JUDICIAL INSTITUTE

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& The news of the Iraqi Judicial Institute

Editor - in - Chief
Judge: Jalil Adnan Khalaf
Director General of the Judicial Institute

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Email: j-inst@email.sjc.iq

Artificial Intelligence in the Iraqi Judicial Institute's Curriculum: An Early Step that Has Drawn UNESCO's Attention

UNESCO has announced the adoption by the Iraqi Judicial Institute of a course on Artificial Intelligence and Judicial Processes within its academic curriculum.

In a statement, the organization reported that "the Institute is approaching the conclusion of one of its most prominent advanced academic tracks, coinciding with the end of the current academic term for students of the Judicial Course (48) and the Public Prosecution Course (49)." It noted that "this academic term witnessed, for the first time, the teaching of the course 'Artificial Intelligence and Judicial Processes: the Legal, Criminal, and Ethical Framework,' as an unprecedented qualitative track at the level of Iraq." The statement added that "UNESCO Iraq clarified that this track constituted an integrated, applied educational journey addressing the roles played by artificial intelligence in supporting judicial systems, through a review of comparative international experiences and an analysis of models for employing AI technologies in courts and justice environments worldwide, with a focus on governing legal and criminal frameworks and the ethical safeguards for the use of these sensitive technologies." It further stated that "the program included an advanced practical component that enabled students to engage directly with leading AI applications used in judicial work, understand their legal challenges and potential risks, and explore future visions for their safe and responsible integration into the justice system," noting that "this achievement is recorded as the first of its kind in Iraq."

The Judicial Institute Organizes a Workshop on International Standards for the Protection of Refugees and the Iraqi Legal Framework

The Judicial Institute Organizes a Workshop on International Standards for the Protection of Refugees and the Iraqi Legal Framework

The Judicial Institute organized a training workshop on 30 December 2025 entitled "International Standards for the Protection of Refugees and the Iraqi Legal Framework Governing Asylum," in cooperation with the United Nations High Commissioner for Refugees and the Ministry of Interior, with the participation of students of Cohort (51). The workshop lectures were delivered by Asaad Al-Hello, Assistant Protection Officer at UNHCR, and Nazim Abdullah Ahmed, Brigadier General and Secretary of the Permanent Committee for Refugee Affairs at the Ministry of Interior.

The workshop addressed several themes, including:

- the international concept of refugee protection and its core standards,
- the Iraqi legal framework governing asylum matters,
- judicial applications related to refugee cases.

In this context, the Director General of the Judicial Institute, Jalil Adnan Khalaf, affirmed that "holding this workshop falls within the Institute's efforts to enable its students to gain comprehensive knowledge of international standards for the protection of refugees, understand the Iraqi legislation regulating asylum matters and its practical applications, and thereby enhance students' skills in following both international and national law and competently handling the cases arising therefrom."

Following Completion of the Qualification Course At the Judicial Institute

Forty Officers Take the Legal Oath before the President of the Baghdad/Rusafa Court of Appeal

Forty officers from the Ministry of Interior took the legal oath before the President of the Baghdad/Rusafa Court of Appeal, Imad Al-Jabiri, on the occasion of granting them the authority of investigating officers, following their completion of a three-month training course at the Judicial Institute.

The President of the Baghdad/Rusafa Court of Appeal emphasized that the work of an investigating officer is of utmost importance, noting that it constitutes the foundation of criminal cases and therefore requires precision and caution in the performance of duties.

For his part, the Director General of the Judicial Institute, Jalil Adnan Khalaf, stated that the Institute attaches great importance to qualification and training programs, particularly those related to conferring the status and authority of investigating officers, due to their pivotal role in ensuring the proper administration of criminal justice.

He stressed that the qualification course was designed on sound scientific and practical bases and supervised by an elite group of judges and specialists, contributing to the preparation of officers who possess legal competence and the professional capability required to perform their duties in accordance with the law.

It is worth noting that a specialized qualification course for Ministry of Interior officers was organized at the Judicial Institute and lasted three months, focusing on the legal and technical aspects necessary for granting them the authority of investigating officers.

The Opening Article (The Lead)

The Iraqi Judiciary A History of Steadfastness and a Renewed Covenant

As the Iraqi judiciary enters the new year 2026, beloved Iraq continues its journey amid formidable challenges and rapid transformations—challenges that have never been foreign to this ancient land, which has time and again risen from the heart of crises stronger and more resolute.

Iraq, with its civilizational and human heritage, and with the awareness and will of its people, has proven throughout its long history that adversity only deepens its resilience, and that sincere determination—grounded in the grace of Almighty Allah—is sufficient to overcome the most difficult circumstances and to shape the future.

At this pivotal moment in the nation's history, the Judicial Institute enters its fiftieth year—five decades of continuous contribution—during which it has stood as a rigorous academic beacon and a cornerstone in building the Iraqi judicial authority.

Throughout its distinguished path, the Institute has graduated successive generations of judges and members of the public prosecution, men and women alike, who have borne the message of justice with awareness and responsibility, contributing to the consolidation of the rule of law, the protection of rights, and the preservation of the dignity of the Iraqi individual.

The outcomes of the Judicial Institute are the direct fruit of the care of its parent institution, the Supreme Judicial Council, and of the close and supportive follow-up of His Excellency the President of the Supreme Judicial Council, who has accorded the Institute special attention by providing all means necessary to enable it to keep pace with contemporary developments—whether at the level of curricula, now strengthened by the inclusion of artificial intelligence, training methods, infrastructure, or a conscious openness to international judicial experiences. This reflects a firm conviction that building a strong judiciary begins with preparing competent judges—armed with knowledge and learning, committed to their noble mission, and capable of confronting the legal and human challenges imposed by a changing reality.

Within this context, the Judicial Institute has developed its curricula, programs, and administrative procedures in a manner that reflects an advanced vision aimed at graduating judges and public prosecutors who possess professional competence, ethical integrity, and the ability to grasp the spirit of the law and apply it with justice and independence.

As the Iraqi judicial family commemorates Iraqi Judiciary Day on the twenty-third of January of this year, it recalls a pivotal milestone in judicial history—the day on which the Iraqi judicial administration achieved full independence with the enactment of the Supreme Judicial Council Law No. (45) of 2017—remaining, as it has always been known, independent in decision, elevated in mission, and accountable only to the law and to conscience. This independence has not been a mere slogan, but a lived practice embodied by Iraq's judges over decades, and one they continue to entrench today during one of the most delicate phases the nation has experienced.

The Iraqi judiciary, through its devoted men and women who have dedicated themselves to serving justice and protecting the people, continues to fulfill its noble mission free from any influence or pressure, placing the interests of the nation and the citizen above all else. History will record the names of those who stood firm in their positions, safeguarded the prestige of the judiciary, and contributed to consolidating the state of law and institutions during this sensitive chapter of Iraq's history.

In closing, we extend our salute to the Iraqi judiciary on its auspicious anniversary, and we highly commend the efforts of all who have contributed—and continue to contribute—to supporting its path and independence. We ask Almighty God to protect Iraq and its people, to preserve the integrity and independence of its judiciary, and to grant the Judicial Institute continued success in its pioneering role of preparing the guardians of justice and the builders of the future.

Editor-in-Chief

The Judicial Institute Continues Its Field Supervision of Student Training at the Baghdad/Karkh and Rusafa Courts of Appeal

Within the framework of its educational and training plan aimed at strengthening the practical dimension of its students' preparation, the Judicial Institute continues its direct field supervision of the practical training programs conducted at the Baghdad/Karkh Court of Appeal and the Baghdad/Rusafa Court of Appeal. This approach is consistent with the Institute's mission to prepare qualified judicial cadres who combine theoretical knowledge with practical application.

As part of this plan, the Institute maintains a daily presence within judicial workplaces to monitor the progress of its students' practical training across various cohorts and to closely observe the nature of the tasks they perform within the courts, whether administrative or judicial. This contributes to refining their professional skills and enhancing their understanding of established judicial procedures.

In this context, the Director General of the Judicial Institute, Jalil Adnan Khalaf, stated that the objective of this continuous field presence is to ensure regular student attendance, monitor practical performance, and overcome any obstacles that may arise during the training period, thereby providing a supportive training environment that enhances the level of practical benefit for students.

He further explained that, upon the conclusion of each training course, the Institute conducts a "virtual court" as an important evaluative step, enabling students to simulate judicial procedures in a practical manner and to apply the expertise and knowledge acquired during their field training.

He concluded by emphasizing that the Institute has observed positive interaction and clear responsiveness from students and trainees, in addition to notable cooperation from supervising court staff. This has been reflected in the smooth workflow and the success of the training program in achieving its intended objectives.

The official in charge of the Scientific Affairs Unit within the academic affairs department at the Judicial Institute also clarified that training is conducted on a daily basis under the direction of the Director General of the Institute at the Karkh and Rusafa Courts of Appeal. He noted that the Institute's staff follow up on training from all aspects, including administrative and practical dimensions, in a manner that fulfills the objectives set for each training course.

The Legal Digital Divide: The Vision and Its Counterpart in the Field of Digital Justice

Judge / Nasser Imran

The concept of the digital divide did not emerge solely from the contemporary digital moment that has propelled applications of artificial intelligence, even though its terminological boundaries continue to expand in their cognitive scope as the digital increasingly encroaches upon lived reality. In its linguistic connotations, a "divide" denotes the gap separating two things, essences, or epistemic meanings, in both their material and immaterial dimensions.

The term digital divide initially appeared in conjunction with the information revolution that laid the foundations for development in advanced states and societies, enabling them to access new sources of information and knowledge and to exploit such access for informational advancement, in contrast to other states. Generally associated with the discourse of informational development, the digital divide came to signify the cognitive gap between developed and developing countries. At the time of its emergence, it generated practical solutions to the challenges inherent in the knowledge society with its expanding horizons—solutions that could only be achieved through mobilizing innovative minds and marshaling all capacities to reach more optimal spaces and distances.

The legal digital divide, as one manifestation of the digital divide in the field of law and the judiciary, is not merely a technical space produced by the contemporary digital moment within the legal domain. Rather, it constitutes a constitutional vision that focuses on the very origin and essence of rights in the field of justice. This necessitates a balanced alignment between the democratic transformation experienced by Iraq—reflected in both legal and judicial dimensions—and the rapid technical digital transformation permeating administrative and judicial workflows, in step with the major technological revolution witnessed globally. It also requires the pursuit of solutions that contribute to creating a legal digital environment by addressing legislative and regulatory rigidity. In the absence of an enabling legislative environment that allows effective and balanced participation in development, regulatory frameworks and legislation remain misaligned with the requirements of the current technical-knowledge landscape and economic demands.

As technologies advance, they draw closer to human life—being oriented toward the human as their ultimate objective—and extend their intervention into everyday affairs and personal circumstances. This reality calls for essential prerequisites for reception and investment. Foremost among these is diagnosing the legal digital divide, which appears clearly between one judicial system and another, and emerges with greater acuity in states that have undergone democratic transformation. This divide constitutes a structural problem that affects the efficiency and quality of justice.

This can be clarified as follows:

The Concept of the Legal Digital Divide

It refers to disparities in the capacity to produce, use, and regulate digital technologies within the judicial system, whether at the level of legislation, technical infrastructure, judicial personnel, or mechanisms for equitable access to digital litigation.

Examining conceptual definitions of the legal digital divide requires identifying the causes of its widening following democratic transformation. Foremost among these is the legal legacy of the former regime, which continues to cast its shadow over the legislative system and across various sectors of Iraqi public life. The persistence of traditional legislation incapable of addressing digital procedures, alongside the absence of legal regulation for digital evidence and its probative value, has created this digital gap and deepened the shortcomings of the legislative and regulatory framework governing legal relations and administrative structures, in the absence of a comprehensive set of integrated laws.

Addressing this situation necessitates identifying the legal digital divide and establishing regulatory legal mechanisms for electronic litigation, the protection of judicial data, and cybersecurity issues affecting judicial institutions. It also requires reconciling conflicts between traditional legal texts and the requirements of the digital environment, in addition to addressing social and technical disparities.

As for the manifestations of the digital divide within the judiciary, they appear in the slow resolution of cases despite the availability of relevant technologies, the lack of unified electronic systems across courts, weak digital documentation of judicial procedures, and limited application of the principle of digital judicial transparency. These challenges call for a gradual legislative reform that explicitly recognizes digital litigation and is grounded in the development of a national strategy for digital justice.

The Impact of the Presence of a Public Prosecution Member before Civil Courts In Light of the Decisions of the Federal Court of Cassation / Appellate Panel No. (296/2023) and No. (3652/2024)

The two cassation decisions numbered (296/2023) and (3652/2024) constitute precise models of how the cassation judiciary addresses the obligation of a public prosecution member to attend proceedings before civil courts, and the extent to which such attendance is connected to procedural regularity and the validity of the court's formation. They also clarify the effect of failure in this regard within the scope of appeals filed in the interest of the law. Upon close examination of the two decisions, it becomes clear that the Federal Court of Cassation did not adopt contradictory positions. Rather, it drew a distinction between the duty of invitation and notification on the one hand, and the condition for the valid convening of the civil court on the other, in a manner consistent with the provisions and legislative objectives of the Public Prosecution Law.

By Student: Faisal Iyad Jaafar – Cohort (49)

First: Cassation Decision No. (296/2023) – The Effect of Failing to Invite a Public Prosecution Member

In this decision, the Federal Court of Cassation held that a civil court's failure to invite a public prosecution member to attend a case in which the State is a party constitutes a legally effective violation. The Court considered that such an omission amounts to a breach of the law that may prejudice public funds and, consequently, undermines a fundamental supervisory safeguard conferred by law upon the Public Prosecution. This, in turn, constitutes a legitimate ground for accepting an appeal in the interest of the law, pursuant to Article (7/Second) of the in-force Public Prosecution Law.

This characterization is grounded in Article (5/Sixth) of the Public Prosecution Law, which requires civil courts to notify and invite a public prosecution member whenever the State is a party to the dispute, given the Public Prosecution's supervisory role in protecting public funds. Under this understanding, the omission is materially influential in the proceedings because it deprives the court of the opinion that the Public Prosecution is required to submit and deprives the State of a legal safeguard expressly established by the legislator. Accordingly, the rationale of Decision No. (296/2023) does not pertain to the court's composition as such, but rather to the breach of a mandatory procedural requirement whose disregard may harm public funds.

Second: Cassation Decision No. (3652/2024) – The Presence of a Public Prosecution Member Is Not a Condition for the Court's Valid Convening

In this decision, the Federal Court of Cassation affirmed that the actual absence of a public prosecution member from civil court hearings does not render the court's formation unlawful, nor does it entail nullity of its procedures, so long as the law does not require the presence of the Public Prosecution as a condition for the convening of civil courts. This stands in contrast to what is expressly provided with respect to criminal courts and juvenile courts under Article (8) of the Public Prosecution Law.

Consequently, the absence of a public prosecution member—despite the obligation to invite him—does not rise to the level of nullity and does not render the judicial decision defective with respect to the legality of the court's formation. For this reason, the Court did not consider such absence to constitute a "breach of the law" affecting public funds in a manner that would justify acceptance of an appeal in the interest of the law. What the Court rejected in this decision, therefore, was the contention that civil courts are improperly convened or invalidly constituted merely due to the non-attendance of the Public Prosecution.

Conclusion

From the foregoing, it may be concluded that there is no contradiction between the two decisions. On the contrary, each applies the rules of the Public Prosecution Law within a distinct scope. Decision No. (296/2023) addresses the court's duty to invite a public prosecution member and regards failure to fulfill this duty as a legally consequential error because it affects public funds, thereby permitting an appeal in the interest of the law. Decision No. (3652/2024), by contrast, addresses the effect of the public prosecution member's actual absence and determines that such absence does not impair the validity of the civil court's formation, since the law does not make attendance a condition for convening.

Any contrary interpretation would lead to a serious result—namely, that inviting the Public Prosecution before civil courts is unnecessary in principle—which would contradict Article (5/Sixth) of the Public Prosecution Law and suspend a mandatory legislative provision. It would also conflict with the directive of the Supreme Judicial Council / Office of the President of the Council, No. (34/Office/2024) dated 7 January 2024, addressed to Courts of First Instance and Appellate Panels, which mandates the notification of Public Prosecution departments in cases where the State is a party.

What I Learned from Practical Training ? – 1

Legal Writing Etiquette
The Art of Drafting the Public Prosecution's Argument Before the Judiciary

Student: Marwa Hassan Laibi
Class (51)

The nature of the work of a member of the Public Prosecution, and its close connection to the humanitarian, ethical, and social dimensions of law, requires that such a member be well-versed in several sciences and arts in addition to law, including sociology, psychology, logic, and language, in order to crystallize their opinion, support their argument, and ensure that their pleading or submission is distinguished from that of the defense counsel and from the judge's ruling. This stems from the Public Prosecution's role in representing truth and legality, and from the importance of the duties entrusted to it, which obligate the prosecutor to be a vigilant overseer endowed with discernment that qualifies them to guard and safeguard the rights of God and of people. This also necessitates observance of legal etiquette in writing, to enhance and build the persuasive force of the pleading, while adhering to clarity, precision, objectivity, simplicity of wording, and logical and causal coherence of facts. Such work requires literary-legal skill manifested in presentation and influence, and a fusion of literary and legal language to produce submissions that carry the strength of legal logic and literary sensibility, revealing a rare linguistic and intellectual flexibility, with an awareness of when a word must be decisive and admit no hesitation, and when it must remain open to contemplation and depth. Observing legal etiquette when drafting pleadings and submissions is justified, as they constitute part of the construction of judicial rulings and the formation of the court's objective and supreme conviction. They also form part of the legacy and heritage of the Public Prosecution apparatus in particular, and of the judiciary in general. Indeed, some submissions may guide the legislator toward enacting a law, repealing it, challenging its constitutionality, or interpreting it. In this regard, the esteemed Court of Cassation, by its decision No. (20142/Criminal Panel/2025), overturned the decision of the Karkh Felony Court / H1, based on the appeal submitted by the Public Prosecutor under No. 45 dated 2025/7/6, and ruled as follows:

"Law No. 8 of 1988 on Combating Prostitution and Sexual Deviance, as amended by Law No. 15 of 2024, intended by the term 'prostitution' the repeated commission of adultery with more than one person, for remuneration or without remuneration. It did not specify what is meant by the term 'adultery'. Upon referring to the provisions of Article (8) of the same law, it was found that it referred to the application of the general provisions of the Penal Code only, such as recidivism, participation, multiplicity of crimes, or criminal conspiracy, when applying the provisions of the Law on Combating Prostitution and Sexual Deviance, without applying the special rules relating to crimes, including crimes that affect the family, specifically the crime of marital adultery, for which the legislator provided special provisions that differ from the provisions and expressions set out in the Law on Combating Prostitution and Sexual Deviance. In the absence of a clear text defining what is meant by the term 'adultery' as used in the latter law, and given that Article (2) of the effective Iraqi Constitution considers Islam to be a fundamental source of legislation and prohibits the enactment of any law that contradicts the established principles of Islam, the intended meaning of 'adultery' in the Law on Combating Prostitution and Sexual Deviance is full sexual intercourse between a man and a woman not bound by a lawful marriage contract. This interpretation also aligns with the explanatory reasons relied upon by the legislator when amending the provisions of the Law on Combating Prostitution and Sexual Deviance, without distinguishing between male and female perpetrators of the crime of prostitution. Since the facts of the case and the evidence presented therein, referred to above, were sufficient to prove that the accused committed that prohibited relationship, and since the Felony Court issued its challenged decision without observing this, it was decided to overturn it and to remand the case for retrial, pursuant to the provisions of Articles 8-259/1 of the Code of Criminal Procedure. The decision was issued unanimously."

Observance of formal and substantive rules, as well as legal and literary language, when writing and expressing an opinion may not suffice if the manner of delivery or expression of that opinion is improper; there exists a complementary relationship between writing, expression, and a deep understanding of the law.

Mubāraʾah Divorce

In a Decision of the Rusafa Personal Status Court

By Student: Mohammed Khalid – Cohort (50)

The Iraqi Personal Status Law No. 188 of 1959, as amended, does not expressly refer to this type of divorce. Nevertheless, the judiciary—specifically the Rusafa Personal Status Court—has applied mubāraʾah divorce in its Decision No. 876/Sh/2025 dated 5 June 2025. In doing so, the Court relied on Article One, paragraph (2) of the Personal Status Law, which provides that where no applicable statutory provision exists, judgment shall be rendered in accordance with the principles of Islamic Sharia most compatible with the provisions of this Law.

By reference to Islamic jurisprudence, this form of divorce is found in a narration attributed to Imam Ali (peace be upon him), who said: "If discord arises from both the man and the woman, each comes to dislike the other and seeks separation, the woman releases the husband from what is owed to him, and the man releases the woman from what he had given her as dowry; they then separate on that basis." Accordingly, mubāraʾah—with the hamzah—or mubārāt—with the alif—is a divorce that occurs due to mutual aversion between the spouses and takes effect as an irrevocable divorce. It is akin to khulʿ in that the husband has no right of return unless the wife retracts the consideration before the expiry of the waiting period (ʿiddah). It differs from khulʿ, however, in that aversion in khulʿ originates from the wife alone, whereas in mubāraʾah the aversion is mutual.

This was established by the Court through its investigations, stating: "This Court finds that the circumstances presented in the case, and the parties' agreement on the formula of divorce based on mutual aversion of both the wife and the husband, bring this divorce under the heading of mubāraʾah divorce."

Mubāraʾah is subject to several conditions, including the offering of consideration (badhl), which must be less than the wife's dowry. It is also required that it be effected using its specific Sharia-prescribed formula, namely the term "bāraʾt." According to the Jaʿfari school—by obligatory precaution—this must be followed by the explicit divorce formula; thus, it is insufficient for the husband to say, "I have entered into mubāraʾah with my wife for such-and-such," unless followed by "You are divorced." In other schools of jurisprudence, the mere utterance of the term mubāraʾah suffices, as it is considered among the expressions of khulʿ.

The Court adopted the former view and recorded the formula in its decision as follows: "The formula of the said divorce shall be the wife saying to the husband: 'I have offered you[the consideration], my husband,' to which the husband responds: 'I have entered into mubāraʾah with you; you are divorced for what you have offered.'"

It is also noteworthy that the Court did not award attorneys' fees, reasoning that "there is no losing party in the case," since the divorce occurred through the wife's release of the husband from her rights in exchange for his releasing her and divorcing her on that condition.

In celebration of Iraqi Judiciary Day, and on the occasion of the ninth anniversary of this event—which has become an annual tradition affirming the role of the judiciary in state-building and the consolidation of the rule of law—the Judicial Institute continues to fulfill its scientific and professional mission in preparing and qualifying judges and instilling the values of integrity, independence, and responsibility within them. Through its training programs and academic activities, the Institute has played a pivotal role in supplying the Iraqi judiciary with competent cadres capable of fulfilling the duties of justice and serving society.

Through the Institute's newspaper, as its official voice and media mirror, this contribution accompanies the celebration of Iraqi Judiciary Day, documents aspects of this journey, and highlights the efforts made to preserve the dignity of the judiciary and promote legal culture within society. In this special file, we present a concise overview of pivotal milestones in the history of the Iraqi judiciary, approaching the most significant transformations witnessed by the judicial institution and the accompanying legislative and institutional developments, in the belief that recalling this journey is a necessary step toward understanding the present of the judiciary and building a clearer vision for its future.

Prepared and Documented by:Ali Fadhil Al-Badrawi / Judicial Institute – Public Relations and Media Division

The judicial institution in Iraq commemorates "Iraqi Judiciary Day" on the twenty-third of January each year, a date associated with a significant historical turning point in the course of judicial independence and the consolidation of its constitutional status.

On this day in 2017, the steps toward the institutional independence of the judiciary were completed with the issuance of Law of the Supreme Judicial Council No. (45) of 2017, which repealed Administrative Order No. (35) issued by the occupying authority and reconstituted the Council as a national, independent judicial body subject to Iraqi law and the will of its constitutional institutions. This transformation marked a decisive milestone affirming the independence of the judiciary from any guardianship or external administration, making this date an annual tradition celebrating a major national achievement.

The significance of this day is not confined to the past two decades but extends to a long trajectory of historical development of the judiciary on Iraqi soil—from the Sumerian, Babylonian, and Assyrian civilizations that laid down the earliest written laws of humanity, through the Islamic and Ottoman eras, then the British Mandate period, and finally the establishment of the modern Iraqi state and the crystallization of its judicial institutions.

In the current year (2026), the eighth anniversary of Iraqi Judiciary Day is observed—an occasion on which the President of the Supreme Judicial Council, Judge Dr. Faiq Zaidan, affirms that this day "embodies a constitutional and legal achievement in the course of the Iraqi judiciary," while the judicial institution continues to carry out its mission in serving society, protecting rights and freedoms, preserving public order, and consolidating the foundations of the democratic state.

Celebrating Judiciary Day is not merely a ceremonial event; rather, it is a moment to recall the judiciary's pivotal role in building a state of institutions, reinforcing the rule of law, safeguarding human dignity, and establishing justice and equality for all without discrimination. Judicial independence remains the fundamental pillar of any stable democratic system.

Based on a deep conviction in the scientific and training role of the Judicial Institute—which for five decades has supplied the judicial family with qualified personnel—the editorial board of its official newspaper has chosen to present to the reader a brief historical panorama of the development of the Iraqi judiciary, in loyalty to this day, pride in the judiciary's past and present, and anticipation of its future.

Judicial Organization in Mesopotamian Civilization

Ancient legislation in Mesopotamia—represented by the Code of Hammurabi—paid exceptional attention to pregnant women and punished anyone who caused a miscarriage, with the penalty varying according to the social status of the woman. The Code also prescribed the death penalty for anyone whose act caused a miscarriage resulting in the woman's death. Assyrian law likewise punished any woman who attempted to abort herself and anyone who assisted her.

Islam prohibited the taking of life except where justified, and prohibited abortion as it constitutes the killing of an innocent soul. Modern criminal legislation, however, varies greatly in its stance on criminalizing or permitting abortion. Some states criminalize abortion whether it is performed with or without the consent of the pregnant woman, and whether the pregnancy results from a lawful relationship or from adultery, rape, or any unlawful relationship. Others permit abortion partially, or apply mitigating or aggravating circumstances depending on the details of each case.

The right to life is protected by the constitution, and any infringement upon it is criminalized under homicide statutes. However, from the perspective of criminal law, life does not begin legally until birth. The fetus is not considered a living human being under the law because it cannot directly receive external effects; it does not possess an independent existence or independent life, but lives mediately through its mother. It is not affected by external acts unless the mother's body is affected first. Its safety is therefore tied to the safety of its mother.

Accordingly, ending the life of a fetus is not considered homicide, nor does it fall under the provisions oth cases is the fetus in the mother's womb. We further propose, in order to address the rising number of abortion cases, that the law penalize incitement to miscarriage and punish anyone who directs, encourages, or assists in such procedures, by reference to Articles 48 ,47, and 49 of the Penal Code. We also call upon the Iraqi legislator to increase the penalty for intentionally assaulting a pregnant woman by beating, violence, administering a harmful substance, or any act contrary to the law, with knowledge of her pregnancy and without intending to cause abortion, as the penalty prescribed in Article 419 is not appropriate for the seriousness of the offense. We likewise urge the legislator to establish a specific provision criminalizing negligent causation of abortion, by adding the following paragraph to the end of Article 419 of the Iraqi Penal Code: "The penalty shall be imprisonment for up to three years if the perpetrator, through negligence, recklessness, inattentiveness, lack of caution, or failure to observe laws, regulations, or instructions, causes her to miscarry."

Protection of the Fetus Between Statute and

The Reforms of Urukagina

Urukagina was one of the kings of the First Dynasty of Lagash and the author of the greatest economic and social reform known to date. These reforms date back to 2355 BCE and were discovered in the city of Lagash in 1878. They were first translated by the French scholar Thureau-Dangin.

It became evident that this noble king put an end to the injustices that had prevailed during that period, restored justice and freedom to the citizens, and removed oppression and exploitation from them. Urukagina led the first social uprising in world history, during which the word "freedom" (amargi) appeared for the first time in a written document. He worked to reduce the taxes imposed on the people, prevented tax collectors and thieves from oppressing the weak, and pledged that:

"He would not allow the orphan to fall prey to the injustice of the powerful."

He removed injustice, spread justice among the classes of society, and put an end to senior officials extorting the wealth of the general population.

This document is considered the first humanitarian law to call for human rights and freedom for the first time in human history. It is mentioned in this document that Urukagina codified laws that provided the people with freedom and justice. These laws themselves have not yet been discovered; however, Hammurabi benefited from them when drafting his famous code.

This document occupies a pioneering position in human history due to its antiquity and precedence. The codification of these reforms and legislations came after the ruler who preceded him (Lugalanda) and his wife went to excess in expanding their wealth and oppressing the people of Lagash. The People's Assembly apparently decided to depose him and appoint Enmetena, who began his reign with these reforms. This represents the first law to demand human rights and freedom in history.

Urukagina restored the freedom of citizens who had suffered numerous injustices. He removed the harbor master from supervising ships, removed the overseer of cattle from supervising large and small livestock, abolished the position of fish inspector, and eliminated the silver levy imposed on the shearing of white sheep's wool. If a man divorced his wife, neither the ensí (the ruler) nor his minister was entitled to collect a fee. If a perfumer prepared a type of ointment, neither the ruler, his minister, nor the palace overseer was entitled to take any fee from him. If a deceased person was to be

buried in the cemetery, the amount of money collected by officials from the deceased's family became less than what had previously been taken, and in some cases less than half. Temple properties became protected and held in high regard, and there was no longer a tax collector traveling from one end of the land to the other.

In conclusion, this historical presentation shows that the reforms of Urukagina constitute the first indication of the beginning of the era of humanitarian legislation. It is still unknown whether these reforms were codified in the form of a comprehensive legal code.

His social reforms went even further. He enacted a law or custom that stipulated the stoning of a woman if she married more than one man, as there is an indication that women were able to marry more than one man prior to his era. This means that he regulated the family and limited its fragmentation and potential disintegration. It suffices to mention finally that the word "freedom" (amargi) appeared in his reforms, and it was not unrestrained or chaotic freedom, but rather "freedom within the limits of the law," as noted by Samuel Noah Kramer.

The Code of Eshnunna

The Code of Eshnunna, or the Code of Bilalama, dating to approximately 1930 BCE, predates the Code of Hammurabi by about half a century. Bilalama was a king of the Kingdom of Eshnunna. The Code of Eshnunna was found on two clay tablets during archaeological excavations at Tell Harmal by the archaeologist Taha Baqir.

Archaeologists have discovered only sixty-one articles of this code. A study of these articles shows that the legislator paid attention to several social issues, including setting a minimum wage for workers, pricing certain goods, and dividing society into classes. These laws contain the first reference to the division of ancient Iraqi society into three classes: free persons, mushkenum, and slaves.

These clay tablets containing the law were discovered in 1945 in the Tell Harmal area (near Baghdad Al-Jadida in Baghdad).

The legal provisions found at Tell Harmal include various rulings on theft, assault, debts, personal status, wages, prices, buying and selling, and other legal matters. Historian and archaeologist Taha Baqir stated in his research on the law of the Kingdom of Eshnunna uncovered at Tell Harmal that:

"The law of the Kingdom of Eshnunna discovered at Tell Harmal is the oldest codified law that has reached us from ancient Iraq. Until recently, the Code of Hammurabi was considered the oldest law in human history, but this view changed after the discovery of parts of a Sumerian law dating back to King Lipit-Ishtar. Since the law discovered at Tell Harmal predates Hammurabi by approximately two centuries, it is therefore the oldest law uncovered by research to date."

Through the texts of the Code of Eshnunna, many articles were found that began to describe certain crimes and prescribe penalties for them, and it became clear that some societal concepts—such as the concept of property—had emerged through these texts. The Code of Eshnunna addressed crimes and set penalties for them, like most ancient legislations, through specifically defined crimes. The text speaks of a crime under particular circumstances and events and assigns a penalty to it, making the provisions limited in scope. Legislations at that time did not yet recognize general definitions of crimes linked to penalties.

The Code of Eshnunna distinguished social classes and reinforced the idea of class differentiation into three classes:

- Free persons, or the upper class, referred to in the code as awīlum or mār awīlim
- Slaves
- The middle class, referred to as mushkenum

Slaves were considered the property of their masters, and compensation for harm to them was treated similarly to compensation for damage to animals or other property.

The Code of Ur-Nammu

The Code of Ur-Nammu is the oldest written law discovered in history to date, predating the Code of Hammurabi by three centuries. Hammurabi's legislation dates to the eighteenth century BCE, while the Code of Ur-Nammu dates to the twenty-first century BCE and emerged in Iraq. It is named after the Sumerian king Ur-Nammu, who enacted it and also founded the Third Dynasty of Ur.

King Ur-Nammu assumed rule after overthrowing the Sumerian king Utu-hegal, establishing a new Sumerian dynasty. Ur-Nammu ruled for 17 years, between 2112 and 2095 BCE.

The first version of this law, inscribed on clay tablets, remained buried under sand until parts of it were discovered by chance. The initial discovery consisted of two fragments found in Nippur, located in the Middle Euphrates region of Al-Qadisiyah Governorate. Samuel Kramer, an American expert in Sumerian history, translated them in 1952. These tablets are now preserved in the Istanbul Archaeological Museum. Due to their poor condition prior to discovery, only the introduction and five laws could initially be translated. Later, additional tablets were discovered near the archaeological site of Ur, translated in 1965, allowing for the reconstruction of approximately 31 laws out of an original 57, though another version found in Sippar showed minor differences.

The Code of Ur-Nammu was written in the Sumerian language and consists of an introduction praising the king and affirming his divine mandate to rule. It highlights his achievements in establishing justice, suppressing injustice, and eliminating economic corruption, such as theft of fields, sheep, and livestock. It also regulated monthly temple expenditures to prevent fraud, waste, and theft.

The code emphasized equality, the protection of the weak, and safeguarding their rights. The king affirmed that the orphan would no longer be delivered to the rich man, nor the man of one shekel to the man of one mina, and he established a system for standardizing weights and measures.

As for the substantive provisions of the Code of Ur-Nammu, it originally comprised 57 articles, of which only 31 have survived. The remaining tablets were found in a severely eroded condition. The surviving articles addressed social issues such as divorce and imposed penalties for criminal matters including murder, theft, adultery, and rape.

The Code of Hammurabi

The Code of Hammurabi is considered one of the most important legislative compilations of Mesopotamian civilizations. It is attributed to the Babylonian king Hammurabi (reigned approximately 1750–1792 BCE). Its provisions were collected and inscribed on a large stele made of diorite, later discovered in the city of Susa (modern-day Iran). The code contains approximately 282 articles, arranged by subject matter. The code consists of three main parts:

- The Introduction, which highlights the king's role as the guardian of justice and order
- The Legal Text, which includes provisions regulating relations between individuals and the state
- The Conclusion, which emphasizes respect for the law and symbolic punishments for those who tamper with it

The code also emphasizes:

- Protection of vulnerable groups, such as orphans and widows, and regulation of state and authority responsibilities toward them
- Codification and public promulgation of rules, as the existence of written and publicly declared law was an important step in limiting arbitrariness and establishing trust in the judiciary

Milestones in the History of the Iraqi Judiciary: From the Roots of Civilization to the Modern State

With the dawn of Islam around 600 CE, humanity witnessed a qualitative shift in legal thought, as Islam established justice as the foundation of governance. The Prophet Muhammad (peace and blessings be upon him and his household) was the first to personally assume judicial authority. The judicial system then evolved until the appointment of the first judge in Islam, Salman ibn Rabi'a al-Bahili, in Kufa.

With the rise of the Abbasid State, Baghdad—the heart of Iraq—became its capital and the center of the world. During the Abbasid era, the judiciary emerged as one of the strongest institutions of the state, as it was entrusted with upholding justice and protecting rights within a vast and diverse empire. With the founding of Baghdad, the judiciary became more organized and institutionally linked to the Caliph, while judges retained a degree of independence in issuing rulings. Judicial practice relied on Islamic Sharia (the Qur'an and the Sunnah), followed by ijtihad and qiyas. The flourishing of knowledge and jurisprudence during this era contributed to the unification of legal principles and the codification of rulings. One of the most significant developments was the establishment of the office of Chief Justice (Qadi al-Qudat) in Baghdad, responsible for supervising judges in the provinces and regulating their affairs.

Judicial functions diversified to include adjudication of disputes among the people, hisbah cases, and grievance courts (mazalim) aimed at lifting injustice from the populace. Despite occasional political influence, many judges remained exemplars of integrity and justice, which helped entrench the authority of the judiciary and the rule of law during the Abbasid era. This period lasted until 1258 CE, when Iraq was subjected to the brutal Mongol invasion, whose consequences included successive occupations, culminating in the Ottoman occupation in 1638. During the Ottoman period, Iraq was divided into three provinces: Baghdad, Mosul, and Basra. In this era, the state adjudicated in accordance with Islamic Sharia, and judges serving in the courts were appointed by the Ottoman Sultan through official decrees and could only be dismissed by him.

In 1850, the Grand Council was established in Baghdad in implementation of the provisions of the Hatt-i Sharif of Gülhane. This was considered the first step toward accepting the concept of modern legal administration, separation of powers, and popular participation in governance. In the same year, the Commercial Code, consisting of 315 articles, was promulgated and is regarded as one of the earliest statutory laws in the Ottoman State.

The Hatt-i Humayun of 1856 followed, completing the phase of reforms by providing for the reorganization of courts and the establishment of mixed courts to hear criminal and commercial cases involving both Muslims and non-Muslims alike.

In 1859, the Ottoman Penal Code was issued, most of whose provisions were derived from the French Penal Code of 1810. This constituted the first positive criminal legislation known in Iraq and remained in force for many decades.

Midhat Pasha and His Role in Judicial Reform

When Midhat Pasha assumed the governorship of Iraq in 1869, a new phase of administrative and legal reform began. During his tenure, the Majalla al-Ahkam al-Adliyya was issued in 1869, representing the first official codification of jurisprudential rulings in the form of statutory legal articles. It consisted of an introduction and four sections comprising 1,851 articles, with its sixth book devoted to the judiciary.

The Majalla functioned as the civil code of the Ottoman State—and subsequently of Iraq—since no unified civil law had existed before it. Courts had previously relied on Hanafi jurisprudence and the diverse opinions of its scholars, leading to inconsistency in judicial rulings. The Majalla thus unified legal principles and laid the foundation for the codification movement in the modern Islamic world.

Midhat Pasha also began implementing the Ottoman Land Code in Iraq as part of efforts to reform the feudal and tribal system. He sought to transfer state-owned lands to actual cultivators, encouraging agricultural stability and bringing tribal structures under state authority.

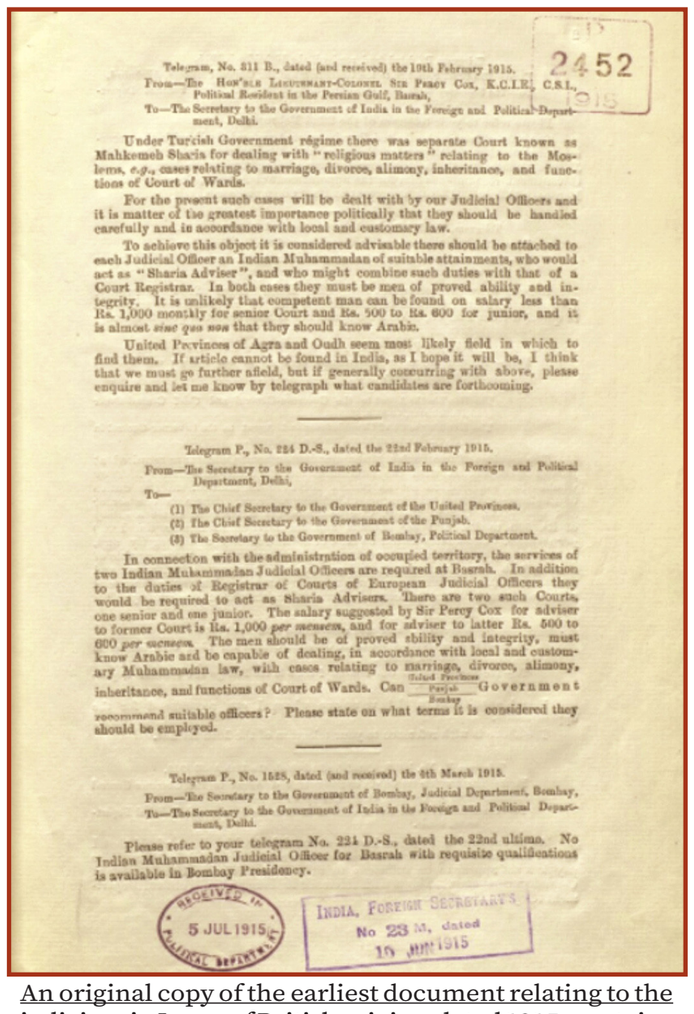
In 1875, judicial departments were established in Baghdad, replacing the Grand Council and the Council of Investigation, a development that paved the way for the later establishment of the Court of Cassation.

Midhat Pasha's reforms extended further to include the establishment of the Council of State, composed of three sections (administrative, civil, and criminal), signaling an early move toward a constitutional and parliamentary system.

The Ottoman Constitution and the Development of Judicial Institutions

The year 1876 marked a pivotal moment in Ottoman history with the promulgation of the Ottoman Basic Law (Constitution) during the reign of Sultan Abdul Hamid II, as a result of the reform movement led by Midhat Pasha. This constitution comprised 119 articles and represented the first modern constitutional document in Ottoman history. It had a direct impact on Iraq, which thereafter became part of the state's constitutional legal order.

In 1879, a package of new laws was enacted, most notably the Temporary Law on the Organization of Regular Courts, which reorganized the judiciary according to a new hierarchical structure, beginning with the Court of Cassation, followed by courts of appeal and courts of first instance, down to local judges. The office of the public prosecution was introduced for the first time, following the French model. In the same year, the Ottoman Code of Criminal Procedure was issued, granting the public prosecution authority to initiate public criminal proceedings.



Telegram, No. 311 B., dated (and received) the 19th February 1915. 2452 1915
From—The Hon'ble Lieutenant-Colonel Sir Percy Cox, K.C.I.E., C.S.I., Political Resident in the Persian Gulf, Basrah,
To—The Secretary to the Government of India in the Foreign and Political Department, Delhi.

Under Turkish Government régime there was separate Court known as Mahkemeh Sharia for dealing with "religious matters" relating to the Moslems, *e.g.*, cases relating to marriage, divorce, alimony, inheritance, and functions of Court of Wards.

For the present such cases will be dealt with by our Judicial Officers and it is matter of the greatest importance politically that they should be handled carefully and in accordance with local and customary law.

To achieve this object it is considered advisable there should be attached to each Judicial Officer an Indian Muhammadan of suitable attainments, who would act as "Sharia Adviser", and who might combine such duties with that of a Court Registrar. In both cases they must be men of proved ability and integrity. It is unlikely that competent man can be found on salary less than Rs. 1,000 monthly for senior Court and Rs. 500 to Rs. 600 for junior, and it is almost *sine qua non* that they should know Arabic.

United Provinces of Agra and Oudh seem most likely field in which to find them. If article cannot be found in India, as I hope it will be, I think that we must go further afield, but if generally concurring with above, please enquire and let me know by telegraph what candidates are forthcoming.

Telegram P., No. 224 D.-S., dated the 22nd February 1915.
From—The Secretary to the Government of India in the Foreign and Political Department, Delhi,
To—
(1) The Chief Secretary to the Government of the United Provinces.
(2) The Chief Secretary to the Government of the Punjab.
(3) The Secretary to the Government of Bombay, Political Department.

In connection with the administration of occupied territory, the services of two Indian Muhammadan Judicial Officers are required at Basrah. In addition to the duties of Registrar of Courts of European Judicial Officers they would be required to act as Sharia Advisers. There are two such Courts, one senior and one junior. The salary suggested by Sir Percy Cox for adviser to former Court is Rs. 1,000 *per mensem*, and for adviser to latter Rs. 500 to 600 *per mensem*. The men should be of proved ability and integrity, must know Arabic and be capable of dealing, in accordance with local and customary Muhammadan law, with cases relating to marriage, divorce, alimony, inheritance, and functions of Court of Wards. Can United Provinces / Punjab / Bombay Government recommend suitable officers? Please state on what terms it is considered they should be employed.

Telegram P., No. 1528, dated (and received) the 6th March 1915.
From—The Secretary to the Government of Bombay, Judicial Department, Bombay,
To—The Secretary to the Government of India in the Foreign and Political Department, Delhi.

Please refer to your telegram No. 224 D.-S., dated the 22nd ultimo. No Indian Muhammadan Judicial Officer for Basrah with requisite qualifications is available in Bombay Presidency.

RECEIVED IN POLITICAL DEPARTMENT 5 JUL 1915
INDIA, FOREIGN SECRETARY'S No. 23 M, dated 16 JUN 1915

An original copy of the earliest document relating to the judiciary in Iraq—of British origin—dated 1915, contains the texts of official telegrams exchanged between the General Military Governor in Basra, Sir Percy Cox, and the Secretary to the Government of India in the Foreign and Political Department in Delhi, concerning the administration of the occupied Iraqi territories and the organization of the judiciary therein. In these telegrams, Cox requests the appointment of Indian judicial officers possessing sufficient knowledge of Islamic Sharia and capable of supervising Sharia cases. The response from the Secretary to the Government of India indicated their inability to meet this request.

The Judiciary in Iraq During the British Occupation

World War I broke out on 28 July 1914, and the Ottoman Empire joined the Central Powers led by Germany, declaring war on Britain and its allies. As a result, British forces launched their military campaign against Iraq, occupying the city of al-Faw on 6 November of the same year, followed by the occupation of Basra on 23 November. In the wake of this military advance, the British authorities began issuing a series of laws to regulate administrative and governing affairs in the areas that had fallen under their control.

Thus began a new phase in Iraq's modern history, characterized by radical transformations compared to the preceding Ottoman era, particularly in systems of administration and justice. The requirements of the British campaign, and the need to fill the vacuum left by the Ottoman withdrawal, necessitated the establishment of a new administration based on different foundations, the most prominent of which was the creation of an alternative judicial system. Ottoman laws were replaced by Indian laws, especially in commercial and civil matters, and new measures were introduced to impose law and order, regulate court organization, and enact a special system for civil tribal disputes, which the British administration regarded as an urgent necessity given the particular nature of Iraqi society.

In this context, Britain sought to establish a colonial occupation system that would enable it to consolidate its grip on the country. Effective power was concentrated in the hands of British military commanders, while civil administration was placed under the authority of the British Government of India, overseen by the British Resident in the Persian Gulf, Sir Percy Cox. In 1917, he was succeeded by Arnold Wilson, who adopted a policy of direct rule over Iraq, with the southern region administratively linked to the Government of India. At the provincial level, British political officers assumed civil administrative responsibilities, supported by officials from the British–Indian administrative apparatus, who replaced former Ottoman employees. The judiciary and administration were reorganized in accordance with systems applied in British India, in a clear attempt to integrate Iraq into the administrative structure of the British Empire and render it, in effect, one of India's dependent territories.

The Beginning in Basra

The British occupation authority hastened to establish administrative and judicial institutions in Basra to address the state of vacuum and disorder left by the war and the withdrawal of Ottoman officials from their posts. Responsibility for managing the city's affairs was entrusted to Sir Percy Cox, who held the position of senior political officer and was later appointed Chief Political Officer.

The British administration found that the existing judicial system in Iraq—particularly in the Basra province—was based on Ottoman legislation derived from Islamic Sharia, with the Ottoman Sultan representing the highest judicial and legislative authority. However, the occupation authority proceeded to introduce a new judicial system serving its administrative and political objectives, in clear violation of Article (43) of the 1907 Hague Convention, which prohibits an occupying power from abolishing existing national judicial institutions in occupied territories and obliges it to respect the laws in force therein.

In April 1915, the British administration appointed Major Stuart George Knox as Judicial Secretary in Basra, through whom it began organizing judicial affairs. Courts were established following the Indian judicial model, with certain modifications to suit the nature of the new administration and the needs of British forces. One of the first measures taken by the new authority was to replace the Ottoman language with Arabic in judicial pleadings, in an attempt to win the goodwill of the local population. This approach extended to other areas of administrative and educational life as well.

Despite these measures, the occupation administration in Basra became known for its severity in judicial rulings, aimed at asserting authority and instilling fear among the population. British officers monopolized judicial powers, exercising justice more as military governors than as civil judges.

This situation continued until 1 August 1915, when the British administration issued what became known as the "Law of Occupied Iraqi Territories", which regulated judicial and administrative affairs in the occupied areas and granted political officers temporary judicial powers pending the establishment of regular courts. The law provided for the creation of new judicial positions, most notably:

- Senior Judicial Officer: held by Lieutenant Colonel Stuart George Knox.
- Junior Judicial Officer: held by Captain Charles Fraser Mackenzie.
- Assistant Judicial Officer: initially held by Khan Bahadur Rustam Ali, then by Khan Sahib Agha Mirza Muhammad following the former's resignation for health reasons; both were Indian officers.
- Notary Public: assigned to a British commercial company known as Gray Mackenzie, an unprecedented arrangement reflecting the commercial–administrative nature of British governance.

The law comprised six chapters and 63 articles, most of which were derived from Indian legislation. It recognized the courts established pursuant to it, defined their jurisdictions, seals, and judicial signatures, and permitted the application of any Indian law compatible with local conditions. As for criminal cases, a separate chapter stipulated that the Commander of the British Occupation Army would function as a "Supreme Court" for adjudicating criminal cases.

Pursuant to this legislation, civil courts in the Basra Province commenced operations in late 1915, with the first civil court presided over by Stuart George Knox, assisted by a number of British officials, while Mazahim al-Bajaji served as court interpreter. The application of the law was later extended to include the Amara and al-Muntafiq provinces, after initially being limited to Basra.

Rural and tribal areas were excluded from this system. Instead, the British administration issued a special regulation subjecting disputes in those areas to military courts, enacting in February 1916 the "Tribal Claims Regulation."

Thus, the judiciary in Iraq became entirely subject to British military authority, as judicial, executive, and legislative powers were concentrated in the hands of political officers, who enacted laws and regulations while also enforcing them, in a manner that served the objectives of the occupation and ensured its security.

The Law of Occupied Territories remained in force from 1 August 1915 until 24 December 1918, when it was repealed by Proclamation No. (16) issued by the Commander of the British Occupation Army in Iraq, General Sir William Marshall.

1918, pursuant to which criminal courts were established. This was followed by the Baghdad Penal Code of 1918. The judiciary of Basra and Baghdad was unified, and the Justice Department was established in Baghdad in 1919 under his leadership in his capacity as Judicial Secretary, forming the first nucleus of modern judicial institutions, including Sharia courts, courts of first instance, courts of appeal, conciliation courts, courts of cassation, criminal courts, and commercial courts, alongside the Ministry of Justice, which took shape between 1920 and 1921.

From this, it becomes evident that the period extending from the outbreak of World War I in 1914 to the early 1920s constituted a decisive foundational phase, during which a package of laws and regulations was issued that laid the groundwork for the modern Iraqi judicial system following the transfer of authority from the Ottoman state to the British administration.

Edgar Bonham Carter

And His Role in Establishing the Modern Judicial System in Iraq

Al Iraq
RATES FOR ADVERTISEMENT.
العراق
جريدة رسمية سياسية ادبية اقتصادية
حفلة وداع حضرة مستشار وزارة العدلية

Al-Iraq Daily Newspaper

devoted its front page of Issue No290

dated ,1921 May 11

a report on the farewell ceremony of the British judicial adviser Edgar Bonham Carter

The British adviser Edgar Bonham Carter is regarded as the pivotal figure in laying the first foundations of the modern judicial system in Iraq. The British administration summoned him from Sudan, where he held the position of Head of the Legal Department of the British Administration, to undertake the reorganization of the judicial apparatus in Baghdad. Upon his arrival, he initially established a temporary office in the Government Serai, then moved his office to a private house in Khan al-Tamr, before finally settling in the Justice Courts Building. From there, he began an in-depth study of judicial conditions in the country, following which he submitted a detailed report addressing the nature of the former Ottoman courts and proposing measures he deemed appropriate for their development in line with the requirements of the new administration.

Historians are in agreement that Bonham Carter was the founder of the modern judicial system in Iraq, having succeeded in achieving a form of harmonization between the former Ottoman systems and the British judicial model.

He proposed granting British political officers judicial powers to adjudicate urgent cases, explaining that the judiciary in Iraq at the time was divided into civil courts and Sharia courts, the latter relying primarily on the Hanafi school of jurisprudence as the basis for their rulings.

Despite his praise for the theoretical discipline of the Ottoman judicial system, he criticized its practical reality due to the low salaries of judges and court employees, which undermined standards of integrity. He also recommended benefiting from graduates of the Baghdad School of Law (established in 1908), proposed reducing the number of courts and merging some of them, and pointed to a decline in crime rates after the occupation compared to the preceding period. He attributed this decline to the "efficiency" of British political officers—although the use of military force was, in fact, the decisive factor behind that reduction.

Bonham Carter spent three years in Iraq, during which he held several important positions, including:

- Secretary of the Central Justice Department in Baghdad
- Justice Adviser
- Director of Justice (effectively Minister of Justice) following the declaration of the British Mandate in 1920

He also served briefly as Acting British High Commissioner, before being retired in May 1921, to be succeeded by Nigel Davidson. A farewell ceremony was held in his honor in Baghdad, the news of which was published in Al-Iraq Newspaper (Issue No. 290, dated 11 May 1921).

One of the most significant outcomes of his report was the issuance of Courts Proclamation No. (6) on 28 December 1917, followed by the promulgation of the Baghdad Code of Criminal Procedure on 15 November

Report on the Administration of Civil Justice in the Baghdad Vilayet – 1918

In a precedent that is the first of its kind in the history of the Iraqi judiciary, we place before the reader and researchers this first official judicial statistical record written on Iraqi soil during the early period of British occupation. This report was neither announced nor published previously in any printed or archival source until we succeeded in obtaining its rare original copy from The British National Archives – the official archive of the United Kingdom.

This report, entitled "Report on the Administration of Civil Justice in the Baghdad Vilayet – 1918," constitutes a unique foundational document. It was prepared by the British judicial adviser E. Bonham Carter and submitted to the Civil Commissioner in Baghdad, serving as the first comprehensive official survey of the judicial and administrative situation in Iraq following the collapse of the Ottoman state and the beginning of the British administrative phase.

We present here a summary of the most significant contents of this rare 1918 report, given the unprecedented details it provides on the structure of the judiciary, the distribution of courts, the nature of cases, and the mechanisms for administering justice during this pivotal stage in modern Iraqi history.

From: Judicial Secretary E. Bonham Carter
To: The Civil Commissioner in Baghdad

Following the British occupation of Baghdad, the new administration decided to continue applying the Ottoman judicial system (laws and procedures), with limited amendments designed to ensure justice and efficiency. The report reviews the development of this system during the year 1918 across three areas:

1.Civil Courts
2.Criminal Courts
3.Sharia Courts

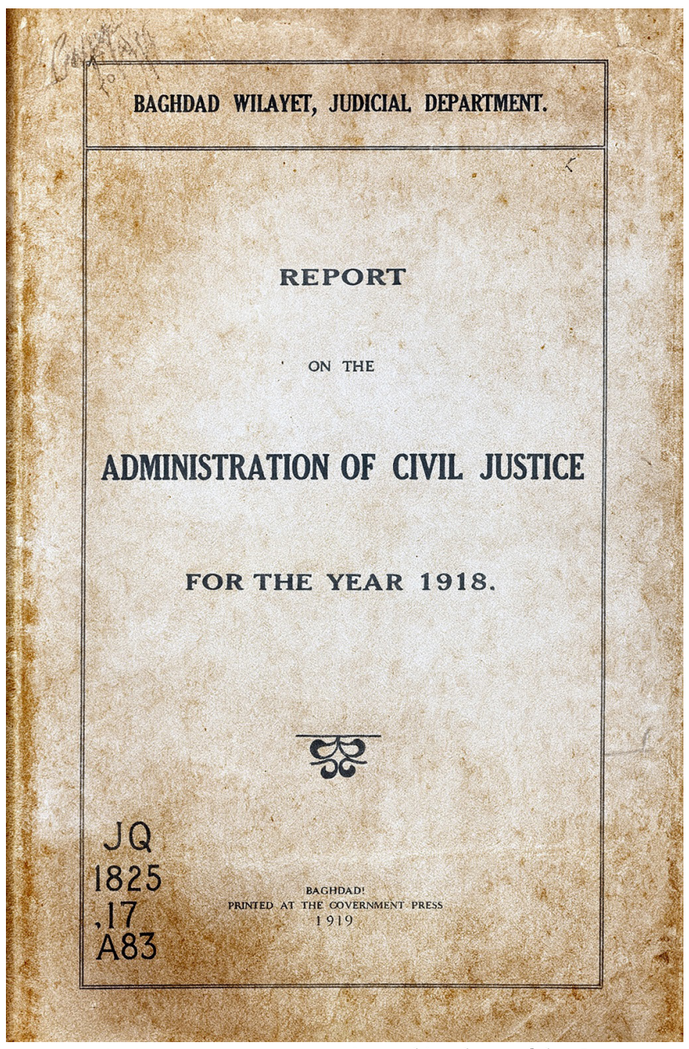
It also addresses the establishment of a Department of Justice and the unification of the courts of Basra and Baghdad.

Civil Courts

The Court of First Instance in Baghdad was reopened at the beginning of 1918.

Courts of Peace were established in Khanaqin, Hilla, and Baqubah, Judges' salaries were increased compared to the Ottoman period in order to reduce corruption.

Arabic became the official language of the courts, and the majority of judges and staff were Arabs, Cases were adjudicated swiftly, and the rate of appeals was low, which was considered evidence of the system's success.


BAGHDAD WILAYET, JUDICIAL DEPARTMENT.

REPORT

ON THE

ADMINISTRATION OF CIVIL JUSTICE

FOR THE YEAR 1918.

BAGHDAD:
PRINTED AT THE GOVERNMENT PRESS
1919

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Criminal Courts

Following the occupation, the Ottoman military courts were abolished, and local British courts were established to try criminal cases.

The Baghdad Penal Code and the Baghdad Criminal Procedure Regulations were issued in place of the Ottoman laws.

The new laws were derived from:

Egyptian law (itself based on French law), the criminal systems of Sudan and India.

The criminal courts consisted of four levels:

1.Sessions Court.
2.First-Class Justices of the Peace.
3.Second-Class Courts.
4.Third-Class Courts.

Judgments were reviewed by the Civil Commissioner, assisted by the Judicial Secretary.

Sharia Courts (Shar')

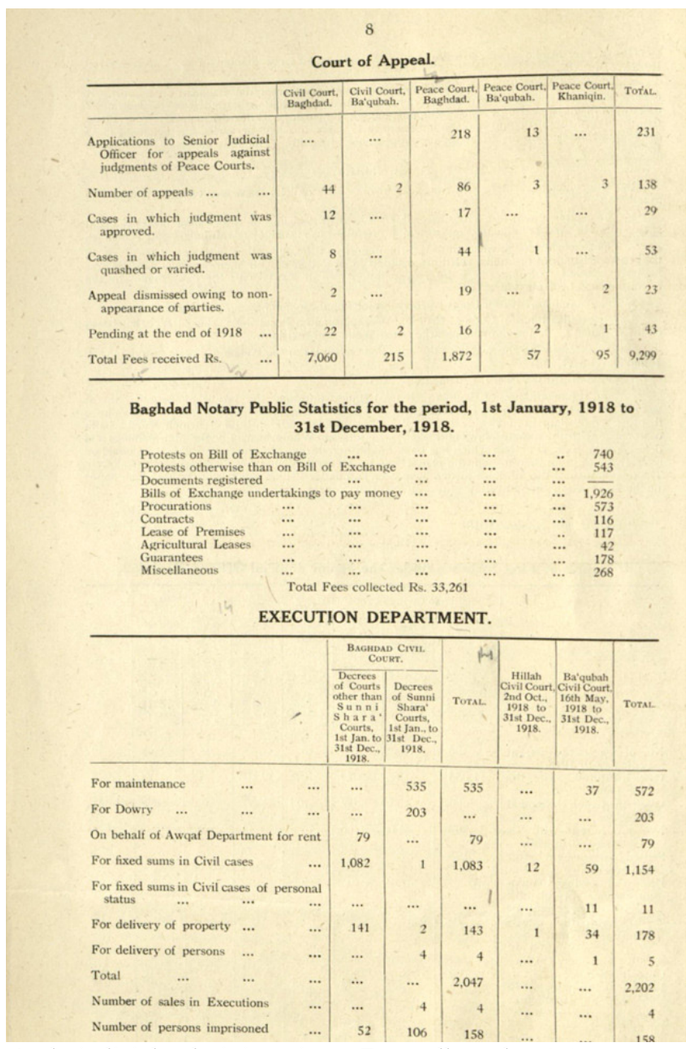
•Sunni Sharia courts were re-established to adjudicate personal status cases.
•Sharia judges were appointed in Baghdad, Baqubah, Hilla, Ramadi, 'Anah, and other locations.
•A Sunni Sharia Court of Appeal was established in Baghdad, composed of three senior religious scholars.
•Ja'fari (Shi'a) courts were also established to adjudicate Shi'a cases, a step unprecedented under Ottoman rule.
•The first Ja'fari judge was Shaykh Haj Shukr Allah in Baghdad, and the system was later expanded to include other cities.

Unification of Courts and Establishment of the Department of Justice

The Indian system applied in Basra was abolished and replaced by the modified Ottoman system applied in Baghdad.

A new administrative body named the Department of Justice was established under the supervision of the Judicial Secretary, without direct interference in judicial rulings.

The objective was to build an Arab judicial administration under British supervision.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Court of Appeal.

	Civil Court, Baghdad.	Civil Court, Ba'qubah.	Peace Court, Baghdad.	Peace Court, Ba'qubah.	Peace Court, Khaniqin.	Total.
Applications to Senior Judicial Officer for appeals against judgments of Peace Courts.	...	...	218	13	...	231
Number of appeals	44	2	86	3	3	138
Cases in which judgment was approved.	12	...	17	...	...	29
Cases in which judgment was quashed or varied.	8	...	44	1	...	53
Appeal dismissed owing to non-appearance of parties.	2	...	19	...	2	23
Pending at the end of 1918 ...	22	2	16	2	1	43
Total Fees received Rs. ...	7,060	215	1,872	57	95	9,299

Baghdad Notary Public Statistics for the period, 1st January, 1918 to 31st December, 1918.

Protests on Bill of Exchange	740
Protests otherwise than on Bill of Exchange	543
Documents registered	—
Bills of Exchange undertakings to pay money	1,926
Procurations	573
Contracts	116
Lease of Premises	117
Agricultural Leases	42
Guarantees	178
Miscellaneous	268

Total Fees collected Rs. 33,261

EXECUTION DEPARTMENT.

	Baghdad Civil Court. Decrees of Courts other than Sunni Shara' Courts, 1st Jan. to 31st Dec., 1918.	Baghdad Civil Court. Decrees of Sunni Shara' Courts, 1st Jan., to 31st Dec., 1918.	Baghdad Civil Court. Total.	Hillah Civil Court, 2nd Oct., 1918 to 31st Dec., 1918.	Ba'qubah Civil Court, 16th May, 1918 to 31st Dec., 1918.	Total.
For maintenance	...	535	535	...	37	572
For Dowry	...	203	...	...	...	203
On behalf of Awqaf Department for rent	79	...	79	...	...	79
For fixed sums in Civil cases ...	1,082	1	1,083	12	59	1,154
For fixed sums in Civil cases of personal status	...	...	...	...	11	11
For delivery of property	141	2	143	1	34	178
For delivery of persons	...	4	4	...	1	5
Total	...	...	2,047	...	...	2,202
Number of sales in Executions ...	...	4	4	...	...	4
Number of persons imprisoned ...	52	106	158	...	...	158

Judicial Personnel by the End of 1918

•British personnel: 6
•Arab Muslims: 82
•Arab Jews: 9
•Arab Christians: 1
•Armenians: 2

The report confirms that British policy sought to involve Arabs in judicial positions to the greatest extent possible.

Legislation and Regulations Issued in 1918

Most notably:

1.Organization of courts in the Baghdad Vilayet
2.Extension of debt moratorium periods under the Ottoman moratorium law
3.Regulation of tribal disputes
4.Issuance of the Penal Code and Criminal Procedure Code
5.Expansion of the judicial system to include Basra
6.Laws relating to waqf (endowments), postal services, opium, and customs

Judicial Statistics for 1918

•Total number of cases: 2,626
•Fees collected: 110,415 rupees

Appeals

•22 appeals from civil courts
•73 appeals from courts of peace

The Court of Appeal upheld 12 judgments and amended or overturned 8.

The Notary Public's Office collected 33,261 rupees in fees.

General Results of the First Judicial Year

1.Establishment of Arabic-language civil courts administered by Arab judges
2.Empowerment of Shi'a communities through their own courts
3.Establishment of a Sunni Sharia Court of Appeal
4.Issuance of the Penal Code and Criminal Procedure Code
5.Expansion of the system to cover all occupied territories
6.Establishment of the Department of Justice

The report concludes with the following statement:

"The foundations of justice have been laid under British supervision, but by Arab hands, on the basis of law and local custom".

The Judiciary in Iraq during the State-Building Phase

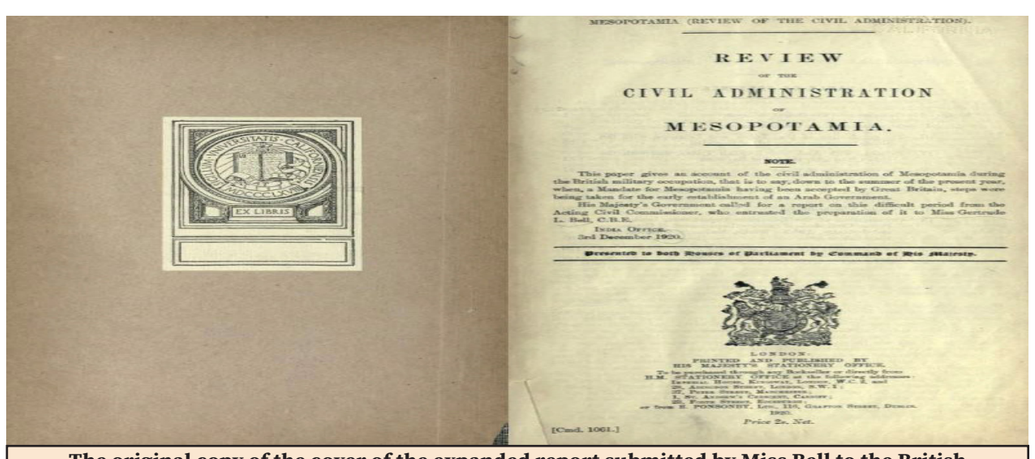
Miss Bell Report

Before turning the pages of the phase of establishing the modern Iraqi state—a phase whose most significant achievements included the emergence of the Court of Cassation of Iraq—it is essential to pause at one of the most important political and administrative documents that documented the early beginnings of this entity: the comprehensive report prepared by the Oriental Secretary to the British High Commissioner in Iraq, Miss Gertrude L. Bell, C.B.E., on the judicial situation in Iraq.

This pivotal report was not merely a general presentation of the political and social conditions of the time; rather, it constituted a meticulous and comprehensive diagnosis of Iraq's condition in the period preceding the proclamation of the modern Iraqi Kingdom. It recorded the finest details of the country's administrative, legal, and economic structure and set out preliminary visions for the course of building the new state—only eight months before its official birth.

Among the chapters of this report, Chapter Eight stands out as the most significant for the history of the Iraqi judiciary. In it, Bell addressed the state of judicial administration in the country and presented a series of reformist views and proposals, most notably the call for the establishment of a Court of Cassation to serve as the supreme authority within the emerging Iraqi justice system.

What follows is a review of the main points contained in this important chapter of the report.


MESOPOTAMIA (REVIEW OF THE CIVIL ADMINISTRATION).

REVIEW
OF THE
CIVIL ADMINISTRATION
OF
MESOPOTAMIA.

NOTE.

This paper gives an account of the civil administration of Mesopotamia during the British military occupation, that is to say, down to the summer of the present year, when a Mandate for Mesopotamia having been accepted by Great Britain, steps were being taken for the early establishment of an Arab Government.

His Majesty's Government called for a report on this difficult period from the Acting Civil Commissioner, who entrusted the preparation of it to Miss Gertrude L. Bell, C.B.E.

India Office,
3rd December 1920.

Presented to both Houses of Parliament by Command of His Majesty.

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[Cmd. 1061.]

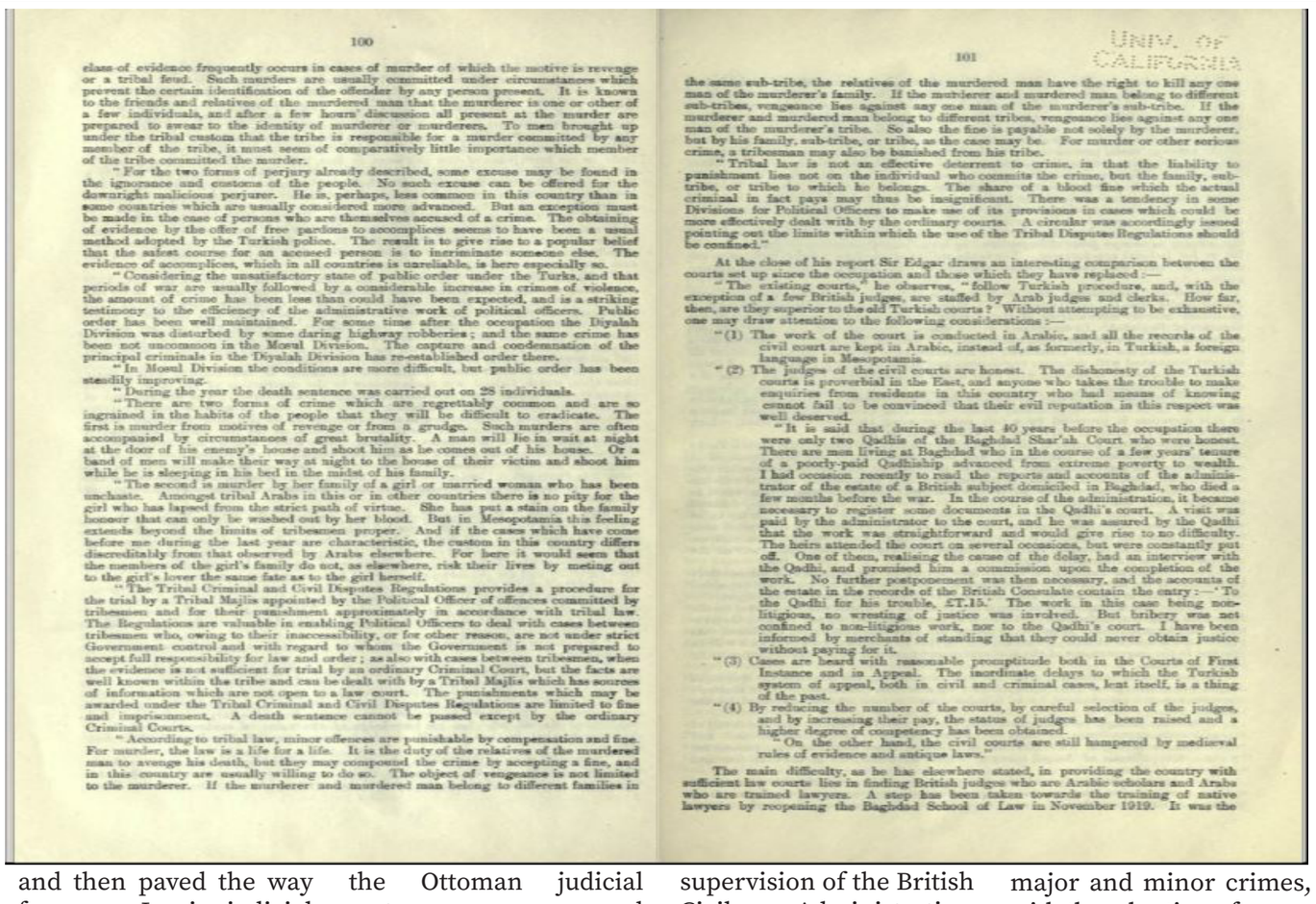
The original copy of the cover of the expanded report submitted by Miss Bell to the British administration, together with an image of Chapter Eight, p. 90 of the report, relating to the organization of the judiciary in Iraq./ Gertrude Bell Archive – Britain / University of Oxford.

Review of the Civil Administration of Mesopotamia
Review of the Civil Administration of Mesopotamia
Note:

This paper presents an account of the condition of civil administration in Mesopotamia during the period of British military occupation, that is, up to the summer of this year, when the British Mandate over Mesopotamia was accepted and steps began to be taken toward the early establishment of an Arab government.

His Majesty's Government requested a report on this difficult period from the Acting Civil Commissioner, Sir L. Bell, who entrusted the preparation of this report to Miss Gertrude L. Bell, C.B.E.

India Office,
3 December 1920.


100

class of evidence frequently occurs in cases of murder of which the motive is revenge or a tribal feud. Such murders are usually committed under circumstances which prevent the certain identification of the offender by any person present. It is known to the friends and relatives of the murdered man that the murderer is one or other of a few individuals, and after a few hours' discussion all present at the murder are prepared to swear to the identity of murderer or murderers. To men brought up under the tribal custom that the tribe is responsible for a murder committed by any member of the tribe, it must seem of comparatively little importance which member of the tribe committed the murder.

"For the two forms of perjury already described, some excuse may be found in the ignorance and customs of the people. No such excuse can be offered for the downright malicious perjurer. He is, perhaps, less common in this country than in some countries which are usually considered more advanced. But an exception must be made in the case of persons who are themselves accused of a crime. The obtaining of evidence by the offer of free pardons to accomplices seems to have been a usual method adopted by the Turkish police. The result is to give rise to a popular belief that the safest course for an accused person is to incriminate someone else. The evidence of accomplices, which in all countries is unreliable, is here especially so.

"Considering the unsatisfactory state of public order under the Turks, and that periods of war are usually followed by a considerable increase in crimes of violence, the amount of crime has been less than could have been expected, and is a striking testimony to the efficiency of the administrative work of political officers. Public order has been well maintained. For some time after the occupation the Diyalah Division was disturbed by some daring highway robberies; and the same crime has been not uncommon in the Mosul Division. The capture and condemnation of the principal criminals in the Diyalah Division has re-established order there.

"In Mosul Division the conditions are more difficult, but public order has been steadily improving.

"During the year the death sentence was carried out on 28 individuals.

"There are two forms of crime which are regrettably common and are so ingrained in the habits of the people that they will be difficult to eradicate. The first is murder from motives of revenge or from a grudge. Such murders are often accompanied by circumstances of great brutality. A man will lie in wait at night at the door of his enemy's house and shoot him as he comes out of his house. Or a band of men will make their way at night to the house of their victim and shoot him while he is sleeping in his bed in the midst of his family.

"The second is murder by her family of a girl or married woman who has been unchaste. Amongst tribal Arabs in this or in other countries there is no pity for the girl who has lapsed from the strict path of virtue. She has put a stain on the family honour that can only be washed out by her blood. But in Mesopotamia this feeling extends beyond the limits of tribesmen proper. And if the cases which have come before me during the last year are characteristic, the custom in this country differs discreditably from that observed by Arabs elsewhere. For here it would seem that the members of the girl's family do not, as elsewhere, risk their lives by meting out to the girl's lover the fate that the girl herself...

"The Tribal Criminal and Civil Disputes Regulations provides a procedure for the trial by a Tribal Majlis appointed by the Political Officer of offences committed by tribesmen and for their punishment approximately in accordance with tribal law. The Regulations are valuable in enabling Political Officers to deal with cases between tribesmen who, owing to their inaccessibility, or for other reason, are not under strict Government control and with regard to whom the Government is not prepared to accept full responsibility for law and order; as also with cases between tribesmen, when the evidence is not sufficient for trial by an ordinary Criminal Court, but the facts are well known within the tribe and can be dealt with by a Tribal Majlis which has sources of information which are not open to a law court. The punishments which may be awarded under the Tribal Criminal and Civil Disputes Regulations are limited to fine and imprisonment. A death sentence cannot be passed except by the ordinary Criminal Courts.

"According to tribal law, minor offences are punishable by compensation and fine. For murder, the law is a life for a life. It is the duty of the relatives of the murdered man to avenge his death, but they may compound the crime by accepting a fine, and in this country are usually willing to do so. The object of vengeance is not limited to the murderer. If the murderer and murdered man belong to different families in

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the same sub-tribe, the relatives of the murdered man have the right to kill any one man of the murderer's family. If the murderer and murdered man belong to different sub-tribes, vengeance lies against any one man of the murderer's sub-tribe. If the murderer and murdered man belong to different tribes, vengeance lies against any one man of the murderer's tribe. So also the fine is payable not solely by the murderer, but by his family, sub-tribe, or tribe, as the case may be. For murder or other serious crime, a tribesman may also be banished from his tribe.

"Tribal law is not an effective deterrent to crime, in that the liability to punishment lies not on the individual who commits the crime, but the family, sub-tribe, or tribe to which he belongs. The share of a blood fine which the actual criminal in fact pays may thus be insignificant. There was a tendency in some Divisions for Political Officers to make use of its provisions in cases which could be more effectively dealt with by the ordinary courts. A circular was accordingly issued pointing out the limits within which the use of the Tribal Disputes Regulations should be confined."

At the close of his report Sir Edgar draws an interesting comparison between the courts set up since the occupation and those which they have replaced:—

"The existing courts," he observes, "follow Turkish procedure, and, with the exception of a few British judges, are staffed by Arab judges and clerks. How far, then, are they superior to the old Turkish courts? Without attempting to be exhaustive, one may draw attention to the following considerations:—

"(1) The work of the court is conducted in Arabic, and all the records of the civil court are kept in Arabic, instead of, as formerly, in Turkish, a foreign language in Mesopotamia.

"(2) The judges of the civil courts are honest. The dishonesty of the Turkish courts is proverbial in the East, and anyone who takes the trouble to make enquiries from residents in this country who had means of knowing cannot fail to be convinced that their evil reputation in this respect was well deserved.

"It is said that during the last 40 years before the occupation there were only two Qadhis of the Baghdad Shar'ah Court who were honest. There are men living at Baghdad who in the course of a few years' tenure of a poorly-paid Qadhiship advanced from extreme poverty to wealth. I had occasion recently to read the reports and accounts of the administrator of the estate of a British subject domiciled in Baghdad, who died a few months before the war. In the course of the administration, it became necessary to register some documents in the Qadhi's court. A visit was paid by the administrator to the court, and he was assured by the Qadhi that the work was straightforward and would give rise to no difficulty. The heirs attended the court on several occasions, but were constantly put off. One of them, realising the cause of the delay, had an interview with the Qadhi, and promised him a commission upon the completion of the work. No further postponement was then necessary, and the accounts of the estate in the records of the British Consulate contain the entry:—'To the Qadhi for his trouble, £T.15.' The work in this case being non-litigious, no wresting of justice was involved. But bribery was not confined to non-litigious work, nor to the Qadhi's court. I have been informed by merchants of standing that they could never obtain justice without paying for it.

"(3) Cases are heard with reasonable promptitude both in the Courts of First Instance and in Appeal. The inordinate delays to which the Turkish system of appeal, both in civil and criminal cases, lent itself, is a thing of the past.

"(4) By reducing the number of the courts, by careful selection of the judges, and by increasing their pay, the status of judges has been raised and a higher degree of competency has been obtained.

"On the other hand, the civil courts are still hampered by mediæval rules of evidence and antique laws."

The main difficulty, as he has elsewhere stated, in providing the country with sufficient law courts lies in finding British judges who are Arabic scholars and Arabs who are trained lawyers. A step has been taken towards the training of native lawyers by reopening the Baghdad School of Law in November 1919. It was the

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Matters Related to the Judiciary and Courts

Several chapters were devoted to describing the judicial system that was established after the British occupation of Iraq.

•The Ottoman courts were reorganized to operate under British supervision, and new civil and criminal courts were established in the major cities (Baghdad, Basra, and Mosul).
•Procedural and legal reforms were introduced, while some Ottoman laws were retained.
•Local judges were appointed under the supervision of British advisers, and courts of appeal were established to oversee judgments.
•The establishment of a Council of Cassation in Baghdad was mentioned as the highest judicial authority.

The report addressed the problem of the shortage of qualified local legal personnel and the efforts made to train Iraqi judges and lawyers.

Conclusion: Yes, the report contains extensive details on the judiciary and courts, focusing on how judicial authority transitioned from Ottoman administration to British administration, and then paved the way for an Iraqi judicial administration under British supervision.

1. Establishment of the Judicial System after the Occupation

After the British occupation of Iraq, the Ottoman judicial system proved insufficient to manage the administration of justice under the new administration. Consequently, new civil and criminal courts were established under the supervision of the British Civil Administration.

2. Types of Courts

•Civil courts: for disputes between individuals, contract cases, property, and commercial transactions.
•Criminal courts: for major and minor crimes, with the adoption of more regularized procedures.
•Sharia courts: retained their role in matters of personal status for Muslims.
•Customary councils: to adjudicate tribal disputes in rural areas.

3. Judges and Administration

Some local judges were retained, while British advisers were introduced. The position of "Judicial Adviser" was created to supervise laws and procedures and ensure the proper administration of justice.

4. Legislation and Laws

Most laws remained Ottoman, with the introduction of some new regulations reflecting the British system, particularly in criminal procedure and civil rights.

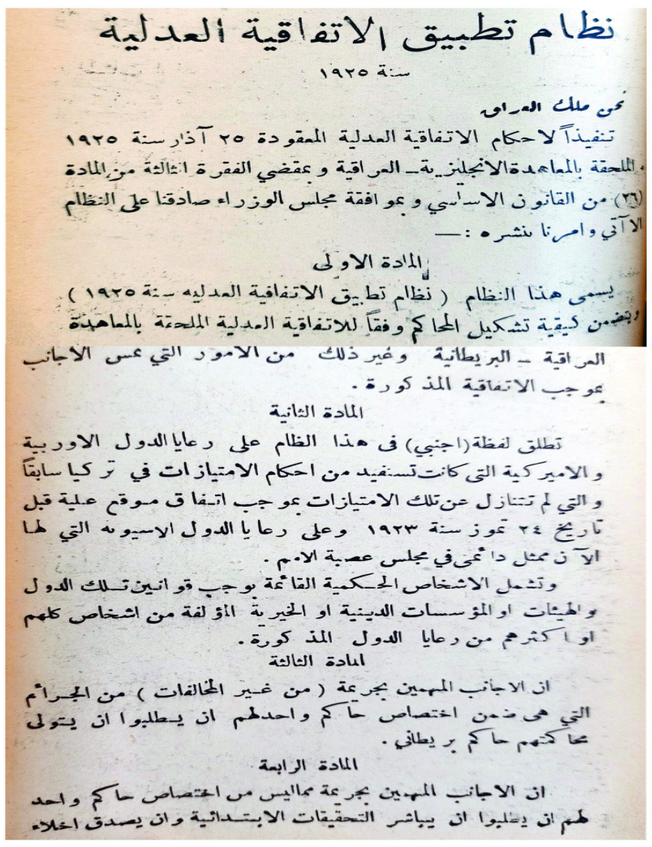
5. Challenges

•Shortage of qualified local legal personnel.
•Weak judicial infrastructure.
•The need to reconcile the old Ottoman law with the modern British system.

6.Impact of the New System

The British judicial organization led to the unification of procedures and improved transparency, and it paved the way for the later establishment of a modern judicial apparatus in Iraq.

Iraqi–British Judicial Agreements



نظام تطبيق الاتفاقية العدلية

سنة ١٩٢٥

نحن ملك العراق

تنفيذاً لاحكام الاتفاقية العدلية المعقودة ٢٥ آذار سنة ١٩٢٥ الملحقة بالمعاهدة الانجليزية ـ العراقية و بمقتضى الفقرة الثالثة من المادة (٣٦) من القانون الاساسي و بموافقة مجلس الوزراء صادقنا على النظام الآتي و امرنا بنشره :ـ

المادة الاولى

يسمى هذا النظام (نظام تطبيق الاتفاقية العدليه سنة ١٩٢٥) ويتضمن كيفية تشكيل المحاكم وفقاً للاتفاقية العدلية الملحقة بالمعاهدة العراقية ـ البريطانية وغير ذلك من الامور التي تمس الاجانب بموجب الاتفاقية المذكورة .

المادة الثانية

تطلق لفظة (اجنبي) في هذا النظام على رعايا الدول الاوربية والاميركية التي كانت تستفيد من احكام الامتيازات في تركيا سابقاً والتي لم تتنازل عن تلك الامتيازات بموجب اتفاق موقع عليه قبل تاريخ ٢٤ تموز سنة ١٩٢٣ وعلى رعايا الدول الاسيوية التي لها الآن ممثل دائمي في مجلس عصبة الامم .

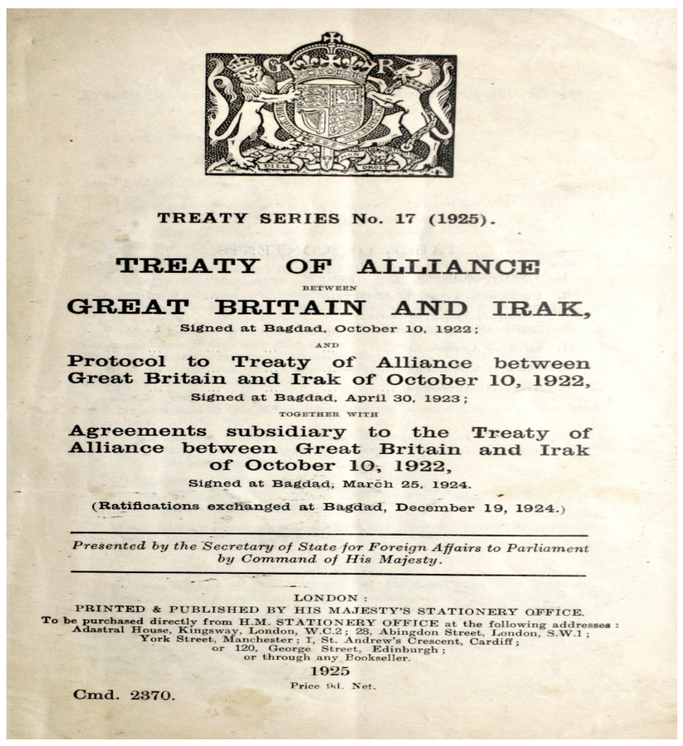
وتشمل الاشخاص الحكمية القائمة بموجب قوانين تلك الدول والهيئات او المؤسسات الدينية او الخيرية المؤلفة من اشخاص كلهم او اكثرهم من رعايا الدول المذكورة .

المادة الثالثة

ان الاجانب المتهمين بجريمة (من غير المخالفات) من الجرائم التي هي من اختصاص حاكم واحد لهم ان يطلبوا ان يتولى محاكمتهم حاكم بريطاني .

المادة الرابعة

ان الاجانب المتهمين بجريمة مما ليس من اختصاص حاكم واحد لهم ان يطلبوا ان يباشر التحقيقات الابتدائية وان يصدق اخلاء



TREATY SERIES No. 17 (1925).

TREATY OF ALLIANCE

BETWEEN

GREAT BRITAIN AND IRAK,

Signed at Bagdad, October 10, 1922;

AND

Protocol to Treaty of Alliance between Great Britain and Irak of October 10, 1922,

Signed at Bagdad, April 30, 1923;

TOGETHER WITH

Agreements subsidiary to the Treaty of Alliance between Great Britain and Irak of October 10, 1922,

Signed at Bagdad, March 25, 1924.

(Ratifications exchanged at Bagdad, December 19, 1924.)

Presented by the Secretary of State for Foreign Affairs to Parliament by Command of His Majesty.

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First: The First Judicial Agreement of 1924

Following the transfer of authority to the Iraqi government, the first judicial agreement was concluded in 1924 and entered into force pursuant to the regulation issued on 12 July 1925. However, this agreement was deficient in certain respects, as its provisions were limited to a specific category of foreigners as defined in its first article. It granted foreigners the right to request that a British judge preside over non-summary civil trials and criminal cases (excluding minor offences), as well as cases brought before the Court of Cassation.

The most prominent feature reflected in the provisions of the agreement was the restriction imposed on the independence of the Iraqi judiciary. Under Article (2), the King of Iraq undertook to employ British legal experts in the courts and to grant them judicial powers under Iraqi law. The agreement also obligated the Iraqi government to submit all draft laws and legislation, including those relating to the constitution or to the appointment or dismissal of judges, to the British High Commissioner for review and advice prior to their enactment. This significantly weakened Iraq's judicial sovereignty during that period.

The agreement further granted extensive judicial privileges to foreigners. It stipulated that mixed courts must include a substantial proportion of British judges: the presiding judge was usually British; in courts composed of five judges, three were to be British; in courts of four judges, two British; and in courts of three judges, one British judge would preside. The agreement also prohibited entry into or search of foreigners' residences without an order issued by a competent British authority.

The agreement consisted of six articles, based on Article (9) of the 1922 Treaty, and aimed to protect the interests of foreigners and nationals of European, American, and Asian states represented in the League of Nations. It granted foreigners the right to use an interpreter in all proceedings before Iraqi courts if they were not proficient in Arabic. It also required the approval of the British High Commissioner for the appointment or termination of any British judge.

Regulation for the Implementation of the First Judicial Agreement No. (47) of 1925

This regulation was issued on 12 July 1925, defining the foundations for the formation of courts in accordance with the agreement. It divided judicial privileges into two categories: criminal and civil. In criminal cases, foreign defendants accused of felonies or misdemeanors were entitled to request trial before a British judge, and to have their appeal or cassation heard by a court presided over by a British judge as well. In civil cases exceeding a value of 750 rupees, foreigners had the right to have the court include specified proportions of British judges depending on the number of its members. A special committee, known as the Jurisdiction Committee for Foreigners' Claims, was established and composed of three judges from the Court of Cassation, two of whom were British, to determine whether a person fell within the scope of the regulation. Its decisions were deemed final.

This regulation was amended on 18 September 1929 by adding a provision stating that any person holding Iraqi nationality in addition to a foreign nationality would not be considered a foreigner.

On 30 June 1930, a second judicial agreement was issued as a supplement to the Iraqi–British Treaty, placing senior judicial positions in British hands. This arrangement continued even after Iraq's admission to the League of Nations on 28 January 1932, when the Iraqi government undertook to maintain the existing judicial system for a period of ten years.

A Secret British Report on Iraqi Judges

In the summer of 1922, the British authorities in Iraq submitted a confidential report to the British Colonial Office in London addressing the performance of Iraqi judges following the establishment of the new judicial system.

The report noted the dedication and seriousness of Iraqi judges in carrying out their duties, and it specifically mentioned Judge Dawood Samra, Deputy President of the Court of Appeal, praising his competence and integrity. The report further stated that the majority of Iraqi judges possessed solid experience in the application of the law, while some lacked practical experience. It recommended the necessity of introducing younger elements into the judiciary to address the retirement of senior judges and to ensure the continued modernization of the judicial apparatus.

Law of the Supreme Judicial Council No. (45) of 2017 and Iraqi Judiciary Day

After the long historical path traversed by the Iraqi judiciary across the ages, the modern era placed the judicial institution before major political and constitutional transformations. Following the end of the monarchy and the country's passage through successive regimes and governments, the judiciary continued to bear the burden of maintaining a degree of legal stability despite the turmoil experienced by the state. With the year 2003, Iraq entered a new phase marked by the administration of the Coalition Provisional Authority, during which multiple changes were introduced to the structure of the state and its institutions, including the judiciary.

Despite these circumstances, the need remained evident for a solid constitutional and legal framework that would guarantee the independence of the judiciary from other authorities, ensure its impartiality, and safeguard its mission in the realization of justice.

The Iraqi Constitution of 2005 affirmed the principle of the independence of the judicial authority. This legislative construction was completed with the issuance of the Law of the Supreme Judicial Council No. (45) of 2017, which represented a pivotal milestone in the history of the Iraqi judiciary. The law clearly regulated the Council's functions, structure, and mechanisms of operation in a manner that entrenched the independence of the judicial authority and shielded it from political and partisan influence.

Accordingly, the promulgation of this law became a defining landmark symbolizing the completion of judicial independence, and its anniversary was transformed into a national occasion celebrated annually by the judicial institution under the title "Iraqi Judiciary Day." On this day, judges and court personnel recall their constitutional and ethical responsibilities and renew their commitment to the protection of rights and freedoms.

The President of the Supreme Judicial Council, Judge Dr. Faiq Zaidan, expressed this significance by stating:

"True judicial independence was completed with the issuance of the Law of the Supreme Judicial Council No. 45 of 2017,"

emphasizing that judges' belief in the principle of the rule of law was what preserved Iraq's security, safety, unity, and interests despite the difficulty of the task.

He further highlighted the nature of the challenges faced by the judicial institution by stating:

"Some evaluate judicial decisions through the lens of personal, partisan, or factional interest; nevertheless, despite these challenges, our awareness of the importance of our role in establishing justice has enabled us to overcome difficulties and obstacles."

Renewing the pledge to the people, he stated:

"We pledge to our people to apply the Constitution and the law impartially, and to stand at an equal distance from all litigants regardless of their backgrounds. This is a trust upon our shoulders, and the judges of Iraq—as they have always been—are worthy of this trust."

Thus, Iraqi Judiciary Day becomes an occasion for reflection on a long journey that began with the earliest laws in Mesopotamia, passed through successive historical eras, and culminated in contemporary institutional independence founded upon the supremacy of the Constitution and the law—affirming that the judiciary has been, and will remain, a steadfast pillar in protecting the state and society and safeguarding justice and rights.

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7.Sara Dean Kelly, British journalist working with the United Nations Educational, Scientific and Cultural Organization (UNESCO), specializing in British criminal justice affairs.

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Judicial Rationalization of the Power of Detention and the Activation of Alternatives

An Analytical Reading of the Latest Directives of the Supreme Judicial Council

The Problematic Balance between the Requirements of Investigation and the Protection of Personal Liberty

Personal liberty constitutes one of the most sacred rights guaranteed by the Iraqi Constitution and international laws, and it may not be infringed except within the narrowest limits and for compelling necessity. In practical application, pretrial detention represents the most serious measure affecting this liberty prior to the issuance of a final judicial judgment, which renders it, by its very nature, an exceptional measure rather than a general rule.

In this context, the document issued by the Presidency of the Public Prosecution at the Supreme Judicial Council, No. 2205/Follow-up/Reports/2025, dated 2025/12/9, emerges as a highly significant reference document. It seeks to recalibrate the legal compass toward reducing instances of deprivation of liberty and to address the crisis of prison overcrowding, which has become a burden on the judicial and security systems.

Dr. Saif Hadi Abdullah Al-Zuwaini
College of Law, Al-Nahrain University

First: Affirming the Principle of the Exceptional Nature of Detention and the Legitimacy of the Measure

The first paragraph of the directives provides, "Not to resort to detaining persons except in the mandatory cases stipulated by law, whenever possible."

From a doctrinal and legal perspective, this directive constitutes a substantive activation of the principle that the presumption of innocence is the rule. Excessive use of detention transforms this precautionary measure into a form of preemptive punishment, which contradicts its legislative purpose. Careful attention to the phrase "whenever possible" indicates the necessity for judges to exercise their discretionary authority in favor of the accused, such that detention is not employed unless its preventive justifications are present, such as fear of flight or tampering with evidence, rather than as a routine measure accompanying every case.

Second: The Personality of the Accused as a Criterion for Assessing the Legal Position

The directive explicitly calls for consideration of "the circumstances of the case, the committed offense, and the personality of the offender."

Here, judicial discourse moves from treating the offense as an abstract material act to addressing the offender as a human being with social and personal circumstances. This approach aligns with modern theories in criminology and punishment, particularly the individualization of sanctions and procedures. An accused person who poses no risk of absconding, or who has committed a minor misdemeanor and does not represent criminal dangerousness, lacks any legal justification for detention. Indeed, detaining such a person may lead to adverse consequences due to contact with hardened criminals, resulting in criminal contagion.

Third: Procedural Economy and Guarantees of Liberty, Bail and Time Limits

The second and third paragraphs focus on limiting detention periods and releasing the accused on bail.

1. Limiting periods

This principle affirms that detention is a means to serve the investigation, not an end in itself. Once the interest of the investigation ceases, continued detention becomes arbitrary and constitutes a violation of the principle of legality.

2. Facilitating bail

The call to exercise the authority to release on bail "whenever legally permissible" reflects a tendency toward strengthening trust between the judiciary and citizens. Bail is a guarantee of the accused's appearance, not a means of financial coercion. Activating this mechanism alleviates the immense pressure on police detention facilities without undermining the course of justice.

Fourth: The Shift toward Restorative Justice and Financial Alternatives

Perhaps the fourth paragraph, which provides for "adopting fines instead of imprisonment in a manner that achieves the required deterrence," represents the most significant qualitative shift.

From a legal standpoint, this directive urges courts to activate legal provisions that allow for replacing custodial penalties in misdemeanors and infractions with financial sanctions. This approach achieves a dual benefit:

- A social benefit, sparing those convicted, particularly in non-serious offenses, from the destructive effects of imprisonment, such as social stigma, family disintegration, and loss of employment.
- An economic benefit, supplying the public treasury with fines instead of depleting state resources on the costs of incarceration, in line with the principle of penal utilitarianism.

Conclusion: Toward a More Humane and Effective Criminal Policy

This document issued by the Supreme Judicial Council does not constitute a mere administrative circular, but rather a directive aimed at correcting procedural practice. It is an explicit call to investigative judges and courts to move beyond the sphere of judicial routine that tends to favor detention as the easier option, and to advance toward the realm of expeditious justice that intelligently balances society's right to security with the individual's right to liberty.

The implementation of these directives requires judicial courage in employing alternatives to detention, and legal awareness that imprisonment is the last resort, not the first, in order to uphold the rule of law and preserve the dignity of the Iraqi individual.

How to Criticize and Remain Free from Hatred?

Nihaya Dawood Salloum / Academic Affairs Department

The writer Dale Carnegie says in his book How to Win Friends and Influence People:

During a tour by the owner of a factory through his workplace, he noticed some workers smoking, with a sign hanging directly above their heads that read: "No Smoking." Did he draw their attention angrily and say, "Don't you know how to read?"

No. Instead, he walked toward them, stood with them calmly, and handed each one a cigar, saying: I would appreciate it if you smoked this cigar outside.

At that moment, they grasped the meaning of his words and appreciated his good treatment, because he did not reprimand them. Can you help but admire a man like that?

This type of wise management is what an administrative leader needs when managing an institution. A manager who possesses true leadership qualities should not use authority for domination, provocation, fault-finding, or excessive blame and criticism of every action taken by employees, nor should he become entangled in petty conflicts. Rather, he needs to master the skill of dealing with others, because engaging in such matters wastes energy and time, and responding to provocation makes him part of a game that diminishes his stature.

These principles are part of administrative skills that enable a person to understand the nature of human conflicts. The true winner is not the one who shouts the loudest, but the one who moves the strings calmly and focuses on achieving goals that make him the center of attention.

The psychologist Freud says that the desire for greatness—that is, for a person to have an impact and be remembered—is the most prominent characteristic that distinguishes humans from animals, and it is their greatest motivation for work. It was this very desire that drove a young writer, who had received little formal education, to study law books he found in a garbage dump, and later become President of the United States (Abraham Lincoln). The same desire drives a wealthy businessman to build a mosque that immortalizes his name, leaving behind a distinctive legacy. This is what a leader should focus on in the institution he manages: performing distinctive tasks that leave a lasting imprint over time, without being preoccupied with trivial matters.

So, if you wish to win people over without offending them or provoking their resentment, here is the rule: draw attention to mistakes indirectly.

Temporary Child Maintenance

between the Letter and the Spirit of the Law

Student: Mustafa Jassim Hussein – Cohort 50

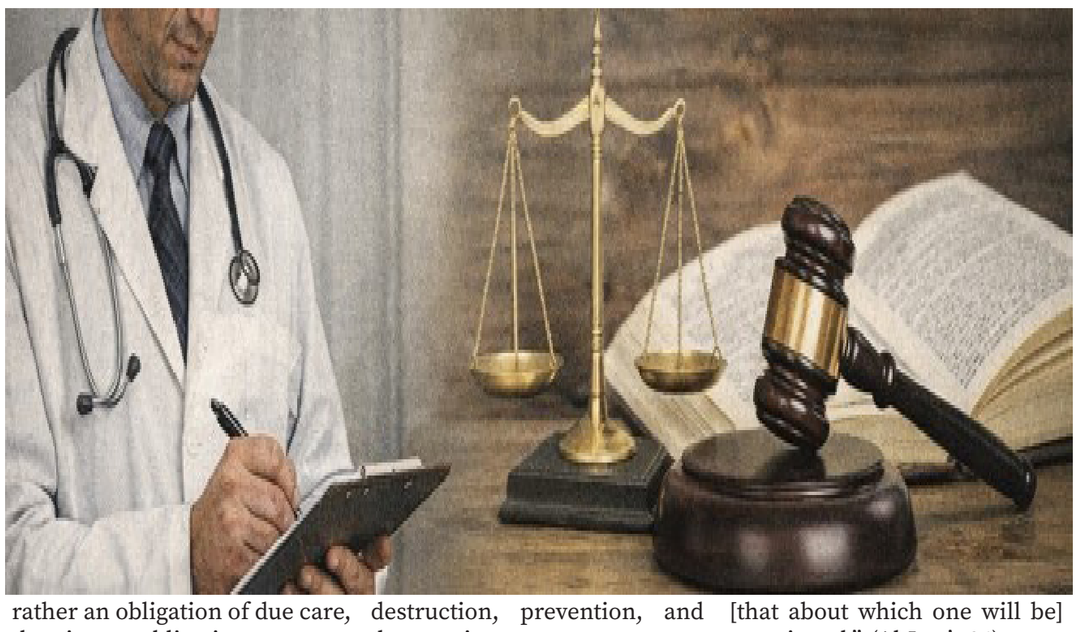
Maintenance is considered one of the most humane subjects regulated by the Personal Status Law, as it relates directly to the family and its stability. Maintenance, in general, refers to the funds expended by a man to meet the needs of the wife, the children, and those whom he is legally obliged to support. It is a right of the aforementioned categories, imposed by Islamic Sharia and by positive laws derived from those Sharia provisions, upon the man, particularly the husband. He is therefore obligated to provide all elements of maintenance for his wife and children, including food, clothing, housing and its related requirements, medical expenses, and the cost of domestic service for a wife who is unable to perform ordinary household duties. In practice, it is often observed during court proceedings that the failure of the person obligated to pay maintenance to fulfill this duty compels the entitled party to resort to the judiciary in order to obtain their lawful entitlement. The majority of such cases brought before Personal Status Courts concern spousal maintenance in all its forms, governed legally by Article (23) of the Personal Status Law, as well as child maintenance.

The judiciary addresses this type of litigation with both humanity and firmness through the application of the provisions set forth in the Personal Status Law. This approach presents no difficulty, except with regard to temporary maintenance, which is imposed upon request pending the resolution of the principal maintenance claim. There is no dispute concerning temporary maintenance claimed by the wife. All courts have consistently settled on imposing it in favor of the wife, based on the explicit wording of Article (31) of the amended Personal Status Law No. (188) of 1959. However, controversy arises with respect to the imposition of temporary maintenance for children. The question thus arises: do children have the right to temporary maintenance pursuant to Article (302) of the Civil Procedure Law, or are they excluded based on Article (31) of the Personal Status Law?Some courts hold that the Personal Status Law provides for temporary maintenance exclusively for the wife, relying on the explicit wording of the aforementioned provision, and that strict adherence to the literal text is required. Had the legislator intended to include children, it would have stated so expressly. According to this view, Article (302) is procedural rather than substantive in nature; it merely addresses the mechanism for enforcing judgments and does not authorize the court to impose temporary maintenance for children. It identifies the competent court to impose temporary maintenance upon the applicant for maintenance, namely the wife, without providing for the imposition of temporary maintenance for children against their father. This view has been consistently upheld by the Federal Court of Cassation in numerous decisions. Nevertheless, an opposing view exists, which supports the imposition of temporary maintenance for both the wife and the children alike. Proponents of this view rely on a broad interpretation of Article (302) of the Civil Procedure Law, arguing that the phrase "the maintenance claimant" encompasses children as well. Had the legislator intended to restrict this term to the wife alone, it would have explicitly indicated so.

Between these two positions, the sounder approach is to adhere to the literal wording of Article (31) of the Personal Status Law, as a special provision regulating the imposition of temporary maintenance for the wife only, and to regard Article (302) as a procedural provision that cannot be relied upon to impose temporary maintenance for children. Had the legislator intended to include children within its scope, it would have expressly provided for that in Article (31), as there would have been no legal impediment to doing so.

However, while emphasizing strict adherence to the wording of the aforementioned provision, the judge, when imposing temporary maintenance for the wife alone, must take into consideration—when determining the amount of such maintenance—the financial needs of the wife insofar as they relate to supporting the children. This includes the number of children, their needs, and their expenses, particularly if they are students. In doing so, the judge applies the spirit of the provision while remaining bound by its text, taking into account humanitarian considerations and the needs of the children, as well as the mother's inability to support them during the pendency of the principal maintenance case, especially where she lacks an income or a stable source of support.

Contractual Liability of Physicians in Law and Islamic Jurisprudence



Contractual liability does not arise unless there exists a valid and enforceable contract and the debtor has failed to perform it. Accordingly, the debtor must perform the contractual obligation in kind whenever such performance is possible. If performance in kind is impossible, or if it is possible but the creditor prefers to claim compensation and the debtor does not demonstrate readiness to perform in kind, then contractual liability arises. In such a case, the judge is entitled to award compensation against the debtor if the debtor's liability for non-performance of the contractual obligation is established. Contractual liability is considered diminished when the debtor fails to perform the obligation in kind, provided that the debtor is unable to prove that performance has become impossible due to a foreign cause beyond the debtor's control. If the debtor proves that performance was rendered impossible by such a foreign cause, contractual liability is not established in that case. This liability has three essential elements that must be present for the debtor's contractual liability to arise: contractual fault, damage, and the causal link between the fault and the damage.

Student: Omar Imad Ahmed Mohammed – Judges' Course (Cohort 48)

Contractual fault consists in the debtor's failure to perform the obligation arising from the contract. In the present discussion, the debtor is the physician or pharmacist. The obligation arising from the contract is not an obligation to achieve a specific result, but rather an obligation of due care, that is, an obligation to exert effort to achieve a purpose, whether or not that purpose is ultimately achieved. The physician is thus required to exercise a certain degree of care. As a general rule, this care is that of an ordinarily prudent person, unless the law or the agreement stipulates a higher or lower standard.

The physician is obligated to treat the patient, and the source of this obligation is the contract concluded between them. If the physician fails to exercise the necessary and required care, through negligence or deviation from the professional standards of medical practice, the physician commits a contractual fault. The patient must then prove the damage suffered as a result of this fault in order to be entitled to compensation, unless the physician proves that the failure to exercise the required care was due to a foreign cause. By establishing such proof, the causal link between the fault and the damage is negated.

As for Islamic jurisprudence, the causes of liability (compensation) are five: contract, possession, destruction, prevention, and deception.

The contract is one of the causes of liability, because by its nature it entails specific legal effects, and any breach of what the nature of the contract requires, or of what the contract itself stipulates, constitutes a source of liability. Al-Suyuti, the Shafi'i jurist, stated: "What is guaranteed by contractual liability with certainty is that which is specified in the core of a contract of sale, salam, or ijārah, and the like."

Accordingly, the contracting parties are obliged to perform the obligations arising from the contract. If either party fails to perform their obligation, liability attaches to the party from whose side the breach occurred, on the basis of the contract.

Just as liability arises from failure to fulfill what the nature of the contract requires, it also arises from breach of a condition stipulated in the contract. Allah the Almighty says:

"O you who have believed, fulfill [all] contracts." (Al-Ma'idah: 1).

And He almighty also says:

"And fulfill [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned." (Al-Isra': 34).

Jurists have differed regarding the attachment of conditions to contracts. Some prohibited it absolutely, others permitted it absolutely, and others adopted a detailed approach, prohibiting conditions that are incompatible with the contract and permitting conditions that are compatible with it.

And Prophet Muhammed peace and blessings of Allah be upon him and his household said:

"Muslims are bound by their conditions, except a condition that makes lawful what is unlawful or makes unlawful what is lawful."

The Federal Court of Cassation has ruled according to the following principle: "The medical error resulting from the misdiagnosis of the appellant's illness was caused by one of the physicians of Hospital (...), whose name was identified. Accordingly, the medical error issued by the physician entails personal liability on the part of the physician, who must be sued in his personal capacity, and there is no relation to the concerned department in its capacity added to its function."

Judicial Prompt Engineering with Artificial Intelligence

From the Language of Investigation to Digital Justice

In an era in which the structure of justice is being reshaped under the pressure of the digital revolution, prompt engineering is no longer merely a technique for improving the performance of artificial intelligence models. In the criminal justice context, it has evolved into a legal-methodological field that redefines the relationship between truth and evidence. Truth is no longer presented as a linguistic narrative, but rather as a fact capable of visual reconstruction and methodological verification, within strict limits that protect justice from falsification and illusion.

From this perspective emerges the concept of the judicial prompt through artificial intelligence, as a document of(control and calibration), not a creative command that unleashes the imagination of the machine. It is a legal-technical framework that determines what may be represented and simulated, and what must remain suspended or unresolved. It precisely links judicial inputs (statements, reports, evidence, confessions, appeals) to visual outputs (visualizations, simulations, three-dimensional models). In this way, justice moves from the authority of rhetoric to the authority of method, and from words to verifiable observations.

Dhia Thabit
UNESCO Expert in Communication and Information

Artificial Intelligence as an "Expert," Not a Black Box

Introducing AI-generated outputs into the judicial arena does not proceed through technological spectacle, but through legal reliability. Amendments to the U.S. Federal Rules of Evidence (FRE 702) embody this shift, emphasizing that expert testimony—whether from a human or an intelligent system—must be based on sufficient data, reliable methodologies, and proper application to the facts of the case.

In the same direction, emerging rules governing machine-generated evidence seek to prevent images or intelligent models from being treated as self-standing facts unless the method of their production is itself subject to scrutiny. Here, the judicial prompt emerges as the heart of the evidentiary process, not merely a technical step.

Between the Conventional Prompt and the Judicial Prompt

A conventional prompt is broad and descriptive, leaving the machine free to fill gaps. A judicial prompt, by contrast, is structural and constrained; it treats the incident as a semantic record in which embellishment has no place.

This distinction is not stylistic but legal. It parallels the distinction in the law of evidence between illustrative aids that represent existing facts and interpretive or predictive simulations that generate new knowledge and are therefore subject to far stricter standards. The function of the judicial prompt is to keep outputs within the realm of illustrative depiction, not to slip into the territory of "junk science" or manufactured argument.

From the Open Question to Structured Judicial Logic

As the use of artificial intelligence in trials has advanced, models of prompts have appeared that mirror judicial reasoning rather than narrative storytelling, relying on analytical structures such as IRAC (Issue, Rule, Application, Conclusion).

Prompt engineering has thus evolved into multi-stage systems, including:

- Contextual prompts to define and constrain the legal framework,
- Task-based prompts to extract and fix facts,
- Reasoning prompts that prevent the generation of new facts.

Accordingly, the judicial prompt becomes a logical architecture of reasoning, not a mere directive sentence.

The Three Principles of Intelligent Judicial Simulation

To prevent visual justice from devolving into visual deception, judicial prompt engineering rests on three pillars:

1.The Principle of Non-Assumption

The machine tends to fill gaps with statistically optimal probabilities, but in the judicial context such probabilities may be more dangerous than falsehood. The intelligent model must therefore be required to distinguish between what is established by evidence, what is logically inferred, and what remains unknown.

2.The Principle of Legal Constraint

Outputs must not create new evidence, add criminal intent, or introduce legal characterization. Here, the concept of "the human in the loop" is embodied through continuous human review and professional accountability. The machine does not judge; it merely displays within predefined boundaries.

3.The Principle of Multiple Scenarios

Instead of a single compelling narrative, multiple scenarios tied to different evidentiary hypotheses are presented, enabling both defense and prosecution to test possibilities on equal footing. This marks a shift from "a story that convinces" to "a laboratory of hypotheses."

From Statements to a Reconstructible Scene

Primary judicial data—statements, reports, evidence, and semantic analysis—however partial or linguistically limited, cannot simply be collected; they must be deconstructed and encoded:

- The accused's statement is parsed to separate actions from justifications.
- The witness's statement is analyzed visually and acoustically (line of sight, distance, timing).
- The victim's statement is handled with ethical sensitivity, without re-invoking pain.
- Medical reports are transformed into physical or chemical vectors.
- Criminal evidence is formulated as "tool–act–result" relationships.

All of this requires a unified data repository with a clear chain of custody, for a scene without a chain of custody has no evidentiary value.

A Model, Not a Film—and a Courtroom, Not a Stage

An intelligent judicial scene is not a dramatic film, but a neutral interactive model, based on:

spatial engineering, temporal sequencing, anonymized figures, evidence-based motion, informational sound, lighting consistent with reality, and a fixed judicial viewpoint.

In court, this model is presented as an illustrative aid open to challenge and examination, with equivalent copies made available to both defense and prosecution.

When the Image Is More Dangerous than the Word

Visual justice may turn into misleading justice if not properly constrained:

- a legal risk arising from simulations lacking reliability,
- a psychological risk stemming from the persuasive power of images,
- an ethical risk resulting from the loss of material connection to reality.

The solution lies in transparency, documentation of prompts, disclosure of constraints, and empowering the parties to examine the methodology before viewing the scene.

The aim is not to impress the court, but to liberate truth from the limitations of language and present it as a testable fact. The judicial prompt is not an order to the machine, but a document of justice, written by the legal mind with methodological rigor and signed by professional conscience.

Only then will the question cease to be: Is the scene convincing?

and become instead: What is its methodology? What are its data? What are its constraints? And what kind of justice does it produce when presented?

A Legal Reading of the Provisions of the Amended Personal Status Law No. 188 of 1959

By Student: Abdul-Ameer Karim Zahraw
Cohort 51

The in-force Personal Status Law No. (188) of 1959 is among the key legislative instruments that have regulated family relations in Iraq, given its important role in organizing matters of marriage, divorce, maintenance, dower, custody, and other family-related affairs. Among the legal concepts contained in this law, the term "two years" emerges as a temporal limit that has a direct impact on a number of legal rulings and procedures, whether related to applications for judicial separation, compensation for arbitrary divorce, or periods of abandonment. However, despite its explicit appearance in the statutory text, this temporal ceiling continues to raise many questions regarding the legislative purpose behind fixing the period at two years, particularly in light of the occasional divergence between legal texts and judicial practice, as well as differing opinions in legal and Islamic jurisprudence concerning its interpretation.

Accordingly, this paper seeks to clarify the principal source of the term "two years" as mentioned in the applicable Iraqi Personal Status Law, through an examination of the relevant provisions, including the following:

Article (5/25/A)

This provision stipulates that: "The wife may request judicial separation after the lapse of two years from the date on which the judgment of nushūz (marital disobedience) acquires finality."

One of the legal consequences of nushūz is the right to request judicial separation in order to terminate a marital relationship that has reached an intractable stage where no solution remains other than separation between the spouses. The law therefore treats nushūz as one of the grounds for separation. The distinction between the husband being the party requesting separation and the wife being the requesting party lies in the temporal element fixed at two years. In this provision, the legislator restricted the wife's right to request separation to the lapse of two years from the date on which the judgment establishing her nushūz becomes final. A similar approach is found in the Personal Status Law of the Kurdistan Region, which set the period for the wife's request for separation at six months. Since this period lacks a clear juristic foundation, it may be regarded as a product of the legislator's philosophy, shaped by several considerations, including granting the husband an opportunity for reconciliation, or preventing the wife from being left in a suspended state, among other reasons.

Article (3/39)

This provision states: "If the husband divorces his wife and the court finds that he acted arbitrarily in divorcing her and that the wife suffered harm as a result, the court shall, at her request, award her compensation against the divorcer, proportionate to his financial condition and the degree of his arbitrariness, assessed as a lump sum, provided that it does not exceed maintenance for a period of two years, in addition to her other established rights."

Some jurists maintain that divorce causes harm to a woman and inflicts moral injury upon her; therefore, Islamic Sharia took this into consideration and entitled her to compensation for the harm resulting from divorce. They argue that the mutʿah mentioned in the noble Qur'anic verse is nothing but compensation for the damage suffered by the divorced woman, referring to it as mutʿat al-ṭalāq. This is the approach adopted by the law, notwithstanding the fact that classical juristic texts did not specify a duration for such compensation, whereas the law fixed it at two years.

Article (43/First/2)

This provision states: "If the husband abandons his wife for a period of two years or more without a lawful excuse, even if his place of residence is known and he has property from which she can spend."

Article (43/First/3)

It further provides: "If the husband does not request his non-consummated wife to proceed with the wedding within two years from the date of the contract; no regard shall be had to the husband's request for consummation if he has not fulfilled her marital rights."

In this provision, the Iraqi legislator permitted a non-consummated wife to request judicial separation if the husband fails to request consummation within the two-year period specified above. The reason for this is that such delay causes harm to the wife and constitutes an indication of the husband's lack of desire to proceed with the marriage. Consequently, the wife is placed in an unstable situation—neither truly married nor unmarried. The legislator was therefore precise in fixing a specific period to prevent abuse by the husband. The choice of two years mirrors what was established regarding the wife's nushūz under Article (5/25/A) of the Personal Status Law and serves to place a limit on a marital relationship oscillating between continuation and dissolution.

Following this legal reading, it becomes evident that fixing the period at two years in the provisions of the in-force Personal Status Law No. (188) of 1959 was motivated by different considerations. Some reflect the legislator's vision and practical realities, while others are linked to juristic roots derived from Islamic Sharia. In its substance, this period carries important legal and social implications aimed at ensuring a balance between the statutory text and the achievement of justice in legislation.

Cross-Border Inheritance

Rand Abd Al-Mahdi
Judicial Assistant / Courthouse of New Baghdad

Mixed and cross-border marriages are no longer an exception; rather, they have increasingly come to raise unforeseen legal challenges, particularly in matters of inheritance. One case brought before the Iraqi judiciary revealed a fundamental question: to what extent do inheritance rules apply when a deceased Iraqi citizen leaves behind a French spouse?

Accordingly, the core issue centers on two questions: who inherits, and which law governs the inheritance?

Under Iraqi law, pursuant to the amended Iraqi Personal Status Law No. (188) of 1959, matters of inheritance are governed by the rules of Islamic Sharia. Article (307) of the Iraqi Civil Code further provides that Iraqi law applies to all Iraqis residing inside or outside Iraq, unless a special provision provides otherwise.

First Case – The Muslim French Wife

If the wife holds French nationality but professes Islam, the impediment of difference in religion does not arise. She is therefore considered an heir in accordance with the Islamic inheritance rules applied before the Iraqi courts.

This legal characterization may further be supported by the principle of reciprocity in international relations, pursuant to Article (10) of the Iraqi Civil Code.

Second Case – The Christian French Wife

If, however, the wife is a Christian French national, the difference in religion constitutes a Sharia-based impediment to inheritance, in accordance with the well-established juristic rule: "People of different religions do not inherit from one another" (i.e., a Muslim and a non-Muslim).

Nevertheless, an alternative legal avenue exists in the form of a will. The deceased may bequeath to her, despite her not being an heir, an amount not exceeding one third of the estate, pursuant to Article (74) of the Iraqi Personal Status Law and in conformity with the rules governing wills in Islamic jurisprudence.

Position of French Law

By contrast, Article 732 of the French Civil Code establishes the right of the spouse to inherit regardless of religion.

Moreover, the French legal system applies to the estate the law of the deceased's place of domicile, subject to considerations of public order. In addition, European Union Regulation No. 650 of 2012 allows for the choice of the law applicable to the estate, whether the law of the country of nationality or that of domicile.

From the foregoing, it is evident that there is a need for legal coordination. While conflicts between Iraqi and French legal provisions do not render solutions impossible, they do reveal a clear need for bilateral agreements or memoranda of understanding aimed at avoiding conflicts of laws and protecting family rights. Cross-border marital relationships require a clear legal framework, particularly in matters of inheritance. Accordingly, expanding the scope of legal cooperation between the two countries constitutes an important step toward achieving justice and ensuring family stability.

The published articles represent the views of their authors and do not necessarily reflect the official position of the newspaper.

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