AL HIKMAH RESEARCH & PUBLICATION CENTRE

Al-Hikmah International Journal for Islamic Studies & Human Sciences
Vol. 5, No. 2, May 2022
E-ISSN: 2637-0581
https://doi.org/10.46722/hkmh.5.2.22a

Guarantees of Legitimacy of State Authority

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Abstract

Research Significance the subject is important since it investigates legitimacy and author-ity and discusses it according to fundamental law and jurispru-dence, where the most important negative points are highlighted, as well as justifications and theories performed by fundamental law jurists, in addition to discussing religious theories. Research Motivation: research into democrat-ic and non-democratic regimes is critical for establishing legitimacy in which the governed can have a sense of loyalty and citizenship. Since an independ-ent and effective judiciary is necessary for the realization of constitutional legitimacy and stability, it becomes crucial to high-light its vital role in ensuring the legitimacy of the state's authority, as well as the achievement of basic state guarantees and the protection. Problem Statement: The research problem arises from the ambiguity of the legitimacy concept of state authority, given the significance of the legitimacy concept in the state, as well as the reality of authority in terms of the extent to which decisions are issued by the ruler if they are appropriate and support legitimacy.

Keywords: Authority, state, theories, legitimacy, guarantees.

Article Progress

Received: 23 January 2022
Revised: 06 March 2022
Accepted: 10 March 2022

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الملخص:

أهمية البحث الموضوع مهم لأنه يبحث في الشرعية والسلطة ويناقشها وفق القانون الأساسي والفقه ، حيث يتم إبراز أهم النقاط السلبية ، وكذلك التبريرات والنظريات التي يقوم بها فقهاء القانون الأساسي ، بالإضافة إلى مناقشة الدين. النظريات. الدافع البحثي: يعد البحث في الأنظمة الديمقراطية وغير الديمقراطية أمرًا بالغ الأهمية لإرساء الشرعية التي يمكن للمحكومين من خلالها الشعور بالولاء والمواطنة. بما أن القضاء المستقل والفعال ضروري لتحقيق الشرعية الدستورية والاستقرار ، يصبح من الضروري تسليط الضوء على دوره الحيوي في ضمان شرعية سلطة الدولة ، فضلاً عن تحقيق الضمانات الأساسية للدولة وحمايتها. . بيان المشكلة: تنبع مشكلة البحث من غموض مفهوم شرعية سلطة الدولة ، بالنظر إلى أهمية مفهوم الشرعية في الدولة ، وكذلك حقيقة السلطة من حيث مدى إصدار القرارات من قبل الحاكم إذا فهي مناسبة وتدعم الشرعية.

الكلمات الدلالية: السلطة ، الدولة، النظريات، الشرعية، الضمانات.

Introduction:

Constitutions are one of the most important principles in defining the legitimacy of state authority because they are the means by which rulers can establish legitimate principles of authority, achieve basic state guarantees, and protect subordinates' fundamental rights. Legitimacy is the governed power through elections and constitution, in which rulers are bound by the constitution's provisions.

The constitutional judiciary is given the power to ensure that the constitution is respected. A legitimate country is established through a set of principles, foundations, and rules, which include a commitment to legitimacy and legality, where legitimacy refers to public institutions in terms of their competence and composition, and legality refers to the actions taken by public institutions. Legitimacy and legality have their own basis to keep their validity. The researcher's main purpose is to determine the legal ways by which the ruler gets authority, as well as to clarify the perspective of legitimacy and the foundations on which authority is formed in order to ensure legitimacy and protect the fundamental rights of citizens.

I. MEANING OF LEGITIMACY OF STATE AUTHORITY

Legitimacy refers to the obligation of both the State and the governed to bind by law, and to impose a penalty for violations, the severity of which is determined by the type of breach (Munib, 1981).

In other words, legitimacy means the rule of law, in which no body or institution can make a decision out of the provisions of the law and the constitution (Ramzi, 1970).

Legality, on the other hand, means that the state is bound by the law in all of its actions and benefits, where the actions of public bodies and their binding decisions are neither valid nor effective for their implications, nor are they binding on the individuals addressing them unless issued in accordance with the law and in accordance with its provisions. When a violation occurs, it is illegal, and the affected individuals may petition a court for a cancellation or suspension of the breach, as well as compensation for damages (Majid, 1985).

Therefore, there is a close and complementary relationship between the principle of legitimacy and the principle of the rule of law, where the principle of applying legitimacy is one of the components of applying the principle of the rule of law, in the sense that legitimacy is achieved in every matter where the law is applied, and the law imposes provisions on the entire social relations regulated by law, thereby achieving the dominance and authority of the law. Law enforcement is critical for society to prevent instability in the state (Zafer, 2018).

In light of the above discussion, the researcher divides the research into two sections: the concept of the legitimacy of state authority and the guarantees of the legitimacy of state authority.

II. THE CONCEPT OF THE LEGITIMACY OF STATE AUTHORITY

In constitutional law, the principle of legitimacy refers to who has access to authority in the state. The study of the principle of power is divided into two types: legitimate authority, which requires the acceptance and consent of the governed, and actual authority, which does not require the acceptance and consent of the governed class but relies on power and law to ensure enforcement. Such power is inconsistent with the emergence of a legitimate state based on subordinates' perspectives.

As a result, the jurisprudence emphasized that, in one sense, legitimacy is tied to subordinates' satisfaction. The principle of legitimacy, on the other hand, has several characteristics that make it legal (Mohamed Taha, 2014)

SECTION 1
THE MEANING OF THE LEGITIMACY OF THE STATE AUTHORITY

In substantive law, some jurists view legitimacy as a legal concept, while others view it as a political concept, implying that the rulers use their authority in line with the subordinate's perspective, highlighting access to power with the consent of the political majority (Mohamed Taha, 2014). Therefore, legitimacy is a political term that refers to the governed in the practice of authority by rulers outside of the legal regime (Ahmed Hussein, 2019).

According to one path of jurisprudence, the principle of legitimacy includes that ruler and the governed are equal under the law; it is the strict implementation of laws and other legal documents by agents, public institutions, and citizens, taking into account compliance with laws that reflect the will of the governed and preserve the state's social and political order, while the principle of legitimacy preserves the legitimate public interests and fundamental rights (Mustafa, 2008).

It is obvious that the government and the governed follow the rules, regardless of their origin, whether constitutional or legislative, and that those legal rules are guided by a penalty for those who break them, and that the penalty factor is the guarantee in achieving the State's legitimacy principle, where the obligation and commitment are dependent on the effectiveness of the penalty (Ali,1985).

This clearly shows that all state bodies are constrained within the confines of the law drafted by the legislative authority, as they can only make decisions that are applicable to all through legislation, and the state and administration should always consider the legal hierarchy when making decisions, and not make decisions in violations of a higher legal rule, as in the case of a decision that must be within the scope of constitutional legitimacy, otherwise it violates the principle of legitimacy (Munib, 1981).

According to some scholars, constitutional legitimacy is "a constitutional principle to build and contain the legal and political regime in the state, coupled with the existence of a constitution, and the establishment and distribution of authority through public institutions based on constitutional commitment supported by the governed to achieve human aspirations for public fundamental rights" (Majid Najm, 2016).

Another group of scholars defines constitutional legitimacy as the supremacy and commitment of constitutional rules under legislation, which could be replaced by executive or legislative authority, since the constitution is

the best way to achieve the principle of legitimacy and its mechanisms, as well as defining its scope (Amin, 2002).

In terms of deciding the public authorities in the country, public authorities of the state are entrusted with the consent of the governed as specified by the constitution or through representatives, as provided in the Iraqi Constitution of 2005.

The first principle is the consolidation of authorities, which is the separation of powers that hold the tasks of the different states, and the seizure of authority by persons or entities[1].

It should be highlighted that constitutional legitimacy offers essential safeguards for individuals, even rulers, because it is a limitation on the authority of the State, and this constraint must exist in order for the law to be free of any aggression. The law is not just a tool to be used; it is also a mechanism to safeguard the fundamental rights. Since the constitution is at the top of the legal pyramid to which all state authorities and persons are tied, the legislative authority, as well as the executive authority and all state authorities and the governed, are bound by it. The constitution and legislation in its rules, as well as all members of society, are obligated to follow the law, regardless of its source or rank in the legal regime (Samir, 2005).

Constitutional provisions, in conformity with the principle of constitution supremacy, supersede ordinary laws and regulations. The Penal Code is one of the most significant branches of law, as it relates to structuring interactions among society members and balancing their rights and liberties against the interests of public (Adnan, 2021).

Section 2
Legitimacy Importance and Basis

I. The importance of legitimacy

Legitimacy is one of the most significant guarantees for citizens' fundamental rights, such as economic, social, and political liberties. Public institutions and rulers may only place limits on liberties through legal laws, as long as these regulations exist and are in conformity with the ruling state's provisions.

The relevance of constitutional legitimacy is targeted at political stability since political stability is dependent on the development of political authority and a legal regime within the confines of its substance and in compliance with legal constraints. Furthermore, constitutional legitimacy is an

1 See articles 2, 3, 4, and 5 of the 2012 Presidential Nomination Provisions Act No. 8.

effective instrument for defining the regime's limitations and general framework, and political stability is the peaceful transfer of power according to the rule of law (Ahmed Nassouri, 2008).

The concept of legitimacy is also intended to promote the contemporary state, which is made up of public institutions and is governed by the rule of law. On the other hand, the concept of legitimacy serves as the foundation for other principles such as the separation of powers and the peaceful transfer of power; therefore, constitutional legitimacy represents the essence of the state's political regime (Mohamed Salah, 2002).

Legitimacy is also vital in defending the state's internal structure from outside intervention, as the constitution protects the state. Furthermore, the concept of constitutional legitimacy includes assurances other than legal guarantees, such as constitutional, legislative, political, judicial, and public perspectives, all of which contribute to the rulers and the governed will for liberty and rule of the law (Majid Najm, 2016).

II. Basis of Legitimacy

Since legitimacy is attained through the constitutional principle of constructing and maintaining the state's legal and political regime, on the basis of which power is distributed through public institutions to achieve public fundamental rights, such legitimacy is attained through a number of basics, which the researcher will discuss in detail.

The constitution is a set of basic legal rules that define the state's basic regime, where the constitution establishes public authorities and determines their terms of reference, as well as regulating the relationship between the government and the governed. The Constitution also defines general rules that public authorities must follow (Mohamed Taha, 2014).

Some academics claim that the constitution's existence is required as one of the foundations of constitutional legitimacy, given that the constitution is derived through democracy and the election of a constituent assembly, followed by a vote on the constitution. Following that, the constitution is adopted as the foundation for constitutional legitimacy in order to establish essential state guarantees (Hassan, 2007).

It should be highlighted that respect for the constitution will not be attained unless the constitutional judiciary is established to oversee constitutional legislation, enforce the principle of constitutional legitimacy, and protect subordinates' fundamental constitutional rights (Majid Najm, 2016).

Each governmental authority's terms of reference and the validity of its acts are determined by the constitution. An act is illegal if it violates the constitution. As a result, the constitution's presence is needed in order to

achieve the principle of legitimacy as a basic guarantee of the state (Mohamed Taha, 2014).

b. Presenting the principle of the hierarchy of legal rules: Most of the jurisprudence has argued that legal rules are hierarchical, with constitutional laws at the top and regulations and instructions at the bottom. Furthermore, the legislature may not adopt a law if it violates the constitution, which is followed by regular legislation, i.e., laws issued by Parliament that must be obeyed by executive authorities. The administration's regulatory choices are followed by decisions and actions, which the State and the administration must follow. The principle of legitimacy is closely related to the constitution, which creates public agents and institutions, as well as the way they are constituted and their terms of reference. Any breach by an agency or institution renders it illegal, as do laws that violate the constitution. Such legislation preserves the principle of legitimacy (Mohammed Ali, 2012).

c. Separation of powers: It is a notion that says that ruling agencies and institutions should have distinct authority in order to prevent power absorption. This concept is based on a key characteristic of establishing the connection between public authorities, in which authority is distributed among three public bodies in order to achieve legitimacy as a fundamental guarantee of the State (Saeed, 2004).

The principle of legitimacy cannot be attained without embracing the concept of separation of powers, which demands the delegation of state functions to several public institutions in order to prevent a single body from wielding authority. Furthermore, political, judicial, and administrative monitoring can be accomplished across many public agencies. The Iraqi Constitution establishes the idea of separation of powers since it is so crucial (Mohamed Taha, 2014).

d. The presence of constitutional institutions: these institutions operate to protect a certain concept while also ensuring the source's independence. In the state, there are numerous constitutional institutions with specific powers outlined by the constitution, which archives legitimacy. The authorities establish legal norms to allocate authority to an individual or a group of individuals, or to an agency, and then lawfully identify legal jurisdictions so that those acting within the jurisdiction of these entities do so in a lawful and legal manner (Majid Najm, 2016).

a. Guarantees of the legitimacy of state authority

Most modern legal states have been forced to establish legitimate guarantees for the state in order to ensure proper adoption of constitutional rules

issued against public authority, so states have been forced to act with legitimate guarantees to prevent violations of the terms of reference or public laws as specified by the constitution.

In light of the foregoing, the researcher classified the topic into two categories, formal and informal guarantees.

i. Formal guarantees

State legislation and constitutions offer the essential safeguards to maintain state authority's legitimacy, ensuring that state agencies and public institutions are protected from deviation in order to attain legitimacy. Regulatory agencies also keep an eye on state authorities and public institutions to ensure that the constitution, laws, and regulations are obeyed.

Such guarantees include:

1. Political monitoring: The majority of nations control political monitoring through focused entities such as parliaments or independent bodies whose authority is to monitor the operation of the state to avoid deviation from the rule of law, as they frequently assure conformity to laws and constitutional provisions (Khalil, 2012).
2. The objective of monitoring is to know if ordinary legislation adheres to the constitution, in order to ensure that the legitimacy of the state's power is attained, and such monitoring is done by court via filing a case in the following manner:
    a. **Judicial monitoring through a direct case "abolition monitoring":** Individuals or some official bodies have the right to challenge a particular law if it is in violation of the constitution by bringing the case directly to the judiciary within a period of (60) days from the date the law was declared. Individuals or government agencies can challenge this type of monitoring directly if it violates constitutional provisions. For all, the sentence is regarded as an absolute argument. The Supreme Court and the Supreme Constitutional Court both participate in the monitoring process (sadae and Abdul Samad, 2016).

In the ordinary judicial system, the Supreme Court handles monitoring; however, under some constitutions, individuals can petition the Federal Supreme Court for the repeal of a law that is contrary to the constitution's provisions if there is a benefit to doing so. This abolition does not apply to federal laws, but only to laws enacted by state legislatures, not by the Federal Assembly. One of the most important constitutional legal guarantees is the Federal Supreme Court ((Majid Najm, 2016).

Monitoring by the Specialized Constitutional Court: This is done through a specialized court entrusted by the constitution to monitor the

constitutionality of laws, and this court is the only one with the authority to hear the original case of the law that violates the constitution. The court shall then repeal the law that violates the constitution, on which the court has the role of ensuring the legitimacy of state authority as well as providing individuals with fundamental rights (Khalil, 2012).

b. **Judicial monitoring through argument of unconstitutionality "abstinence monitoring":** This can be done by filing a case to consider not enforcing the law that violates the constitution, but not repealing it. Such monitoring is a defensive tactic for getting rid of a specific law without prejudice, such as bringing a case to court, whether civil, commercial, or administrative in nature. During the case's hearing, the plaintiff or defendant can argue that the law being applied is unconstitutional. The court then examines the law, and if it is found to be in violation of the constitution, the court will suspend it because it lacks the authority to amend or repeal it. Since the court did not repeal the law, but only suspended it, the ruling is limited to relative authenticity. This means that the law achieves the legitimate guarantees of the state's authority in order to prevent deviations of applying laws that violate the constitution (Sadae and Abdul Samad, 2016).

In terms of the procedure and its implications, this type of monitoring is unique. Such monitoring does not require a constitutional provision to exist, but it is the judge's responsibility to uphold the principle of the State's legitimacy. As a result, abstinence monitoring is not decided by a single court, but is available to all sorts of courts and can sustain the principle of state legitimacy. Furthermore, anyone can raise the issue of unconstitutionality at any point during the case, as long as there has been no earlier judgment in the same case (Khalil, 2012).

The Federal Supreme Court clearly plays a critical role in safeguarding the principle of legitimacy by establishing constitutional principles that ensure the protection of fundamental rights in the chamber of law and penalties, and as a result, the Federal Supreme Court practices the principle of legitimacy and incorporates powers in the State. If the legislative and executive branches of government go beyond their authority and pass laws that are in violation of the constitution, the Court will declare those laws and regulations unconstitutional. Otherwise, the state's legislative and executive authorities will be in violation of the concept of legitimacy if they do not follow the laws as written in their legislation and apply them in accordance with the constitution (Adnan, 2021).

Legislative Monitoring: The state legislature supervises the executive authority's activity through members of parliament who have direct contact with the government and have the capacity to suggest delay for the purpose of discussion. Furthermore, the parliament has the power to establish a commission of inquiry into a specific issue involving the executive authority's organs, as well as the power to withhold confidence in a ministry or one of its ministers, known as ministerial responsibility, in order to gain knowledge about the government's deviation from the state's legitimacy principle (Sadae and Abdul Samad, 2016).

The parliament has a variety of techniques available to check government deviations from the principle of state legitimacy, which needs an investigation. The purpose of such parliamentary investigations is to ensure that the government does not break the law. This would ensure the state's essential guarantees and improve the government's performance in the public interest. Parliament should take legislative action to remedy any deviations, either through parliamentary investigation or a full withdrawal of confidence of the government (Wadie, 2018).

Given the necessity of achieving state legitimacy and basic guarantees, as well as defending fundamental rights, most constitutions provide oversight of the legislature and executive authorities for any gaps in government operations that could have major political, economic, and social effects. As a result, the executive authority in financial, administrative, and political matters is restrained in the majority of international constitutions. Any divergence in these areas could jeopardize the state's legitimacy (Ilham and Muntaha, 2018).

Since the government always appears to be abiding by the principle of legitimacy and conceals its mistakes, the parliament's monitoring techniques on the executive authority turn it into a supervisory body for the government's actions. As a result, such monitoring approaches are critical for ensuring fundamental rights and establishing legitimacy. On the other hand, guaranteeing constitutional and legal oversight to ensure the state's authority, balancing legislative and executive power, and making the legislative authority the decision-maker, given that parliament is elected by the people according to the constitution (Wadie, 2018).

It should be noted that the executive authority has a significant level of control in the administration of state activities, as it implements the legislative regulations enacted by parliament and issues administrative decisions required for ministries and government departments to function. This would aid in obtaining the state's essential guarantees without

deviating from the principle of legitimacy in achieving state authority guarantees (Khalil, 2012).

It is concluded from the foregoing that parliament has the means of monitoring on the government through questioning, investigation, parliamentary inquiry, and recall. The Government can be monitored juridically by constitutional and legal rules in order to prevent deviation from legitimacy in the achievement of basic state guarantees. Moreover, parliament uses the powers to monitor the government according to the principle of legitimacy. The use of monitoring level depends on government violation of the constitutional rules, which are granted by the powers of the government according to the deviation of the principle of legitimacy. Parliamentary monitoring methods have a key role in granting legitimacy to the state and achieving basic guarantees. On the other hand, the parliament has the authority not to grant legitimacy to the state by putting forward a withdrawal of confidence from the government if it violated constitutional rules and legitimacy (Wadie, 2018).

ii. Informal guarantees

Formal legal guarantees monitor regulatory bodies as described by legal rules. There are other guarantees other than the formal guarantees which have a crucial role in maintaining guarantees of the legitimacy of state authority and protect fundamental rights of subordinates; such guarantees include:

Public Opinion: It is a collection of viewpoints that prevail in a certain society at a given moment, and these viewpoints would address a specific subject. Public opinion can be formed on its own, or as a result of an invitation to support a specific event or person, or as a result of a public group attempting to influence their activities directly towards a specific subject in society, which has an impact on the state's overall politics (Omar, 2017). It's worth noting that one of the most essential safeguards for legitimacy is public opinion, because the media reflects the views of individuals in society on all economic, social, and political concerns. Public opinion plays an important role in achieving the state's legitimate guarantees and how rulers obtain their authority, and it is substantially tied to the people's consent and support for the ruler through elections. One of the foundations of a ruler's authority is the legitimacy of his or her authority. The rulers' authority is dependent on the acts of the governed, which are determined through elections. It is a legal method of transferring power between rulers. As a result, individuals must assess the legitimacy of this authority in

order to defend the principle of legitimacy. Public opinion plays a significant function as one of the most critical safeguards for citizens' ability to evaluate rulers and maintain legitimacy (Omar, 2017).

Some scholars argue that monitoring public opinion is an important safeguard for individuals' fundamental rights, because public opinion reflects the will of the governed, and indeed public opinion is useless unless individuals have their fundamental rights, such as personal freedom, freedom of expression, freedom of assembly, freedom of the press, and freedom of the media. Opinion is the way by which political acts are triggered, and it serves as a check on a particular state at a given moment if it deviates from legitimacy and fails to achieve the state's basic guarantees and defend the governed fundamental rights (Maytham , 2018).

Individuals can express their opinions through tv channels, the internet, and social media platforms, which can be used to monitor rulers and the governed for their legitimate acts. This would put pressure on state policy to change and avoid deviations from the legitimacy of state authority, as well as share their views on how rulers exercise power and respond to individual and public opinion demands (Omar, 2017).

Political participation, on the other hand, refers to citizens' contributions to the political system, through which individuals can decide the type of activity that has an impact on government decision-making, such as election action, political pressure, and organizational activity. The process of political engagement and impact emphasizes such efforts. Individuals' political engagement can also be accomplished through their beliefs and opinions about authority and its practices, which can be an effective way for rulers to respect legitimacy and avoid deviation (May, 2005).

2. Civil society institutions: They are non-governmental organizations that work to defend human rights and freedoms and are not affiliated with the government. These institutions are distinguished by their independence, automatic organization, collective and voluntary action, and efforts to avoid the authorities' arbitrariness and despotism while preserving the State's legitimacy (Khalil, 2012).

Furthermore, the Iraqi legislator strengthens the role of civil society institutions in achieving legitimacy and legality of state authority as stated in Article 45 of the 2005 Iraqi Constitution, "the state should be keen to strengthen the role of civil society institutions, support, cultivate, and independence in line with peaceful means to achieve their legitimate objectives as regulated by law". Several civil society organizations are working to organize and activate people's roles in self-determination, particularly

when it comes to exposing people's fates to despotism. Injustice perpetrated by specific actors, as well as policies that have a direct impact on their life. These organizations work to keep the government from infringing on people's fundamental rights, and they urge that the government adhere to the principle of legitimacy and legality in order to protect political, economic, and social rights (Abbas, 2012).

Some researchers, on the other hand, claim that civil society institutions have a role to play in monitoring government authority and regulating individual behavior in society. Each association, institution, or organization establishes a set of rights and responsibilities that individuals and groups are required to follow as members, which directly affects individuals' economic, social, and political rights, thereby defending fundamental rights of individuals (Khalil, 2012).

As a result, civil society institutions must operate free of external and internal influences that obstruct their work and undermine their community role, and their practices must adhere to certain frameworks and appropriate transparency. The independence of civil society institutions from the government is not seen as a flaw, but rather as proof of state legality and constitutional validity, preventing affinities from exerting control over the state. Furthermore, constitutional provisions govern the interaction between the state and civil society. Civil society organizations play a key role in bolstering the legitimacy of the state and safeguarding citizens' fundamental rights (Abbas, 2012).

It should be noted that civil society is a product of state authority since the state can monitor society, and vice versa, therefore civil society institutions are the result of deciding state authorities because the state has the ability to overstep its bounds. Civil society institutions are the outcome of figuring out the relationship between society and the state authority, the monopoly of power, and the public society, which is intended to be a source of state legitimacy, rather than the decline, destruction, or instability of the state (Mona, 2005).

Furthermore, the role of civil society institutions is to support the principle of legitimacy and give basic assurances to the state by safeguarding people's fundamental rights and forcing governments to do so in order to avoid deviance from legitimacy. As a result, civil society institutions serve as a vital link between the state and citizens. These institutions exist to exert pressure on and monitor the government in order to ensure that individual rights are not violated. The provision and protection of basic human rights guarantees is not contingent on the existence of constitutional and judicial guarantees, but rather on the existence of civil society institutions that

work to defend human rights in a way that is effective and transparent to individuals, preserving the legitimacy of state authority (Amer, 2010).

II. The basis of the legitimacy of state authority

The legitimacy of state power stems from jurisprudence's theoretical foundations on which rulers exercise power; as a result, jurisprudence has become accustomed to identifying the basis of the legitimacy of power in several theories through which the principle of legitimacy can be described as a fundamental guarantee of the state.

Legitimacy, on the other hand, is determined by the sources that rulers rely on when applying the principle of legitimacy in order to achieve the State's essential guarantees and protect individuals' fundamental rights.

In light of the foregoing, the researcher organizes the study into two sections: the first is about religious and public source theories, and the second is about the sources of legitimacy of state authority.

The basis of the legitimacy of the authority of the state is represented by positive and Islamic law, in the positive law of the state with political authority, which is the presence of rulers who issue orders and clubs on behalf of the state and individuals in society, to abide by them by implementing orders issued by the state, whether positive or negative, considering that political power is the cornerstone for the state.

In the light of the above, the researcher divides the demand into two branches, the first section explains the theories of religious foundation, and the second chapter deals with the theories of the popular source of power.

1. Theories of religious source and public source

The sanctity of the ruler's power is conferred by this theory, and the sole basis for this authority is God, the Commander. This viewpoint described God's exclusive power, from which the ruler obtains legitimacy in order to realize the state's essential guarantees and offer fundamental rights to society's members.

So, the researcher divides his discussion into two parts: the first is about the ruler's divine right theory, and the second is about the indirect divine right.

i. Religious source theories

a. The direct divine right theory

This theory has a point of view in achieving the legitimacy and fundamental guarantees of the state, believing that the sole source of authority is God, not the people. Individuals have no right to hold the ruler responsible

for any act he has done while exercising his powers because God gave him the right to do so. As a result, the ruler can achieve the state's essential guarantees and defend the people's fundamental rights (Khalil, 2012).

Christ, on the other hand, created a different definition of religious legitimacy based on the theory that the source of authority is not the people, but God almighty, who is the absolute authority over all persons as their Creator, guide, and ruler over what is good. As a result, the ruler derives his rightful power from God Almighty and exercises it over members of society since God selected him to do so. As a result, the choice of the governed has no bearing on who their rulers are; rather, the divine self-picked them and entrusted them with exercising power (Mustafa, 2008).

As a result, the ruler is not responsible for his actions in front of the governed, but rather in front of God, who has chosen and assigned him, and the governed must obey these orders, because the king has clearly chosen the right to rule in a specific country for a specific period of time in order to regulate the principle of legitimacy in society through the issuance of orders that people must obey (Sabah, 2008).

As a result, the ruler has extensive and unrestricted authority in making judgments based on legitimacy and protecting people's fundamental rights, as well as providing essential State guarantees. The basis for the realization and preservation of legitimacy is this view promoted by jurisprudence and rulers.

b. The theory of indirect divine truth

The ruler is selected indirectly, rather than directly from God, as the theory of direct divine right suggests, so that if the ruler is chosen in this way, i.e., by the people in order to exercise this power, the ruler is chosen by the people. According to this belief, when the people choose a ruler, they are directed by divine care, and the ruler can thus exercise the legitimacy of the State's authority and provide basic human rights (Khalil, 2012).

This theory is founded on the concept that power comes from God, but that it is the people who choose the ruler, with God guiding them in their decision. Individuals and institutions in the state have the right to challenge the ruler and his conduct, and to hold him accountable even if he is incompetent, because he has a higher position than others and is delegated by God, hence God, not the governed, is the one who judges him (Sabah, 2008).

This belief expands the ruler's power because it is forbidden for the people to resist to the rulers' actions, even if they are dictatorial, because the ruler is under divine providence and has the powers of divine vengeance to punish the spoilers. This trend has been questioned in terms of the legitimacy

that rulers can obtain because it is illogical. This theory does not persist in religious societies or the modern world, which regards the state as something unique and independent of various religious beliefs (Mustafa, 2008). The ruler draws power indirectly from the people, who are ruled by divine care, or alternatively the ruler derives his authority from God but is unable to exert it without the approval of the Christian people and the Church, because these are Christian principles that he cannot disobey. As a result, the ruler gains legitimacy from the governed, which can subsequently be employed in society to maintain the legitimacy of power and safeguard individual fundamental rights. Therefore, the legitimacy of rulers was based on indirect divine right, as well as practicing legitimacy in accordance with religious beliefs and Church approval, according to this theory.

Section 2
Theories of the public source authority

According to these theories, the people are the source of power, and they can use it themselves or elect those who act on their behalf, and rulers only have legitimate authority if they are elected; otherwise, the government is illegitimate. As a result, the people have become the cornerstone and source of power or sovereignty legitimacy.

1. Theory of the sovereignty of the nation: Sovereignty has shifted from the ruler to the nation, with the will being the supreme power with which no one in the state can challenge. It is nothing more than the exercise of this sovereignty when the government makes sovereign decisions (Khalil, 2012).

Furthermore, sovereignty reflects the nation's collective will, including that of previous and succeeding generations. Because the nation is one unit, there is no sovereignty for the individual as long as the nation has sovereignty. As such, sovereignty cannot be divided, surrendered, or disposed of because it belongs to the nation. As a result, no single person or group of people may exercise sovereignty. Furthermore, the function of national sovereignty is to maintain the legitimacy of authority by exercising it (Samir, 2005).

Furthermore, a parliament member is seen as a representative of the entire nation, through which he can exert state authority legitimately. According to this theory, the nation's power is legitimate since it represents the will of the people with the knowledge and wealth. According to this theory, the nation will have authority and sovereignty, which will be exercised by its representatives in the nation's best interests. Because voting is a function

rather than a right, voters must exercise their right to vote so that the parliamentarian designated to participate in the enactment of laws is not unconstitutional and works to defend the people's fundamental rights. As a result, the ruler obtains legitimacy from the people through winning votes (Mustafa, 2008).

2. Theory of popular sovereignty: This theory supports the legitimacy of state authority by stating that sovereignty does not rest with the community as a whole, but with the people as a whole, and that sovereignty is granted to each individual in the community (Khalil, 2012).

This approach asserts that sovereignty believes in the individual rather than a moral person, and that election is a right rather than a function. As a result, everyone has the right to exercise their political rights. Since a parliament member represents his or her constituency and constituents, he or she should abide by it in accordance with the popular sovereignty principle. Furthermore, the people exercise legitimacy by satisfying the governing authority, which confers legitimacy and establishes it as a legal authority (Mustafa, 2008).

3. Socialism theory: This approach tries to grant sovereignty to the proletariat based on the society's economic and social situation. Since the state imposes its legitimacy according to this theory, it is thought that the proletariat, who represent the majority of society, are the most deserving class for the state's power and leadership. Based on such viewpoints, Marxism begins to provide the groundwork for establishing a foundation for the legitimacy of state authority (Khalil, 2012).

Additionally, democratic legitimacy is derived from the proletariat, which elects its representatives. The government lacks democratic legitimacy if it does not represent the proletariat. According to this theory, the proletariat, as the majority class in society that represents the government, plays the most important role in ensuring the legitimacy of power and protecting the fundamental rights of the proletariat in society. As a result, the proletariat is given power over the election of parliament members and the establishment of democratic legitimacy in society (Mustafa, 2008).

Marxism assumes that the state is a legal phenomenon that emerges from society's classes and works to achieve the basic guarantees of the state's legitimate authority through class conflicts, ending only with the proletariat's victory and control over all means of production, as well as the transfer of power to the working majority of society (Khalil, 2012).

4. Elite theory: There are two categories in this theory: the governing group, which consists of a few people, and the governed group.

According to this theory, the ruling group's legitimacy is based on its control of the economy's resources, and this group represents the society's elite, such as researchers, technicians, and managers. The industrial state's authority is exercised not only by those who own the means of production, but also by technicians. As a result, the people gained control of the government. In addition, this elite group wields the power to exercise legitimacy and protect individuals' fundamental rights (Mustafa, 2008).

III. Sources of legitimacy of the authority

There are several sources of power legitimacy; some are designated sources, such as the constitution and basic laws, while others are undesignated sources, such as judicial principles and constitutional custom, which are considered crucial for rulers in ensuring the legitimacy of state authority and protecting public fundamental rights.

As a result, the importance of such sources stems from their relevance to the judiciary and the pursuit of the principle of state authority legitimacy. It should be based on a set of criteria, so that a judge can assess its legitimacy by referring to the source and measuring it with instruments and provisions.

Based on the foregoing, the researcher divides the subject into two sections: the first focuses on the designated sources, and the second on the undesignated sources.

1- Designated sources

The constitutional document and the basic laws are two sources on which jurisprudence relies to ensure the state's constitutional legitimacy.

i. Constitutional document: It is the initial source of the constitutional judiciary, through which the plaintiff's text may be evaluated in light of the constitutional legitimacy concept. This document is issued by the constitutional legislator rather than the usual lawmaker, and it can be amended via specific processes. The constitution is at the top of the legislative pyramid since it lends legal status to other regulations. Furthermore, the state must try to maintain the validity of the power established by the constitutional legislator's document. Individuals' basic rights are promoted, and their relationship with the state is regulated, under this document (Mohamed Taha, 2014).

ii. Basic laws: a set of laws enacted by the legislature that govern the state's public authorities, their jurisdictions, and how they carry out their duties. Individual rights and freedoms are regulated, and the legitimacy of state authority is preserved. Such laws are either issued in response to a constitutional legislator's mandate or directly, such as laws governing the

composition of parliament and the voting process. They are issued by the legislature to assess the state's constitutional legitimacy (Abdul Ghani, 2002).

To summarize, the constitutional document and basic laws play a critical role in preserving the legitimacy of state authority and protecting the fundamental rights of individuals through the constitutional judiciary in ensuring constitutional legitimacy and achieving the state authority's fundamental guarantees.

2- Undesignated sources

There are undesignated sources to maintain the legitimacy of power and achieve basic guarantees of the state and protect fundamental rights of individuals. These sources are the principles of justice, and constitutional custom.

The principles of judiciary: judiciary is one of the most important foundations in maintaining the legitimacy of the authority by resolving claims and adjudicating disputes involving individuals and the state. The primary function of the judiciary is to protect individuals' fundamental rights (Mohamed Taha, 2014). The judge main function is resolve disputes through laws issued by the legislature. The judge has no right to amend laws, and he can interpret the laws in case there is doubt about a particular text. The interpretation process should be following the legally prescribed rules of interpretation (Mazen, 2008).

The judiciary is viewed as an undesignated source that can be used to preserve the legitimacy of state authority by establishing principles and rules, or by extracting information from courts in order to maintain the legitimacy of the authority and adherence to what is imposed by general principles of the courts (Mohamed Taha, 2014).

As a result, even if there is no legislative text, the judge must find a resolution for the case because he can rely on general principles that can be applied to the dispute to preserve the fundamental rights of individuals; otherwise, he will be counted against the preservation of the judgment's legitimacy (Abdul Baki and Zuhairm 1989).

In light of the foregoing, the constitutional judiciary plays a critical role in preserving the legitimacy of power, achieving fundamental guarantees, and ensuring individual rights and freedoms, and this becomes an argument for all in the absence of the text and its adoption as a criterion for measuring the principle of legitimacy.

The constitutional custom: it is a rule that is not sanctioned by the rules of state law but has been practiced for a long time by agencies of state power and administration., and it turns out to be a habit that must be

realized and bonded, and these are the two pillars of the custom (Hosni, 2003).

The first pillar of custom is the physical custom, which can be expressed as the conduct or work issued by a government agency, and this custom arises through the conduct of the public authority through the role of individuals in achieving the constitutional custom and must be repeated regularly to become binding. While the second pillar is the morality that sits inside individuals which have obligation on people to apply. It is obvious that the constitutional custom has a key role in maintaining the legitimacy of power through the constitutional custom that the judiciary and individuals are obliged to apply (Mohamed Taha, 2014).

To summarize, in the absence of a provision applicable to the dispute, the principles of the judiciary and constitutional custom play a critical role in maintaining the authority's legitimacy, and the judge will use designated sources to maintain the authority's legitimacy, achieve the state's basic guarantees, and protect the fundamental rights of individuals. The main concept is the preservation of state power legitimacy, in which the judge executes his duty by using general judicial principles and constitutional standards to maintain the foundations of power legitimacy and protect individual rights and freedoms.

CONCLUSION AND RECOMMENDATIONS

Following the completion of this study, the researcher came to the following findings and recommendations.

Findings

1. According to the findings, legitimacy is defined as power exercised by rulers in line with the will of the people, which entails gaining power with the permission of the majority of political people.
2. The researcher came to the conclusion that the legitimacy of the authority plays an important role in attaining the state's essential guarantees.
3. The principle of legitimacy is concerned with one aspect of sustaining power and accomplishing individual liberties and rights in society, as well as how rulers come to power.
4. The principle of legitimacy has four components: the existence of the constitution, the adoption of the principle of legal hierarchy, the inclu-

sion of the principle of separation of powers, and the existence of constitutional institutions, all of which play a role in establishing the foundations of power legitimacy.

5. The legitimacy of state authority is based on substantive law, which states that the state has considerable power and is separated into two parts: popular source theories and religious source theories.
6. The source of legitimacy differs from the source of obligation in that the source of constitutional legitimacy is the sovereignty of the people, because the people are the ultimate sovereign, and this sovereignty is exercised through the power of parliament members elected by popular vote. The commitment of the rulers and the governed to the provisions of the constitution as a basis for legitimacy is a feature of binding.

Recommendations

1. The researcher recommends that the constitutional legislator be tough on the assurances of the principle of legitimacy, because upholding this principle preserves the legal status more than any other legal regulations.
2. Strengthening parliament's independence from party influences by granting members of Parliament extensive flexibility to exercise their oversight and legitimate the government in a neutral and independent manner, as they are representatives of the people rather than a certain party.
3. The researcher suggests that the Iraqi legislator recognize that the judge should practice some kind of monitoring over constitutional legitimacy, as in the practice of administrative justice, because such monitoring is the highest level of justice and fairness, because constitutional texts deal with political bodies of the highest authority in the state, and deal with the primary sovereign, which is the people.

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