

# Protecting Rights of Accused between Legislation and Practice

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**Abstract---** *The most glorious role of the modern state, concerning the rights of its citizens, is maintaining the balance between the citizen's right and public interests. These two roles sometimes might contradict each other's, even in those cases that the public interest demands prevailing a right that has to be protected over the individual interest or right. For instance in the case of committing crimes, that forces the state to practice its rights to punish the criminal through restricting criminal's freedom and depriving him from some of his rights. For that, the state must be committed to provide a legal and constitutional protection to prevent the public authority's abuse in practicing the state's rights while dealing with those citizens that their life, individual or social conditions dragged them into the crime circle, when they practice some actions or do not do some others, that both of them count as criminal in the legal point of view. Since the accused is the weak side in the criminal case, the Iraqi legislature emphasized in permanent Iraqi constitution of 2005, or criminal legislations (whether substantive or Procedural) on providing important guarantee to protect this side from abusing who acts on accused's issues throughout criminal case, whether in the phase of inquiring and gathering of evidence or in the phases of investigation and trial. But this alone is not enough or a proof on real practicing of those guarantees, for the constitutional or legislated texts (substantives and Procedural) are not warranties for true practicing. In order to address the research question, this research relies on three types of methodology: which are: descriptive, analytical and comparative.*

**Keywords:** Legislation and Practice, Protecting Rights of Accused, Criminal Cases.

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## I. INTRODUCTION

### A. Research Question

This research is determined to provide answers for these questions: what is the responsibility of the state to practice constitutional guarantees of accused in reality? what are the phases criminal case goes through? what are the legal guarantees that are claimed for the accused in course of criminal case? and how is its sufficiency? to what extents the constitutional and legal guarantees claimed to protect the rights of the accused, are getting to be practiced in the reality? and finally what are the influences of unrespecting legal texts that protect rights of accused?.

### B. Research Objective

This research is determined to fulfill many objectives such as: providing scientific contribution to recognition of accused's rights and transcending our criminal legislation to required level. Obligating investigators to respect rights of accused and practicing them in reality, and calling upon monitoring sides of investigating issues including public

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prosecution, courts and accused's deputy to hold the guarantees of accused's rights and respecting it, in order to achieve the justice and good progress of criminal cases.

### ***C. Research Methodology***

Answering the questions of our research require commitment to descriptive methodology, which depends on collecting facts and describing them as they are; and also to analytic methodology, which depends on discussing and analyzing opinions of the jurisprudents, constitutional rules and criminal case legislations as well (procedural and substantives); and also to comparative methodology, in accordance to the modern methodology in judicial studies, which can help us to relief the similarities and differences, weak and strong points, and exchanged effects between our criminal law and compared criminal laws, for that, this research depends on descriptive analytic comparative methodology to attain its objective.

### ***D. Research Outline***

There searchers depend on a specific plan to present their research at first, we highlight, rights of accused in the phase of inquiring and collecting evidences, and then rights of accused in the phase of preliminary investigation, finally we explore the rights of accused in the phase of trail.

## **II. RIGHTS OF ACCUSED IN THE PHASE OF GATHERING EVIDENCES**

Criminal case starts with investigation, gathering evidences phase is a preliminary phase, and generally crime scene officers works on it or sometimes public authority and people, and gathering evidence acts are not within the investigation proceedings [3].

According to multiplicity of those who act on accused's issues in this phase and variety of procedures of inquiry and revealing the crimes, probably violation would be done by crime scene officers and public authority, whether in the course of investigating the crime in the normal circumstances or in the course of inspecting or arresting accused in the (witnessed crimes).

Depending on this point, we will divide the chapter to two parts, in the first part, we would research the rights of accused in the investigation phase, and in the second we study the rights of accused during arresting and inspecting in the case of witnessed crimes.

### ***A. Rights of Accused During the Inquiring of Crimes***

According to Article 39 of Iraqi Criminal Procedure code No. (23) of 1971 "crime scene officers are the following persons, within their areas of competence:

- a) Police officers, police station commanders and sub-officers.
- b) Mayors of villages and of urban neighborhoods - in respect of the notification of crimes, the apprehension of suspects and the safe custody of persons who should be detained.
- c) Railway stationmasters or their deputies, train guards/conductors, port managers/harbormasters, airport managers and captains of ships and aircraft and their deputies - in respect of crimes committed within their areas of responsibility.

d) Heads of government departments and official or semi-official establishments and agencies - in respect of crimes committed within their areas of responsibility.

e) Public servants authorized to investigate crimes and take appropriate action within the limits of the powers accorded to them by the relevant laws”.

This article determined the crime scene officers who has rights to inquiry the crimes and gather evidences exclusively, and it didn't include governors and heads of management units, in addition to the head of governorate council and district and sub-district within decided tasks due to decentralized authority that given to them, according to Non-Systemized Provincial Law in region No. (21) of 2001, which needs a legal interfering to change this mentioned article in order to add other people as inquirer of crimes and gatherer of evidences.

So, the tasks of crime scene officers are inquiring and gathering criminal evidences and receiving notification and complaints, but they don't have the authority to evaluate the notification and complaints. They just gather criminal evidences, then presenting them to investigation judge, and their tasks do not include investigation even in witnessed crimes[7, 11].

And each crime scene officer perform their jobs in the limits of their jurisdiction, supervised by public prosecution and depending on legal provisions of (Article 40/A of Iraqi Criminal Procedure Code), as the crime scene officers obliges in performing their duties, would be monitored by investigation judge (Article 40/B).

This guarantee considered as one of those guarantees that would secure the good progressing of crime scene officer's job, for he won't violate the legal provisions when he perform his duties.

Here arises a question concerning the possibility of gathering evidences in those crimes that requires law, before starting investigation, to take actions, such as (request crimes, permission crimes, and complaint crimes).

- Request is procedure issued in a written, form an official side specified by law to the competent investigating authority, and declares the desire of that side to initiate criminal case for the crime which has prejudiced its interest or harmed an interest that is represented by it [1].
- Permission is a procedure that includes stating of the approval of the side specified by law to initiate criminal case against accused for a crime that initiating it requires approval of that side [18].
- Complaint crimes are crimes that are only initiated by a complaint of the concerned people and have a limitation period which is (three months from the date when the victim became aware of the crime, the legislature regulates its provisions in the article (3), and criminal case can be initiated only on the base of a complaint from the victim or someone taking his place in law

In these crimes, crime scene officer does what he has to do in collecting information, inquiring and gathering evidences, and keeps them with investigator until he receives the request or complaint or permission, then initiate proceedings and depending on that what the crime scene officer done would be valuable, including inferences, and without it, the criminal proceedings cannot be initiated, also the investigation cannot be started, and the inferences would not have any legal value [12, 16, 19].

In this phase, two subjects would rise – concerning the rights of accused-, which are seriousness of inquiring and

its limits as an evidence for condemnation, regarding the seriousness of investigation, requires law to reference the proceedings to some reasons and proceeds with monitoring as a guarantee of validity of information that the proceedings depends on, for non-seriousness of investigations would cancel entire inquiring proceedings and revealing inferences until inspecting and getting to materialistic evidences of the crime [25].

And the validity of inquiring as an evidence for condemnation, judicial provisions (Iraqi Court of Cassation, Egyptian Court of Cassation) settled on insufficiency of inquiring as an evidence for condemnation, unless evidence strengthens it, and the witness on the inquiry is not considered as an evidence for this matter, unless witnessing was depending on the criminal scenes [25].

### ***B. Rights of Accused During Arresting and Inspecting in the Case of Witnessed Crimes***

The Article (1/B) of Criminal Procedure Code reported those cases which a crime considered a (witnessed crime)exclusively as follows: “A crime is considered to have been witnessed if it was witnessed whilst being committed or a shortly afterwards or if the victim followed the perpetrator afterwards or if shouting crowds followed him afterwards or if the perpetrator was found a short while later carrying the equipment or weapons or goods or documents or other things pointing to the fact that he was a perpetrator or participant in the crime or if traces or signs indicate this at the time”.

During occurrence of a witnessed crime and detecting it by a crime scene officer or receiving the report or complaint, he would perform some proceedings, such as: arriving to the crime location as soon as possible after notifying the investigation judge and public prosecution at the appropriate time, and taking some actions in the case, which represent in listening to the victim, if he was alive, and recording the witness’ statement, if they was any, managing the weapons and keeping them, also keeping the available evidences in criminal scenes, and arranging a detection and preventing any one to leave the criminal scene, questioning the accused and not investigating him, and in all of these has the help of experts and experienced people, if it is needed [34, 36, 38].

The article (50) of the Criminal Procedure Code gave special and exceptional legitimacy to police officers and commissioners which they don’t have in normal crimes, like it allowed the head of police station the authority to investigate in all of the crimes in some particular situations by giving them a wide investigatory authority in these crimes like it is given to an investigator if he is instructed to do so by an investigative judge or [judicial] investigator or If he considers that referring the informant to an investigative judge or [judicial] investigator would delay necessary action and result in evidence of the crime being destroyed or lost, the course of the investigation being impaired or the suspect fleeing, provided that the officer submits the documentary record of the investigation to the investigative judge or the [judicial] investigator as soon as he has completed it [20, 26, 32].

However, it can be seen that the Iraqi legislature wasn’t successful to widen the authority of heads of police stations to this limit, for the head of police stations must precede some investigation’s proceedings according to an order from the investigation judge or investigator, in order to be justified –because the investigation judge or the investigator have a lot of things to do and might don’t allow them to proceed the proceedings of the investigation-, but the reason of putting the investigation in the hand of a head of a police station, is thinking that it would violate the investigation if the reported would be transmitted to investigation judge or investigator, or just because there is a

possibility of the accused to flee, and we won't hide what are the risks that would face the rights and freedoms of individuals in a way, not mentioning the extent of how heads of police stations prevents the investigators to do their duties on the other hand, so the legislature had to restrict the cases that the heads of police stations can perform the investigations.

And we notice that the Iraqi legislature gave wide authority to the crime scene officers in articles (72, 79, 102 and 103 of Criminal Procedure Code) concerning investigations and arresting the accused of witnessed crimes which are the most dangerous and important influences of witnessed crime.

Article (72) clarified that the inspecting would be performed by some actors, including crime scene officers, and the article (79) makes it obligatory on this officers to inspect the arrested in a situation that he is allowed to be arrested, at the same time gave the allowance to inspect and check the house to accused or any other places which he owns, in order to manage the persons, documents or any other things that would be help to reveal the truth, and this happens in seen misdemeanors and felonies.

Here we see the extent of the risk and danger on the freedom of the individuals and the sanctity of their houses by the crime scene officers, for they have the given absolute authority during the investigation of crime, such as arresting the accused and chasing him to those places that he would flee to, or inspecting their houses and even questioning him. Even though the investigation is considered as a part of investigation proceedings and must not be performed, unless with an allowance of an authority which is specialized in investigation, for it is one of those proceedings that is well connected to individual freedoms and houses' sanctity, and violating the secrets of people [10].

It is not allowed to enter houses without a prior permission from the judge, and not allowed to enter houses in the witnessed crime cases, for the witnessed crime followed by an order for only arresting and inspecting without entering any houses unless the situations are dangerous or permission, and it is not allowed to chase the accused into his house under the excuse to push back dangerous on the dwelled of house or after getting the permission from the house owner[2].

Here arises the question on the possibility of issuing an order to arrest and bringing the accused by a crime scene officer in a witnessed crime, so we see that the witnessed crime is the only case that is allowed for a crime scene officer to issue an order to arrest and bring the accused on a condition that the crime should be witnessed according to the article (1/B) of Criminal Procedure Code, and it is not allowed for him to issue an order like that, in cases other than witnessed crime even when the evidences were sufficient to accuse the accused and arresting him, for it must be presented to investigation authority and receive an arresting order from him to arrest the accused and bringing him [2].

From here we must show the differences between arresting, (Estiqaf) and (TaarwzAlmaddi), which have been texted in criminal jurisprudence and some criminal procedure legislations; arresting is restricting of accused's freedom for a period of time which is defined by the requirement and the interests of investigation depending on some rules that is been settled by the law [9], and it is not allowed to arrest anyone or stop him, unless there would be an issued order from judge or court or in those situations that law allowed it (articles 92,102 and 103 of Criminal

Procedure Code).

Estiqaf, is a term which is been created by criminal jurisprudence and the law didn't texted on, which is been taken from administrative detention; it is a case in which a crime scene officer or a man of public authority, if there was any strong signs to indicate that there is a crime, can interfere to scout someone who put himself in the position of suspicion before the crime scene officer, so it is allowed for crime scene officer and a man of public authority to perform this duty, and any other man, and this proceedings do not give the right to arrest or inspect the accused even if he was from crime scene officers, in addition to that the Estiqaf doesn't not considered among the public prosecution proceedings, unlike arresting which is counted among the investigation proceedings. So a police officer has rights to ask for ID from someone, even without being in position of suspicion, if this occurs, Estiqaf and what has been gather of evidences depending on this proceedings consider as falsified [5].

Taarwz Almaddiis not arresting but a stopping which is followed by restricting the freedom of an individual, and it is allowed to any crime scene officer and anyone from public authority and normal people to perform these proceedings in a witnessed crime, but this proceeding does not give right to arrest and inspect the individual, unless the performer was a crime scene officer, but generally the role of performer –if he was a man from public authority or was a normal person- to restrict his freedom and surrender him to closest station of judicial authority or crime scene officer[15].

Even the Iraqi legislature didn't define the last two terms during the framing of proceedings texts of criminal procedural code, and wasn't careful concerning this matter, but sufficed to use the term of “arresting” during framing of this articles, unlike some other Arabic legislatures such as Egyptian and Yemeni, and this is what negatively reflected on the performer of law and those who act on accused's issues during every phases of criminal case, including the phase of inquiring and gathering evidences (Articles 102 and 103 of Iraqi Criminal Procedure Code, Articles 107,108 and 175of Yemeni Procedures and Articles 34, 35, 37 and 38 of Egyptian Criminal Procedure).

### **III. RIGHTS OF ACCUSED DURING PRELIMINARY INVESTIGATION**

This phase is considered as the most important phase in criminal case and most dangerous as well, because of the variety of its proceedings and multiplicity of staffs that perform it, and the risk of actions that must be took during it, which may violate the justice of accused's trial.

In this chapter we would suffice to present the legal guarantees that the accused enjoy, which the Iraqi legislature pointed them out, whether in legislated texts of modified Criminal Procedure Code No. (23)of 1971, or of modified Iraqi Civil Procedural Law No. (83) of 1969 and of Law of Judicial Regulation No. (160) of 1979, with pointing to those connected laws to the research subject, whenever required [23].

#### ***A. Guarantees of Accused to Keep the Secrets of Preliminary Investigation in Facing People***

The rule which apply in this phrase is the secrecy of preliminary investigation in facing the people. Unlike trial phase which its proceedings considered as public to people and adversaries, but some proceeding legislature allowed the investigation authority in some proceedings during the initiatory investigation to restrict the circle of

investigation secrecy to include sides of criminal case. Thus prevent some of them to attend some proceedings in order to safeguard the secrecy of investigation due some reasons connected to necessities or emergency of the investigation, and the reason to make the preliminary investigation secret is to safeguard the interests of investigation on one hand, and protecting the reputation of the accused on another hand; and both of them connected to the general system, in a way that the legislatures emphasized on the secrecy of investigation in some countries that someone who violate the secrecy would be considered as a criminal.

The Iraqi legislature didn't specify a particular text to criminalization and punishment on disclosing secrets of preliminary investigation, despite banning of publishing investigatory proceedings in Article (6) of Press Law No [30]. (26) of 2011 which claims the right of journalists to notify the events and occurrences to the people, on the condition to not violate the banning of publishing the proceedings of preliminary investigation which been texted in Articles (235 and 236).

And when the revealing has been made by the investigators or supervisors, it would be counted as a crime which is assigned to employee and persons entrusted with a public service when he reveal secrets connected to his job and tasks, or public service, which that has been texted in Article (437) of Iraqi. Penal Code No.(111) of 1969 [29].

The practical reality in Iraq and Kurdistan region requires raising the level of procedural protection of secrecy of investigation in the phase of initiatory investigation by issuing a specified procedural text for criminalizing any revealing of secrets of initiatory investigation, in order to achieve the promised protection for criminal case in the phase of initiatory investigation from any risk of publishing through newspapers, presses or any other channels.

### ***B. Guarantees of Accused During Summons to Appear***

Summons to appear is to "Invite the accused to appear by the investigating judge, the investigator or in charge of the police station or by the court at a certain time and place to notify him of the crime he is accused of, to question him about the facts attributed to him or to confront him with the other accused or witnesses"[8].

Including those guarantees that the accused enjoy during these proceedings, follow:

1. Iraqi legislature allows issuing a document of asking the accused to attend or summons to appearing all of the crimes, except the crimes punishable by death or life imprisonment, because in these cases (arrest warrant) muse be issued at the begging, and crimes punishable by a period of detention exceeding one year, The accused shall be brought with the issuance of the arrest warrant unless it is advisable for the judge to bring him with the summons. (Article 99 of Criminal Procedural Code).

2. The legislature defined the period of time in which the accused could be asked to attend in the phase of trial and according to the type of crime, eight days for felony, three days for misdemeanors, and one day for infraction. (Article 143 of Criminal Procedure Code).The effect of the failure to observe these periods is the invalidity of all procedures, which necessitates its reinstatement.

And concerning the form of this proceeding and conditioning writing the request the legislations divided on two sides:

**The first trend:** summons to appear is conditioned to be written down, but we can notify the accused in order to

attend in a police station orally or by call through phones, that is what the Russian legislature did in criminal procedure code. And the Egyptian Court of Cassation, which did not require writing in the order of arrest (Appeal No. 386 - for the year 43 - 18/11/1980 - technical office 31 - p.1910).

This arises the confusion which it violate one of the guarantees of accused, how the accused knows that there is an order from the specified authority to arresting him.

**The second trend:** holds that summons cannot be verbally notified but it must be written down, and this trend is the Iraqi legislatures trend, according to the Article 87 of the Criminal Procedure Code “The court, investigative judge, [judicial] investigator or policeman in charge of a police station may issue a summons to the accused or to a witness or to anyone connected with the case. There should be two copies of the document on which are recorded the person issuing the summons and the person summoned, along with his place of residence, the time and place of the requested attendance, the type of crime being investigated, and the legal paragraph on which it is based”

3. The legislature forbade using materialistic force or power (materialistic coercion) against accused who does not attend, as we see when Iraqi legislature counted summons to appear among the obligating ways for the accused to attend, it didn't mean to allow using materialistic power (materialistic coercion) against accused who does not attend, for the summon to appear is left for the accused's will, and must not use power when he didn't will to appear, and it is not allowed to power to make him attend, and here there is no materialistic coercion, but in this case, the specified authority can issue an order to arrest the accused or brining him, and here the existence of the summons would be useless by issuing arresting order by specified court. (Article 91-87 of Criminal Procedure Code).

4. The legislature forbade to touch the body of accused if he didn't will to sign the summon to paper and refrain from attending, if the person summoned will not accept the summons or is unable to sign, the person tasked with notification must ensure that he is informed of the contents in the presence of two witnesses, and leave him the other copy, after noting this on both copies, followed by his signature and those of the two witnesses.(Article 88 of Criminal Procedure Code).

### *C. Guarantees of Accused during Arrest*

Arresting is an order issued by investigation judge to a crime scene officer to arrest the accused and brining him to investigation, and arresting distinguished from summons to appear, with using power to perform it, which means the allowance to hurt the accused's body if he refused to obligate. It is among those dangerous proceedings that is used by investigation judge in the phase of initiatory investigation, for it restrict the freedom of accused, for it puts accusation on the person and overshadow him with condemnation, for the legislations does not reveal it, except in the limitation of legal rules on how to use it [13].

Here we mention those legal rules which had been issued by Iraqi criminal legislature as guarantees to protect the accused from violation of investigators, among them:

1. Arrest of a person is permitted only in accordance with a warrant issued by a judge or court or in other cases as stipulated by the law (Article 92).
2. The wanted person must be informed of the warrant which has been issued for his arrest and then be



brought before the party who issued the warrant, the accused may obligate to this order, and no one has to use power or violate him, which means it is not allowed to hurt the body of accused, as long as he is committed to his arresting order (Article 94/B, 96 and 97 of Criminal Procedure Code).

3. In the case of crimes punishable by a period of detention exceeding one year, the accused is called to attend by the issue of an arrest warrant against him, unless the judge sanctions the issue of a summons. (Article 99 of Criminal Procedure Code).

4. Necessity of attending the (Mukhtar) of the district with the specified units when the situation requires performing inquiry or inspecting or arresting who is concerned, according to the law, except the accused depending on Article (4/1) of the Anti-Terrorism Act No. (13) of 2005, and Mukhtarin Act No.(13) of 2011 [21, 22, 28].

The Iraqi legislature make it necessity on the government or members of crime scene officers to arrest anyone who carries gun publicly or secretly, for it contradicts the law, and anyone who is reasonably suspected that had done a deliberate felony or misdemeanors and hadn't a special place to dwell, or anyone who faced the crime scene officers or someone entrusted with a public service during performing his duty (Article 103 of Criminal Procedure Code). Although in article (50), it is allowed for a head of police station to perform the necessary investigatory proceedings, including arresting the accused in some particular cases.

Giving this dangerous authority to the head of a police station, and especially the authority of arresting, is subject of consideration, for the legislated texts are flexible and could be interpreted according to the point of view of the head of a police station, who can argue with such things in order to take over the investigation by himself, and this matter may follow by taking some proceedings which end with touching the body of the accused, such as arresting, inspecting or taking sample of his blood, hair or nails. Giving investigation to an official at the police station just because a damage would be done to the investigation or there would be a possibility that the accused would run away, is a matter that would allow many high position officers in the police stations to intervene in the investigation, which is not right excuse, thus the matter is not that hard if those cases occurred, it is possible to notify the specified judge through any communication mean.

Iraqi legislature has allowed anyone, even without permission from specified authority to arrest anyone accused with the witnessed felony or misdemeanors, if the accused run away after he has been legally arrested, or has been sentenced absently with restricting his freedom, or someone found in a public place who is in a clear state of intoxication and confusion and has created trouble or has lost his reason (Article (102) of Criminal Procedure Code).

Here questions arise concerning the ability of using power and touching the body of accused, if he refused to oblige willingly to officers to arrest him, the legislature allowed to use reasonable force which makes the legally ordered officer to arrest the accused, but in two situations; when the accused confront officers or try to flee away (Article 108 of Criminal Procedure Code).

We notify that the legislature used "reasonable force" term, which means that estimating using reasonable means is left to the arrester to arrest the accused, and this matter would violate the right of arrested accused, which makes the physical safety threatened by the estimation and thoughts of the arrester, that he could uses both cases (especially when the accused flee away) to hurt the accused during arresting him.

Also we notify through checking the previous article that the Iraqi legislature allowed using reasonable force to arrest the accused and preventing him to escape, but it didn't prevent using gun. We comprehend this from the generality of Article (108) of Criminal Procedure Code, due using this article it is possible to use gun (whether just shooting or shooting him as well), we see that even this way is not good, thus it is necessary to put into this article not to use gun, in addition of forbidding other means, unless other means were depleted.

And the question arises concerning the possibility of using dogs and handcuffing to easily arrest an accused that confront or tries to escape, since we cannot imagine using this means, if the accused willingly obligate to be arrested.

And we can comprehend from the generality of article (108) of Criminal Procedure Code, that using dogs or handcuffing is possible, so it is necessary to be aware of using dogs to a wide extent, and those dogs must be supervised and followed by expert people, and using them must be in some particular cases, for these dogs would make risks to the body of accused, if they are not under control and supervising by experts [37].

For this, we find the necessity of intervention of legislature to manage this matter by putting some legal conditions to prevent violation of those who acts on accused's issues during undertaking these given authority, especially arresting the accused, which is counted among the most dangerous proceedings which concern direct acting on rights and individual freedom of the accused.

#### ***D. Guarantees of Accused during Stopping***

Stopping means a secondary periodical proceeding, which puts the accused in a specific location, by an order of a judicial side and to the legally decided period, and the sides intend to justify or falsify the accusation during this period, and the accused would face a stopping by a special system. Although stopping is counted among the dangerous and important proceedings, which can be taken against the accused, for it would be acted on the individual freedom of the accused [1].

The Iraqi legislature claimed some guarantees for the accused, among them:

1. The legislature left the stopping order in the hand of investigation judge, but for the practical necessity, exceptionally allowed the investigator to issue this order for someone who is accused by doing felony when he is in a remote place, and he could not be able to communicate with the specified judge (Articles 92 and 112 of Criminal Procedure Code).

2. The Iraqi legislature defined those cases, in which the specified authority is allowed to issue this stopping order, and they are:

- a. Those crimes which their punishment is 3 years jail and less or penalty: but the specified authority has to free the accused, unless it is exceptionally allowed to stop the accused, if the freeing was harming the course of investigation or there is a possibility for the accused to flee away.

- b. Those crimes which their punishment is more than 3 years jailing or temporary prison or life imprisonment: the specified authority must stop the accused, and exceptionally can free the accused, with filling a pledge to an

amount of money, or without this pledge if the judge thought that that would not harm the course of investigation and there isn't any possibility for the accused to flee away [7].

c. Those crimes which their punishment is capital crime, the accused must be stopped and must not be freed depending on the article (109/A and B) of Criminal Procedure Code.

3. The Iraqi legislature defined the period of stopping: the investigation or court judge have rights to issue an order to stop the accused for a period which is not longer than 15 days each times, which means that the judge has an estimating authority to define the period of stopping from 24 hours to 15 days, for shortening this period is in interest of the accused, also it is a guarantee for the accused, because the judge is not allowed to issue a stopping order for a period more than 15 days, otherwise his order would be falsified concerning the extra period (Article 109/A of Criminal Procedure Code).

4. It is necessary that the accused should attend in front of the judge, when the judge thinks about extending the period of stopping, to ask the accused about his treatment during stopping, and the period that he spent. And the investigation judge must not order to extend the stopping period without attending of the accused. But what is happening during the investigatory cases, is that the judge would extend the stopping period with accused's attendance, that's why we support some who justify the necessity of the text which is been issued by Iraqi legislature, claiming that the accused must attend in front of the judge, who is extending his stopping period [20].

5. The right of accused to appeal to the stopping order and his right to ask for freeing with or without a bail: the article (249/C of Criminal Procedure Code) pointed out that "No individual appeal for cassation will be accepted over decisions issued on matters of jurisdiction, over preparatory and administrative decisions or any other decision on which there has not been a ruling in the case, unless it is subject to a halt in progress in the case; decisions involving arrest, detention (note: we used stopping) and release on bail, or release without bail are also excluded". Although the article (265/A) of the same law, claims that "Appeal before an appropriate Felony Court is permissible as stipulated in Article 249... and in decisions issued by the investigative judge, within 30 days, starting from the day following the date of issue". And concerning asking for freeing with or without bail, the article (111) of the mentioned law pointed out that "The judge who issued the decision to detain the accused may decide to release him on a pledge, with or without bail, before the end of the period of detention stipulated in sub-paragraph B of Article 109..."

6. The necessity of not to exceed one quarter of the maximum permissible sentence for the crime: the article (109/C) of Criminal Procedure Code pointed out that the total period of detention should not exceed one quarter of the maximum permissible sentence for the crime with which the arrested person is charged and should not, in any case, exceed 6 months. If it is necessary to increase the period of detention to more than 6 months, the judge must submit the case to the felony court to seek permission for an appropriate extension, which must not itself exceed one quarter of maximum permissible sentence, or he should order his release, with or without bail.

this article –especially when it is concerned with stopping period to not exceed maximum permissible sentence for the crime- would lay ground to the investigators to keep the accused stopped to a period exceeds four years, so the Iraqi legislature must decrease the maximum permissible sentence of the period, in which it is allowed for the

accused to be stopped, and to make it maximum one year, except for the crimes punishable by capital crime, which could make extend the period, for instance a year and half.

Although the Iraqi legislature like any other legislature in the Arabic countries, didn't issue any texts to pay back the accused when it is justified that he/she is innocent while he/she was stopped, unlike the Kurdistan Legislature which took the modern rout in this subject, that he claimed when someone, who had been accused with terror crime, was justified as innocent, has rights to ask for compensation instead of those material and moral damage it has suffered.

7. Rights of accused to be treated in a proper way during his stopping period: these rights includes wearing owned clothed by the accused, caring for cleanness and health of him, feeding him qualitatively and quantitatively sufficient meals, keeping his body safe, providing individual cleanness needs, such as barbering, and the accused must not be forced to cut his hair, unless for his health, and taking bath weekly, and exposing them to sunlight depending on the situations, separating between men and women, and adults and teenagers, and not forcing them to work, but it is allowed to force them to clean their place.

8. Taking the accused to a special doctor after the stopping: some legislation necessitate of taking the accused after arresting or stopping him to a special doctor, or to his personal doctor, or to a doctor which he chooses in order to justify that his body has not been harmed [16].

And even Iraqi legislature doesn't contain a text of this type, for this reason, we think it should legislate a text on the necessity of taking the accused to a special doctor after stopping him, which makes it a real guarantee for the accused, and prevent the investigation authorities to use some illegal means that would mentally and physically harm the accused.

#### ***E. The rights of accusing during questioning***

Questionings discussing the matter of accusation and its situations and conditions with the accused, and confronting him with the evidence, and discussing accused answers with him, which intends to brief the truth that he hides[6].

The accused must enjoy some guarantees during questioning, such as:

1. Questioning is limited only for investigation judges and investigators who works under judges' supervision, and it is not allowed for criminal scene officer to do this in witnessed crime, when he has to take some investigatory proceedings, but he only can question the accused verbally (Article 43 of Criminal Procedure Code).

Before questioning, it is necessary to justify the personality of the accused and clarifying the crime which is attributed to the accused (Article 123 of Criminal Procedure Code), and it is also allowed to a member of public prosecution to question the accused in some particular situations.

2. Speeding up the questioning and not extending it: the law claimed that it is necessary for the accused to be questioned during 24 hours after his attendance, and he must be aware of the accusation that he has been accused with, and its details and nature and reason (Article 23 of Criminal Procedure Code), and even this guarantee has been emphasized on by High Criminal Court law.

3. Attending the accused's lawyer during the questioning: the Iraqi legislature made the attendance of the lawyer allowed (Not obligatory) during all of the procedures –including questioning- unless the investigation judge prevent him to attend for reasons that he shall enter in the record (Article 57 of Criminal Procedure Code).

According to the Coalition Provisional Authority (CPA) memorandum, The lawyer must be present with the accused at the investigative phase - in particular in the questioning- and prevent its initiation unless a lawyer is assigned to the defendant who does not have a lawyer, at the State's expense (Article 123/B)modified by Coalition Provisional Authority (CPA) memorandum (No. 7 of 2004/section 4/C). The lawyers have the right to access to the investigative papers, and all papers related to the investigation [24].

4. Preventing using illegal forceful means: whether physical such as (punching and hurting, giving pills, hypnosis or using lie-detecting machine) or mental (swearing or using dogs to force the accused to confess), and the legislature punish any employee or person entrusted with a public service, who torture or order t torture an accused to confess, with imprisonment or detention which is condemned with torturing, using force or threatening (Article 333 of PenalCode).

5. The right of being silent and not to obligate the accused to answer the questions: this is what article (126/B) of Criminal Procedure Code pointed to, holding “The accused is not required to answer any of the questions he is asked”. Supreme criminal court act emphasized same thing in (Article 19/4/f) like that “The accused may not be compelled to confess and he/she has the right to remain silent, this silence is not evidence of guilt or innocence”.

#### ***F. Guarantees of accused when he appoints experts***

Experience is technical advice used by the investigator or the investigating judge in assessing technical issues that need to be assessed by technical or scientific knowledge that is not available to those who do investigation, whether these technical issues relate to the person of the accused, or to the body of the crime and the materials used in its commission"[14].

Requesting to appoint experts would be done by court or depending on request by the sides, and this is what has been texted by criminal procedure code and Central Criminal Court Act (Articles 213, 70, 69 of Criminal Procedure Code and section (12) of the Law of the Iraqi High Criminal Court No. (10) of 2005).

The accused must enjoy the guarantees which achieve a just trial when appointing the experts would be requested, including these guarantees:

1. Taking the oath of the expert: the expert would take oath on performing his task truthfully; we notify that the Iraqi criminal procedure code hadn't texted on the necessity of taking the oath of the expert, unlike the criminal procedures of other countries such as Egypt or Libya.

When we go back to Iraqi Civil Procedural law No. (83)of 1969, we see that the specified texts of experts had been canceled, according to Article (47/2) of Evidence Law No. (107) of 1979. When we go back to the evidence law, we find that Article (134 / second) of it states that “if the expert is not on the list of experts, he shall need to swear an oath prior to commencing his job that he will carry out his duty with honesty and sincerity. If the court forgot to have him swear the oath in the first instance and that he completed his job as required, the court shall have

to make him swear the oath that he has performed his job honestly and sincerely”.

2. Recusal of the Expert: the Iraqi legislature doesn't text on that right in criminal procedure law, unlike some other criminal procedure code, like Egyptian and Libyan, which claimed the right of litigants to request the recusal of the expert, if some strong reasons were found (article 89 of Egyptian Criminal Procedure Code and Article 73 Libyan Criminal Procedure Code).

In returning to the Iraqi evidence law, the Article (136) gave the litigants this right “The litigants may request the recusal of the expert appointed by the court considering the case. The court shall decide on this request by decision that cannot be appealed unless after the issuance of the decisive decision on the case, and in this case the same procedures for the recusal of judges shall apply in the recusal of experts.”

3. The female body should be examined by the female in the intimate parts (awrah): the examination which the accused is its subject is a criminal examination, like an examination that is going to find out whether the hymen is exists or not.the Iraqi legislature claimed this right of the accused in article (70) of Crime Procedure Code, and we see that in this article pointed this examination as “if it is possible”, this phrase means that it is possible for examination of female accused to be done by a male, which is interesting, the Iraqi legislature must made this right as an obligatory to do physical examination of female by another female, with erasing “if it is possible” in the article expressions, as he did for inspecting in article (80) in Criminal Procedure Code.

4. Identifying the sides that have right to obligate the accused to commit and examination: the criminal procedural code, concerning this matter, is obvious and clear, which only allowed the investigation judge and investigator to obligate the accused to the claimed proceedings which has been texted in mentioned article (Article 70 of Criminal Procedural Code).

So it is not allowed for the expert to obligate the accused to commit to examination and using force against him, otherwise he violate the limit of his duties, if the accused refused to obligate to this type of examination, and we deal with his refusing according to the articles (240 and 241) of Penal Code.

5. The right of accused to ask for an translator: Iraqi legislature obligated specified court to intervene a translator, if the accused didn't comprehend or didn't speak the language which is being used during the trial, and this is in article (61/B) of Criminal Procedure Code, which claims: “Any person who is unable to speak may give his evidence in writing or in conventional sign language if he is unable to write”, and section (C) from the same article claims: “If a witness does not understand the language in which the investigation is being conducted, or is deaf or dumb,a person must be appointed to translate what the witness says, or interpret the witness's sign language, after taking an oath that he will translate or interpret truthfully and faithfully.”.

### ***G. Guarantees of Accused during Inspection***

The legislations didn't give any definition of inspection, so its definitions, which have been drafted by jurists, varied, and all of them didn't go beyond a general definition, that inspection is a proceeding of investigatory proceedings intending to search for physical evidences of a misdemeanor and felony in a place which is owned by accused, and this is for justifying the one who committed it, according claimed legal proceedings[35].

Inspection is considered among the dangerous proceedings, which involves the personal life of an individual and

his house, so it necessary for the accused to enjoy some guarantees when he is undergoing this type of proceeding, so the proceeding wouldn't go beyond its intended limits, and among those guarantees:

1. Clarifying and identifying the authority which performs inspection: the Iraqi legislature identified this side with investigation judge and investigator or criminal scene officer, depending on an order from judge or someone who is authorized by law to perform it (Article 72/B of Criminal Procedure Code).

2. Clarifying those situations that are been claimed to be allowed to inspect in: the law requires to perform inspecting of doing some action and not doing some other action, which have been considered as crime, some laws conditioned this crime to be felony or misdemeanor, otherwise it is not allowed to perform inspection in infraction sun like Iraqi law which allowed to perform inspecting despite the type of the crime, as well as there must be some clues assigns to a particular person, in another word, there must sufficient evidences, enough to expose the personal inviolability of the accused.

We think the Iraqi legislature must restrict the range of inspecting on felonies and misdemeanors, without infractions because infractions are less dangerous and not that important to allow to expose the personal inviolability of the accused.

3. There must a benefit of proceeding inspection: for proceeding inspection, there must be a benefit, whether the benefit is in interest of the accused or against him, as long as the inspection has the benefit of revealing the truth, if there wasn't any benefit to proceed the inspection, so the inspection would be counted as invalid, an there isn't any criterion to identify the benefit from the inspection, but it is left to the investigation authority, which he brief it from the clues which points to benefit the managing possibility by inspecting the accused or his house (Appeal No. 11448 of the year 60q - session 12/7/1999).

4. Inspecting is obligatory: inspecting must be performed obligatory, whether inspecting the accused or the place that he dwells in, and of course in a situation that the accused allow the inspector to perform his duty in a proper way, if the accused doesn't allow to be inspected or inspecting his house, the accused may not claim the invalidity of the inspection (Egyptian cassation, session 25/11/1973, 24s, 219q, p1053).If the accused prevented the inspector to perform his duty, the inspector has to do it forcibly or ask for help from the polices (Article 81 of Criminal Procedure Code).

5. Determining a time for inspection: the Iraqi legislature didn't issued any legal text in criminal procedure code to determine a period of time which is allowed in to proceed inspecting, like any other legislation such as Egyptian, Syrian, Jordanian and Sudanese legislations, so the inspecting in night or day, and in any hour, or in holidays and Eids would be allowed.

We see the necessity of reframing a special legal text in criminal procedure code to determine the period, in which the inspection would be proceeded, and the excepted situations, for in this there would be a guarantees for the accused to protect safety of his body.

6. Necessity of performing inspection of female by another female: this prohibition just includes intimate parts in the female's body, it is not allowed to summon a male doctor to inspection, for the prohibition is absolute, (Article 80 of Criminal Procedure Code).

7. Banning inspecting houses unless there was a judicial permission: for the houses have sanctity, and it is not

allowed to be inspected unless there was a judicial permission (article 73/A of Criminal Procedure Code), and this proceeding undergoes the legislation of inspection, so the inspector must introduce himself, and show the inspection order to the house-owner or the dwellers, and perform the inspection to search for evidences concerned with the crime, that the inspection is performed for, and if during the inspection another hidden crime, it is allowed to take necessary actions concerning the second crime, which have been accidentally revealed during the inspection on the condition of legality of the proceeding the inspection, and if the inspection was illegal, the taken actions concerning the second crime would be invalid [25].

For in those situations that it is allowed to inspect shop-owner or car-owner, it is also allowed to inspect his shop or car, for they are belonging to the owners, and it is allowed to violate them in those situations that violating their owners sanctity are allowed[25].

And if the shop was belonging to a house, the house and the shop have the same sanctity, and the shop would undergo the house inspection proceedings, and inspecting is not allowed in those crimes which their punishment does not exceed 3 months, the violation of the procedure for all of the above guarantees shall invalidate the procedure with the evidence obtained, based on principle (fruit of the poisonous tree)[25].

#### ***H. Guarantees of Accused During Transferring***

After finishing investigation proceedings by investigation authority, the specified authority orders transferring, which is been the investigation authority by itself, as Iraqi legislature did, and it might be an independent authority from investigation authority and specified of transferring, as Syrian legislature did [31].

So the Iraqi legislature made transferring specified to investigation judge (Article 130/B of Criminal Procedure Code), but the investigator has the right to transfer a case if the crime was the type of infraction (article 134/B of Criminal Procedure Code).

But we support the referral judge system, in which the judge has the right to transfer the case, and the Iraqi legislature must adopt this system and make the transferring authority specified to a body contains a head and expert judicial members, for this system would be a guarantee for the accused, because the cased would be studied once again by the transferring judge, who has real authority to summon accused and witness to attend in front of him, and this guarantee of avoiding the possibility of making mistakes by investigation authority and the accused would avoid many proceedings which violate his rights.

However, and to protect the rights of accused during performing this proceeding, the accused might enjoy necessary guarantees, such as:

1. Rejecting the complaint and closing the investigation: If the investigative judge finds that the action is not punishable by law or the complainant has withdrawn the complaint, and the crime was one of the crimes in which may be reconciled without the consent of the judge, or that the accused is not legally responsible because he is a minor, the judge issues a decision rejecting the complaint and closing the case file definitively. (Article 130/A of Criminal Procedure Code).

2. It is allowed for the accused and his deputy to appeal to the decision of transferring, which has been issued by the investigation authority, when the case was transmitted despite the invalidity of investigation, absence of



evidences or the action wasn't crime, for the accused and his deputy to be able appeal to the transferring decision, they must be informed, but the Iraqi legislature didn't texted about this in criminal procedure code, but he restricted this informing only on the public persecution (Article 130,E of Criminal Procedure Code).

We must recognize the necessity of text on informing the accused about the transferring decision, whether he was stopped or freed, and in a specific period, for informing the accused and his deputy about the transferring decision, could help the accused to avoid many effects the referral, which affect the integrity of his rights by appealing the referral decision, which may result in the benefit of the accused.

#### **IV. GUARANTEES OF ACCUSED IN TRIAL PHRASE**

When the evidences are enough to judge the accused, he/she would be transferred to specified court to legally be judged according to particular codes, in which a new phase of initial investigation would be taken including some proceedings, so the accused must enjoy some guarantees during these proceedings, such as:

##### ***A. Banning Using Restraint or Handcuffs During Trial Proceedings***

The accused would be brought without restraint or handcuffs, and this does not mean preventing court to taking necessary means in order to keep the security of the hall, for court has the authority to spread officers and guards inside or outside the hall, especially if the crime was dangerous, and this is for preventing the accused to run or harming other, or to protect the accused from those who criminalize him, especially in homicide (Homicide: the killing of one person by another) (Article 156 of Iraqi Criminal Procedure Code and Article (143)of Iraqi Criminal Procedure Code).

If the accused made something which would violate the security of the court and its calmness and stability, it is not allowed for the court to use handcuffs to restrict the accused in order to keep the security and calmness of the court, but it could decide to take the accused, who violated the court and its calmness, out of the court, if he or she does not obliged, the court may order his or her imprisonment for the period prescribed by law. The sentenced may not appeal this judgment, rather, before the end of the hearing (Jalsa) at which the judgment was rendered; the court may review it and revert to the judgment it has rendered. (Article 153 of Criminal Procedure Code).

##### ***B. Publicity of Trial***

The hearing must publicly held in a place, that everyone could enter, and attend the hearing without any condition except what requires to keep the court goes in a proper way, and the documents of the trial could be published through various means such as TV broadcasting, which counted as a public mean (Article 152 of Criminal Procedure Code, Article (19/3)of the Supreme Criminal Court ActNo. (10) of 2005).

The publicity of the trial would be an important guarantee for the accused, in a way it is an active and interesting mean to protect rights of accused, including his right in just proceedings, for it provides a public monitory on the works and proceedings which would be performed by the court[17].

##### ***C. Searches for Accused Personality***

Search for accused personality is examining him and studying him psychologically, mentally and socially, in order to obtain information which would be put in a special file of accused, titled "personal file" that would be put

with the case file, the personal file could help the judge to identify the level of responsibility of the accused, and the reasons that may affected on his personality and may lead him to do a crime, and it may help to determine the solution or proper reward for personality of any accused, and search for accused personality includes examining social, health, psychological and mental situation of the accused.

So the personal search of the accused before condemning him would be an important guarantee for the accused, for his rights would be safeguarded, for personal examination contains physical, psychological and mental examination of the accused [1].

Searching the personality of the accused before judgment is an important guarantee for the accused to preserve his rights, and the requirements of this guarantee are:

1. Identifying the specified side to do this procedure: performing this procedure must be given to someone who is capable and expert, for instance, physical search would only be performed by a specified doctor, and the psychological search too must be performed by someone expert in psychology, and social search would necessarily be performed by a sociologist who has a university degree, and that is what the majority of legislations claimed, which give the task of searching to the specified people.

The Iraqi legislature give the task of physical and psychological search of teenagers and under ages to the personal researching office [33], and our Criminal Procedure Code didn't contain any legal texts, to obligate the court to perform social search for the adults.

For that, we see the necessity of filling this gap by adding a specified text to the core of the criminal procedure code that would obligate criminal courts to perform this procedure, and identify the specified side to do it and how to do it, despite mental searching of the accused.

2. Determining those situations that require personal search for the accused: The Juvenile Welfare Act No. (76) of 1983 makes it necessary to transfer the teenager to the personal researching office, when he was accused with doing felony, but makes it only allowed in the case of infraction and misdemeanor [33].

But the criminal procedure code satisfied with pointing out those situations in which it is allowed to do mental test to the accused, when it is has been clarified that the accused is not able to conduct his own defence on the grounds of mental illness, or if the situation requires an examination of his mental faculties in order to test his criminal responsibility, and the court is not authorized to identify the situation of accused by itself, but it must be done by experts and specialized (Articles 230, 231 and 232 of Criminal Procedure Code).

The researchers recommend that a text to be added into criminal legislation so that the court can adopt this procedure on its own, because this procedure has a big role in the application punitive individualization system.

#### ***D. Recording Trial's Procedures***

Everything that takes place in the court is written up in a report. The judge or the chief justice signs all its pages. The report must include the date of each hearing, whether it was public or closed, the names of the judge or judges who considered the case, the clerk, the representative of the Public Prosecution, the names of the accused, and other members of accused's team, the names of the witnesses, a report on the papers which were read out, the requests made, the procedures concluded, a summary of rulings, and everything else that occurred during the trial. (Article 222 of Criminal Procedure Code).

### ***E. The Right to Defense and the Right to Legal Counsel***

No investigative action may be taken against the accused except in the presence of a lawyer. In the absence of a lawyer, the competent judge shall appoint a lawyer to represent the accused at the State's expense (Article 123 Criminal Procedure Code).

The legislature also granted the President of the Criminal Court the right to assign a lawyer to defend the accused with a felony. (Article 144 Criminal Procedure, section 19 section 4, B.D of the supreme criminal court act, 66.73 law of attorney, as well as section 22 of the central criminal court act).

### ***F. Recuse of Judges and the Complaint from him due to Lack of Impartiality***

These are not special provisions in criminal procedure code about recuse of Judges and the complaint from him due to lack of impartiality, but when referring to the Iraqi Civil Procedural Law, we find that "it prevented the judge:

- 1- If he was a spouse, a son in law, or a relative until the fourth degree to one of the litigants.
- 2- If there was a current court dispute between himself, his spouse, any of his children or of his parents with one of the litigants, his spouse, one of his children or one of his parents.
- 3- If he was an attorney, agent, custodian, guardian, an apparent heir to one of the litigants or if he has an in-law kinship or relationship until the fourth degree with one of the litigants, or his attorney, custodian or guardian, or with a member in the board of directors of the company that is a party in the suit, or with a director/ manager in such a company.
- 4- If there was an interest in the suit to himself, his spouse, his ancestors or their spouses, his descendants or their spouses, or for whom he acts as a custodian or a guardian.
- 5- If he has given previously an opinion in the suit or represented one of the litigants therein or if he was involved in the suit as a judge commissar, an expert, or an arbitrator, or if he has made /delivered a testimony therein.

And cases of dismissal of the judge shall be enforced if one of the parties is employed by the judge, is used to his habitual residence or permanent residence with him, or there is a gift accepted by the judge, or he has given a prior opinion in the case". (Article 93 of the Iraqi Civil Procedural Law).

### ***G. The Inadmissibility of the Judgment on the Basis of Evidence has not been Discussed***

The court is free to form its judicial conviction but in the light of the facts of the case and the evidence available therein, and may not rule on his own knowledge [27].

Accordingly, the court may not base its judgment on evidence that has not been discussed by the parties to the case, and which has not been disclosed by the court, as a witness testimony received in the phase of the investigation.

### ***H. The Right to Appeal Against Judgments***

The judgment issued in the criminal case could be legally wrong, in order to allow the parties to request the correction of these errors and to raise legal violations, the legislature gave the parties the right to object to judgments, whether these judgments are absent or present, and indicate the types or methods of appeal exclusively,

and identify them in four ways, and they are: Object to absentee judgment (Articles 243-248 of Criminal Procedural Code), Cassation (Articles 249-265 of Criminal Procedural Code), correction of cassation decision (Articles 266-269 of Criminal Procedural Code), and retrial (Articles 270-279 of Criminal Procedural Code), and explained the legal mechanisms for how to exercise them and specify the periods during which an appeal may be made.

The Iraqi central criminal court act also gave this right to the parties (Section 21 of the Supreme Criminal Court Act), and make the federal court of cassation competent to see all appeals and affirmed the right to appeal the judgments (Article (25) of the Supreme Criminal Court Law).

## V. CONCLUSION

In this research we have reached a number of conclusions and recommendations, the most important of which are summarized in the following points:

1. The Iraqi legislature was not successful in drafting article (50) of the Criminal Procedure Code by giving special and exceptional powers to police officers and their commissioners who do not have this power in the case of ordinary crime, This is because putting the investigation in the hands of the official in the police station simply because he believes that there may be damage to the investigation, or just the possibility of the accused escaping, represents a serious threat to the rights and freedoms of individuals on the one hand, The possibility of frequent interference by officials in police stations in the investigation on the other hand, The legislatures were also unsuccessful when drafting articles (72, 79, 102, 103) of the Criminal Procedure Code by giving a wide power to crime scene officers especially which related to the inspection and arrest of the accused for the witnessed crimes. Therefore, this research recommends that legislature should review article (50) of the Criminal Procedure Code to limit investigations which can be done by the police station official, as well as articles (79, 102, and 103) in concerning with inquiring and arrest of the accused in the witnessed crimes.

2. The practical reality in Iraq and the Kurdistan Region requires raising the level of criminal protection for the confidentiality of the investigation in the preliminary investigation phase, by making a special criminal provision to criminalize disclosure of the secrets of the preliminary investigation in order to achieve the desired protection of the criminal case in the preliminary investigation phase from the impact of publication through press or media publishing. or other public ways.

3. It will be better if legislature amend article 109 (c) of the Criminal Procedure Code and to reduce the maximum period in which the accused can remain stopped for a maximum of one year except for capital crimes, which may exceed this period, which is likely to be a year and a half.

4. Iraqi legislature should make the examination of the female by another female in the intimate parts (awrah) obligatory, by lifting the phrase (as far as possible) from the terms of article (70) of criminal procedural code, as it did for the inspection in article (80) of the same code.

5. The researchers argue that the legislators should adopt (the referral judge system) and make the referral authority the competence of a body composed of a president and two experienced judges. Because this system is a guarantee for the accused. It provides an opportunity to re-examine the case by the referral judge who has investigative powers such as inviting the accused and witnesses to appear before him, and adopting this system, excludes the errors that investigating authority may do and the accused avoids many of the proceedings that would

violate his rights.

6. The researchers note that the criminal procedure code should include a provision stipulating that the accused must be notified of the decision of the referral whether he is arrested or released within a certain period of time. This enables the accused to avoid many of the consequences of his referral, which would violate the integrity of his rights, by appeal the referral decision, which may result in the benefit of the accused.

7. The researchers further argue that the criminal procedure code should include a provision requiring the criminal courts to do the procedure (search for accused personality), and indicate the competent authority and how it can be conducted. Because this procedure has a great importance in determining his responsibility; it also has a big role in the application punitive individualization system

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