomever he chooses without any limitation as to whether the beneficiary is an heir or not. This is also taken from the Jaafari Shii School, but applies to all Muslims in Iraq.

VII. Criminal laws

Following the occupation of the district (Wilayat) of Baghdad by the British forces during World War I, the British Military Authorities promulgated the Baghdad Penal and Criminal Procedure Codes to replace the Ottoman ones. These Codes kept their original appellation even after they became applicable to the rest of Iraq, as a result of the expansion of the British occupation. Although these codes were supposed to be temporary, they were in force until they were replaced by the enactment of the Penal Code No. 111 of 1969 and the Criminal Procedure Code No. 23 of 1971. In 1979, Iraq issued Law No. 159, entitled the Law of the Public Prosecutor, replacing the relevant articles in the criminal procedures code.

A. Penal Code

Under the Iraqi Penal Code the occurrence and consequences of a criminal offense will be determined in accordance with the law in force at the time the offense was committed. However, a subsequent law will be applied if it is more favorable to the accused or convicted person. The provisions of the Penal Code are applicable to offenses committed in Iraq or to offenses whose consequences affect or are intended to be affect Iraq. However, an Iraqi who commits an offense outside Iraq will be subject to the Iraqi Penal Code if the offense is a felony or misdemeanor and if it is punishable in the land where it was committed. The criminal acts are classified as either ordinary or political.

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10 The Baghdad penal code stated the following in its explanatory memorandum: “The Baghdad Penal Code” has been prepared as a temporary and provisional law for use in the Courts which have been established by the British Military Authorities in the Baghdad Wilayat.

11 Art. 2 of the Iraqi penal code (Penal Code) No. 111 of 1969

12 Id. art. 6

13 Id. art. 10
1. Political Offenses

A political offense is defined as one which is committed with a political motive or which violates the political rights of the public or the individual. If the court finds the crime to be political it will so indicate. The death penalty will be replaced by life imprisonment for political offenses.\textsuperscript{14}

2. Ordinary Offenses

Ordinary offenses are divided into three categories depending on the severity of the offense. The punishment provided for the offense determines its category.

a. Felonies

A felony is the crime punishable by death, life imprisonment, or five to fifteen years’ imprisonment.

b. Misdemeanors

A misdemeanor is an offense that is punishable by hard or ordinary detention for three months to five years.

c. Infractions

An infraction is an offense that is punishable by either an ordinary detention for a period of twenty-four hours to three months, or a fine not to exceed 30 dinars.

3. Justifications for Commission of an Act

Under certain conditions, actions that are normally considered criminal offenses will not be recognized as such. The penal code identifies three situations where this is the case; if the person committing the act is performing a duty prescribed by law, exercising a legal right, or acting in self-defense, then no offense will be attributed to him.\textsuperscript{15}

B. Criminal Procedures Code

The Criminal Procedures Code, as supplemented by the Public Prosecutor Code, addresses several issues, such as investigations, indictments, trials, and judgments.

1. Investigations

Investigations of criminal offenses are conducted under the overall supervision of an investigating judge. Within the scope of their competent authority, police officers, police stations commanders and

\textsuperscript{14} Id. art. 20 to 22

\textsuperscript{15} Id. arts. 39 –46.
commissioners are considered to be the law enforcement agents, charged with discovering crimes and receiving information and complaints.

The Mukhtar\textsuperscript{16} is available on the local level to receive notification of crimes and apprehend suspects.

The manager of a railway station, his deputy, and the train master; the manager of a seaport or airport; the pilot of an aircraft; and the captain of a ship are considered to be the law enforcement agents with respect to any crimes committed within their respective places of work. The heads of the departments in the government or the heads of any official or semi-official agencies are responsible for crimes committed within their departments.

1. Searches

Searches of people’s persons or residences are not allowed except as permitted by law. Such searches are to be undertaken by the investigating judge or based on a warrant issued by him.\textsuperscript{17} No female can be searched except by a female appointed for this purpose.\textsuperscript{18}

2. Arrests

The investigating judge may order the arrest, for a period not to exceed fifteen days at a time, of a person accused of committing an offense punishable by more than three years detention or imprisonment. If the offense is punishable by death, the accused is to be arrested, and his arrest renewed as long as it is necessary to conduct the investigation. The totality of the arrest period is not to exceed one-fourth of the maximum punishment period for the offense, and is not to extend beyond six months. If the arrest must extend beyond six months, the investigating judge must bring the matter before the felony court seeking a permission to do so.\textsuperscript{19}

VIII. Judicial Organization

All three Constitutions provided for the independence of the judiciary; however, they left the organization of the courts to be dealt with by the legislature. The regime of Saddam Hussein issued several laws relating to the judiciary. It created several courts dealing with civil, criminal, administrative, and personal status matters in addition to special courts dealing with cases that were considered related to the security of the State. The substance of the Iraqi law is a combination of the Islamic, Ottoman, and European laws. Personal status matters, such as marriage and inheritance, are subject to the religious laws within the jurisdiction of the religious courts, and each religious community, to one extent or another, has its own laws and court system.

\textsuperscript{16} The Mukhtar is the lowest administrative authority in the town or the neighborhood.

\textsuperscript{17} Art. 72 of the Criminal Procedures Code No. 23 of 1971.

\textsuperscript{18} Id. art. 80.

\textsuperscript{19} Id. art. 109.
Iraq has enacted Law No. 160 of 1979, entitled the Law of Judicial Organization, in which article 2 states that the judiciary will be independently accountable to no one but the law.\textsuperscript{20} The judiciary is divided into 3 levels with the Court of Cassation at the helm. The Court of Cassation is the highest judicial authority, and as such, it exercises judicial supervision over all other courts except when the law provides otherwise.\textsuperscript{21} The Court of Cassation consists of a President or Chief Justice, five deputy chiefs, and no less than 30 judges, and is organized into the following chambers or formations:\textsuperscript{22}

- The full court
- The general assembly
- The civil chamber
- The chamber of personal status

These chambers are formed at the beginning of each year. In essence, the judiciary in Iraq is modeled after the European court systems. The court of first instance is the court of the first level; the courts of appeal are the courts of the second level, and the court of cassation is the highest level. The courts have jurisdiction in civil, commercial, criminal, and personal status cases. A number of non-Muslim communities have their own courts with respect to certain personal status matters. With regard to territorial jurisdiction, there is a court of first instance in each locality and a court of appeal in each district. Iraq is divided into a number of judicial districts. The territorial jurisdiction of the court of cassation covers all of the Iraqi territory and has its seat in the capital city of Baghdad.

A. Filing a Claim

A claim should always start at the first level and be filed in a court of first instance. The courts of appeal review the decisions rendered by the courts of first instance existing within their district if the losing party chooses to appeal the decision within the time limit prescribed by law. The court of appeal has the full capacity to review the facts and the proper application of the law. A claimant appellant may contest the decision rendered against him based on errors in the ascertainment of the facts and the errors in the application of the law.

B. Court of Last Resort

The Court of Cassation is the court of last resort. Its jurisdiction is limited to reviewing the proper application of the law based on the facts ascertained by the court of appeal. The Court of Cassation does not normally review the facts except when it orders a retrial and acts as an appellate court itself. As a matter of internal judicial organization, the courts are organized into civil courts that deal with civil and commercial disputes and criminal courts that deal with violations of the penal code. Under the former regime, Iraq had also established special courts to deal with matters relating to the security of the state.

\textsuperscript{20} Published in the Iraqi official gazette No. 2746 dated 12/17/1979.

\textsuperscript{21} Art. 12 of Law No. 160/79.

\textsuperscript{22} Id. art. 13.
The Judges are appointed by the President of the Republic through the Ministry of Justice. To be considered for appointment the candidate must be a graduate from an accredited law school. Judges can be promoted from within the judiciary and can be transferred from one location to another.

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