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The Impact of Anti-Terrorism Law No. 3 of 2006 of the Kurdistan Regional Government on Freedom of Expression

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ABSTRACT

Freedom of expression is one of the most fundamental human rights and a key driver of development, progress, and democracy. The Constitution of Iraq, the Draft Constitution of the Kurdistan Region, and ordinary legislation attach great importance to this right and guarantee and protect it. Nevertheless, anti-terrorism legislation in the Kurdistan Region and globally has had adverse effects on this freedom. Even in a country such as Sweden, which has a long-standing tradition of ensuring and safeguarding freedom of expression and citizens' rights, anti-terrorism laws have become a source of threat and restriction to this fundamental liberty. Accordingly, several critical questions arise: Can the protected freedom of expression of citizens be guaranteed through the enforcement of anti-terrorism laws? Is it possible to strike a balance between ensuring public security in the Kurdistan Region and safeguarding freedom of expression? Has this law not been used as a tool to suppress and intimidate political opponents, writers, journalists, intellectuals, and holders of the pen? The significance of this research lies, first, in the importance of the subject matter as it relates directly to the life and well-being of citizens, and second, in its attempt to address these essential questions and to identify appropriate solutions and practical recommendations for the protection of freedom of expression and security. The study employs conceptual clarification of the subject matter, an analytical method for examining the articles and provisions of the law, and a critical method for interpreting the legal text and identifying its strengths, weaknesses, shortcomings, and challenges, and for evaluating them. This work is conducted with the aim of discovering and proposing suitable solutions to the identified problems.

Keywords: Anti-Terrorism Law No. 3 of 2006 of the Kurdistan Region of Iraq; Human Rights; Kurdistan Regional Government; Freedom of Expression.

Introduction

Terrorism, as a phenomenon, has always accompanied humankind (1). This phenomenon has continuously appeared and disappeared in different forms until it ultimately re-emerged in a form different from that known in history.

Terrorism is a horrific phenomenon in the world (2). It is unique, destructive (3), radical and dangerous (4), organized, powerful, and diverse (5). Its influence has reached such an extent that a superpower such as the United States formed an international coalition and declared war against it, describing it as the "mother of events." This phenomenon has constantly risen and fallen in different forms until it finally reappeared in a form distinct from its



historical manifestations. Terrorism, embedded within human societies, is a horrific global phenomenon: unique, destructive, radical, dangerous, organized, powerful, and extensive. Its influence has reached such a level that a major power such as the United States formed a coalition (6) and declared war against it, calling it the “mother of events” (7).

The Kurdistan Region has borne a significant share of these events and acts of violence and, since 2003, has been threatened by the extremist group ISIS, which committed some of the most brutal and violent crimes. Therefore, in order to confront this unwanted phenomenon through law (8) and to reduce the negative effects of terrorism while protecting citizens’ homes, the Kurdistan Parliament, for the first time, enacted Anti-Terrorism Law No. 3 of 2006 (9). This law remains in force. The long period of its implementation has been accompanied by extensive debates, discussions, problems, negotiations, agreements, conflicts, compromises between ruling and opposition parties, and numerous investigations. This is because the nature of this law places human rights and freedom of expression at risk. The law is frequently misused by the government to exert pressure and to arrest intellectuals, researchers, journalists, opposition figures, citizens, street activists, and protesters without trial. A number of individuals in Europe have been convicted under anti-terrorism laws merely for “liking” a post. Some believe that a country such as Sweden, after 300 years of democracy and freedom of expression, has lost its democracy. In the Kurdistan Region, Human Rights Watch has reported that security forces treat detainees in ways that violate human rights, torture them during interrogations, extract confessions under threat, and use those confessions as evidence in court. Innocent individuals may be arrested, tried, and convicted.

The reason for the enactment of this law in the Kurdistan Region and worldwide is the threat and fear posed by terrorism to public security. For this reason, the Kurdistan Parliament decided that this law must be renewed every two years, and as long as the threat of terrorism persists, the law will continue to be renewed and will not expire.

The research problem is how Anti-Terrorism Law No. 3 of 2006 of the Kurdistan Regional Government can balance counter-terrorism needs and measures, ensure the security of the Kurdistan Region, and protect freedom of expression.

The reason for selecting this topic is the importance and sensitivity of freedom of expression and public security, which this law is intended to protect, and the aim of identifying the law’s weaknesses and shortcomings in order to reach conclusions, recommendations, and significant measures to eliminate or reduce its negative aspects and to safeguard the security of the Kurdistan Region.

For this purpose, a descriptive and analytical research method has been employed. Among the problems and shortcomings of the law that restrict freedom of expression are the overly broad and vague definition of terrorism, the severity and type of punishments, and the issues related to the commencement of liability and enforcement guarantees.

The Concept of Freedom of Expression

Linguistic Definition of Freedom of Expression

For the purposes of this study, the linguistic definitions of three terms—*freedom*, *thought*, and *expression*—are presented as follows:

Freedom

In Arabic, the term *al-ḥurriyya* is used (10) in place of the Persian word *āzādī* (11). In Persian, the word *āzādī* (freedom) is used in contrast to *slavery* (12), and it denotes the ability to act freely and at will. In other words, it refers to the ability to act according to one's own will, or to be released from bondage (13), blame, condemnation, and the like (14).

Thought and Opinion

In Arabic, the word *nazar* and in Persian the words *fekr* and *andīsheh* (thought) (15) are used to denote opinion, reflection, intelligence, belief, contemplation, or reasoning (16), as well as consultation.

Expression

In Arabic, the word *ta'bīr* refers to the interpretation and articulation of what exists in the inner self and the human mind (17). This corresponds in Persian to the term *bayān* (expression, articulation) (18).

Jurisprudential Concept of Freedom of Expression

Freedom of expression, in jurisprudential terms, means that an individual is free to express their opinions without surveillance, pursuit, or fear, and is entirely free to express those views in any manner they choose.

Concept of Freedom of Expression in Iraqi Draft Legislation

In Iraqi legislative discourse, freedom of expression means the freedom of citizens to express their opinions verbally, in writing, through images, or by any other conventional means, provided that this does not harm public order or public morality.

The Concept of Terrorism

Linguistic Definition of Terrorism

In the Kurdish language, the words for intimidation and the creation of fear are used to denote terrorism (19). In Persian, the word *terrorism* refers to fear, horror, dread, anxiety, and unusual and unexpected threat (18). In Arabic, the word *irhāb* denotes danger, intimidation, repression, terror, threat, panic, and similar meanings (16, 20).

Definition of Terrorism in International Law

From the late 1960s and early 1970s, terms such as *terrorism*, *political terrorism*, *domestic terrorism*, *international terrorism*, and *state terrorism* came into widespread use and debate due to the increase in bombings, hijackings, hostage-takings, and attacks on embassies. Owing to persistent disagreement over the definition of terrorism, the United Nations defined terrorism as:

criminal acts against civilians with the intent to cause death or serious bodily harm, or to take hostages, for the purpose of spreading fear and terror among the public, a group of people, or specific individuals, or to coerce a government or organization into carrying out a specific act.

It also refers to international criminal acts carried out for political purposes, with the aim of spreading fear, panic, and anxiety among the public or particular groups of people.

Definition of Terrorism under Iraqi Law

Under Iraqi law, terrorism is defined as:

any criminal act committed by an individual or an organized group that targets a person, group, category, or official or unofficial institution, with the purpose of damaging public or private property, undermining security, stability, and national unity, or spreading fear and terror among the people for terrorist objectives (21).

Definition of Terrorism under the Law of the Kurdistan Regional Government (KRG)

According to the Anti-Terrorism Law of the Kurdistan Regional Government, a terrorist act is defined as:

the use of organized violence, the threat thereof, incitement to it, or any act to which the offender resorts in order to carry out a criminal project, whereby one or more persons or a group of people are targeted, with the intent to spread intimidation, fear, chaos, and disorder among the population, thereby harming public order, peace, and the security of society and the region, endangering the lives, independence, dignity, and safety of individuals, or damaging the environment, public resources, public or private institutions, or property for political, ideological, religious, sectarian, or racial purposes.

The Impact of the Definition of Terrorism on Freedom of Expression

The legislator must define crimes clearly and without ambiguity and must determine their essential elements (22). If the legislator fails to observe this requirement and enacts vague, general, and flexible provisions, the application of the law will deviate from the principle of legality of crimes and punishments. This principle aims to guarantee and protect individual rights and freedoms. If the legislator leaves this matter to judges and law-enforcement authorities, individual rights and freedoms are placed at risk. Historically, many rights and freedoms, including freedom of expression, were violated by authorities and judges, as officials exercised absolute power and judges ruled according to the will of those authorities (21).

The Kurdistan Parliament, for the first time, enacted Anti-Terrorism Law No. 3 of 2006 (9), which remains in force. This law consists of eighteen articles, with Article 1 addressing the definition of terrorism. However, the law does not provide a clear definition of terrorism; rather, the definition is vague, broad, and elastic. It relies on numerous ambiguous expressions and does not distinguish between who is a terrorist and who is not, nor between freedom of opinion and terrorism. Consequently, in 2016, the United Nations Assistance Mission for Iraq (UNAMI) engaged in extensive discussions with the Presidency of the Kurdistan Parliament concerning the Anti-Terrorism Law, and the organization raised several concerns, the most significant of which related to the vague and expansive definition of terrorism.

When examining Article 1 of the law, it becomes evident that the law does not define terrorism properly; instead, it remains ambiguous, general, and flexible. It fails to distinguish between who is a terrorist and who is not, or between what constitutes terrorism and what constitutes freedom of expression, thereby granting the executive and judiciary wide discretion to accuse individuals, parties, organizations, groups, and institutions of terrorism. This broad scope exists in a context in which successive governments in Iraq, including the United States, have employed violence, coercion, and intimidation against the Iraqi people (23). This represents the first and most serious legal threat to freedom of expression and has a profoundly negative impact on political pluralism and social cohesion, which are critically important for contemporary Iraqi society (24). While combating terrorism and

eradicating it may justify certain restrictions, the positive values of security, peace, and coexistence must prevail over obstacles, limitations, and threats to life, freedom of expression, and the rule of law (25). This constitutes the first and most significant legal threat that contradicts freedom of expression and has a highly negative effect on political unity and social cohesion (24).

The Impact of the Forms of Terrorism on Freedom of Expression

Article 2 of the law, in eight clauses, details activities and acts considered terrorist crimes and imposes extremely severe penalties on them. It criminalizes the establishment, organization, or management of an organization, association, group, gang, base, or network for the purpose of committing a terrorist act. The law does not stop there; rather, in Article 3, it expands the scope of the crime of terrorism for a second time into eight clauses, each of which contains multiple sub-branches and employs numerous broad terms, including disruption of communications, computers, access to their networks, or any resource vital to the national economy. For the third time, Article 4 defines a set of activities as terrorism across six clauses, each encompassing multiple acts, including writing, publishing, incitement, endorsement, or promotion of terrorism, and intentional activities involving news and analysis in visual, audio, written, or electronic media, insofar as they amount to incitement to commit a terrorist offense. This expansion pushes the concept and boundaries of terrorism to their broadest possible extent.

By allocating three articles and more than twenty broad and comprehensive elements to acts deemed terrorism, the law creates an expansive scope of criminalization. This elasticity, ambiguity, and overbreadth have reached a level that grants the executive and judiciary such wide discretion that anyone engaging in any act or movement may be imprisoned and severely punished. What is most alarming is that all journalists, researchers, writers, political activists, and intellectuals are placed under the authority of this law, and any of them may be arrested on charges of committing one of the acts defined as terrorism within these three articles. When all human rights are violated and placed in jeopardy, all activists are effectively forced to adopt the principle and slogan of silence in order to survive.

The Impact of Severe Terrorism Penalties on Freedom of Expression

The Anti-Terrorism Law is among the most stringent legal regimes, imposing harsh penalties on terrorist crimes with the aim of preserving public security through the fight against terrorism, and prescribing intimidating punishments for perpetrators, accomplices, and supporters. These penalties include capital punishment, life imprisonment, fixed-term imprisonment, confiscation of property, and post-release surveillance.

Article 3 of the law prescribes the most severe penalty for activities considered terrorism and lists them in eight clauses; the penalty is capital punishment. Article 4 likewise imposes a severe penalty—life imprisonment—for acts enumerated as terrorism. Article 5, for the third time and in eight clauses, provides a list of activities deemed terrorist and subject to prosecution, punishable by imprisonment of up to fifteen years. The severity of these penalties, combined with the vagueness and expansiveness of the definition of terrorism, has consistently instilled fear among journalists, civil society activists, politicians, researchers, writers, and political opponents of being accused and punished for terrorist crimes.

Especially in light of allegations of torture, psychological and physical suffering, threats, and inducements during interrogation to obtain forced confessions—despite the fact that the law prohibits such practices and recognizes that coerced confessions are unreliable—freedom of expression remains under constant threat. Although this

prohibition constitutes one of the strengths of the law, the problem lies in the fact that legal counsel is typically provided only at the trial stage and not during the investigative phase. Consequently, the defense attorney often has not reviewed the case file during investigations. It would have been preferable for the law to explicitly guarantee legal representation at all stages, including the investigation stage, rather than limiting it to trial defense.

In effect, freedom of expression is placed in jeopardy by the framework of anti-terrorism legislation, because terrorism is not clearly distinguished from freedom of expression, journalism, political activity, and civil engagement. Ultimately, opinion leaders remain constantly confronted by the specter of fear and anxiety over severe punishments, and unless this law is amended or suspended, freedom of expression will remain at serious risk.

The Impact of Attempt (Commencement) of an Offense on Freedom of Expression

Any person who attempts to commit a terrorist offense is sentenced to life imprisonment (21). Accordingly, if an offender begins the commission of an offense—even if the offense is not completed and, for any reason, the terrorist act does not reach its intended result—the person is punished with life imprisonment. The law prescribes severe penalties for the commission of offenses referenced in its provisions, including conduct that does not culminate in a completed offense yet remains punishable. As noted earlier, this stems from the law's vague, broad, and flexible definition; concepts such as participation, motivation, and cooperation are elastic and admit multiple meanings and interpretations, while the penalties are extremely severe.

The Kurdistan Regional Government (KRG) has likewise established harsh punishments for terrorism-related conduct. Thus, if an offender attempts to commit an offense—even if it is not completed and, for any reason, the terrorist act does not achieve its outcome—the offender is punished with the same penalty. This, as indicated above, is grounded in an ambiguous, highly expansive, and flexible conception of terrorism and its forms.

Therefore, this law can be used to restrict freedom of expression and human rights, which is particularly dangerous for extra-system political parties, journalists, and independent writers, and it increases the likelihood that the executive authority and the ruling party may employ it against freedom of expression.

The Impact of Non-Release on Bail

Under Iraqi law, if an arrested person is accused of an offense punishable by detention for up to three years, or by fixed-term or life imprisonment, the judge may detain the person for up to fifteen days per detention order. Alternatively, if the judge believes that release would not lead to flight and would not harm the investigation, the judge may order release on bail or without bail.

However, any person accused under the anti-terrorism framework is not eligible for release on bail during the investigative phase. This is justified by reference to the nature of terrorist activities and their negative implications for public security. The Iraqi legislator has regarded this strictness as necessary to preserve public security, prevent suspects from fleeing, and prevent their return to terrorist activity. Yet, as previously discussed, the definition of terrorism is so broad, vague, and flexible that many acts deemed “terrorism” become a real threat to intellectuals and writers, because they may easily fall within the ambit of the law and be denied bail—an additional restriction on freedom of expression. The accused remains detained until trial, even when evidence is absent or weak, while pre-trial and investigative procedures in Iraq are often lengthy, difficult, and time-consuming.

One of the problems of the KRG Anti-Terrorism Law is that a person arrested on charges of terrorism is not eligible for bail and cannot be released. In practical terms, when a journalist, civil activist, political opponent,

intellectual, or similar figure is not released during the investigation, they remain detained until the specialized court issues its decision and the case is resolved. Terrorism cases sometimes take months. By contrast, Iraqi procedural rules allow investigative judges to release suspects on bail during the investigation, except in limited circumstances. Consequently, it may be said that this deficiency in the anti-terrorism framework restricts freedom of expression and generates fear and anxiety for many individuals and parties who should be free in thought, speech, media activity, and the publication of opinions. Without such freedom, neither the individual nor society can develop toward a more advanced, free, and democratic social life.

The Impact of Exclusion from General Amnesty on Freedom of Expression

Many countries' constitutional systems refer to general amnesty. However, neither the 1970 interim constitution, nor the 2003 Law of Administration for the State of Iraq, nor the 2005 Iraqi Constitution explicitly addressed general amnesty.

If general amnesty serves the purpose of normalization and restoring a deteriorating national situation to ordinary and peaceful conditions, Iraq is among the countries most in need of it, and thus it has issued such laws on multiple occasions. This has also led the Kurdistan Region's legislature (KRG) to issue several general amnesties that benefited hundreds of prisoners and enabled their return to society with the hope of resuming normal life. Notably, the general amnesty laws in the Kurdistan Region do not include terrorism suspects and convicts. The KRG legislator has presumed shortcomings and errors in enforcement and has provided that if a person is accused of terrorism and later proven innocent, the person may claim compensation for damages. Nevertheless, if activists, intellectuals, and similar individuals are accused or punished—even for something as minimal as a click—they will not fall within general amnesty and will not benefit from it. This occurs despite the fact that the law should cover those who have not participated in bloodshed against citizens. Because the law does not distinguish between freedom of expression and terrorism—particularly given the ambiguity and breadth that contaminate the definition—legislators should have extended general amnesty to certain detainees under the anti-terrorism framework, under specific conditions. Such a measure could provide a pathway to the release of journalists, civil and political activists, intellectuals, and writers who have been accused or punished under this law.

The Impact of Conditional Release (Parole) on Freedom of Expression

Conditional release is a legal regime that allows a convicted person to be released before completing the full sentence, subject to specific conditions. This release depends on the competence and discretion of the relevant authorities and does not apply to all prisoners. The requirements include: the judgment must be final; the prisoner must have served part of the sentence; the prisoner must demonstrate good conduct in prison; the prisoner must not pose a threat to public security; and the prisoner must have fulfilled financial obligations. Notably, conditional release is not applied to prisoners convicted under the KRG Anti-Terrorism Law. The legislator, in my view, should have left this determination to the judiciary and executive authorities, especially given that the law provides that anyone who, as a perpetrator, participant, or instigator, "cooperates" will be punished with the same penalty as the terrorist act—an approach that may endanger and violate freedom of expression.

Assessing Legality and Legitimacy in the 2016 KRG Anti-Terrorism Law

For a law to be enforceable and to possess legal legitimacy, it must contain legitimate substantive content and be grounded in the preservation of citizens' fundamental human rights and freedoms (26). Otherwise, even if the law has formally passed through official channels and completed the procedural steps of enactment, it will still lack legitimacy (27). This issue is of substantial importance in Iraq and the Kurdistan Region as multicultural societies with a mosaic ethnic, sectarian, and religious fabric, because different cultures hold different values and differing perceptions of law and democratic norms (28). Minorities and marginalized groups—especially where a legal system cannot protect their rights equally—are particularly vulnerable to discrimination and violence (29). Therefore, given the prevalence of cultural relativist perspectives on human rights in Iraq and the Kurdistan Region, it is necessary that this matter be taken seriously in anti-terrorism legislation so that it is not misused as an instrument for hierarchy and domination between cultures and differing political spectra. Under both formal and substantive criteria, law must possess the characteristics of legality and legitimacy (30). Otherwise, what remains of "law" is merely an oppressive command designed to subjugate dissenters and opponents.

This point has been repeatedly affirmed in international judicial reasoning—particularly in approaches emphasizing that the prohibition of violations of fundamental human rights is treated as a peremptory norm of international law and is not subject to derogation under any circumstances. Where such norms are breached, responsibility may arise not only for the state but also as individual international criminal responsibility. This approach has contributed to the development of international law, especially in the field of human rights (31). In principle, legality is not inherently equivalent to legitimacy, because a law or act may be formally legal while substantively unjust and illegitimate (29). In light of these considerations, it can be argued that the law in question faces challenges under both the formal and substantive rule-of-law criteria.

Conclusion

In our research, we reached several conclusions. Among them is that this law does not provide a precise, concise, clear, and comprehensive definition of terrorism that distinguishes the crime of terrorism from other crimes and activities. Through three articles and twenty paragraphs, the law significantly expands the scope and forms of terrorism. This expansion is open to abuse and places freedom of expression at risk. The law is so broad that even members of counter-terrorism agencies themselves may be arrested on terrorism-related charges. It may also be misused to resolve political disputes and thus constitutes a threat to journalists, writers, researchers, and freedom of expression. Because the right to freedom of expression, intellectual property, and terrorism are inseparably connected and interrelated, the law includes severe measures and penalties for incitement or encouragement of terrorism, which may be established merely through clicking, taking photographs, or writing materials that conflict with freedom of expression. The accused and the convicted are excluded from general amnesty and conditional release. One of the advantages of the law is that it mandates the appointment of legal counsel for the accused; however, counsel is limited to courtroom defense and does not extend to the investigative stage, meaning that the lawyer has not reviewed or examined the case file during the investigation. The law also stipulates that detainees must not be tortured or subjected to psychological or physical abuse. Nevertheless, this guarantee cannot be effectively implemented in practice, as it lacks sufficient enforcement mechanisms, and coerced confessions should not be relied upon. If a person convicted of terrorism is innocent, the individual may claim compensation for material

and non-material damages. However, even when compensation is paid, freedom of expression is violated and human rights remain endangered.

Finally, it is recommended that the definition of terrorism be clearly and concisely formulated in the law so that terrorism is precisely identified. Many acts are classified as terrorism under the current law and listed across several clauses that encompass multiple domains and dimensions. This constitutes an expansion of the framework of the crime of terrorism and represents a serious threat to freedom of expression. Efforts should therefore be made to reduce the scope and forms of terrorism defined in the law. The law should not be applied against opposition parties, journalists, media personnel, writers, researchers, and experts. The application of press and journalism law, rather than anti-terrorism law, should govern cases involving journalists and media professionals, and the protection of rights, freedoms, and freedom of expression must be explicitly guaranteed. Bail should be approved in certain terrorism cases that do not involve acts of violence or intimidation and where the court lacks sufficient evidence. This is necessary to maintain a proper balance between public security and freedom of expression. Moreover, it is preferable that this law be temporary and repealed once the exceptional circumstances that justified it have ceased. Until such time as the law is repealed and amended in a manner that safeguards freedom of expression, all human rights, and guarantees legal representation throughout both investigative and trial stages, certain accused persons and convicts should be made eligible for general amnesty, conditional release, and release on bail.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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