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The Impact of Emergency Federal Intervention on the Autonomy of Federal Units (A State of Emergency as Case Study)

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ABSTRACT: Declaring a state of emergency is one of the most prominent and influential means of federal emergency intervention in the structure of the federal state, due to the temporary redistribution of powers between the federal authority and the units, and the impact this has on the autonomy of the latter. In this context, the study reveals that most studies have focused on examining the declaration of a state of emergency from the angle of protecting security and the impact on rights and freedoms, without extending to examining its impact on the autonomy of federal units. Based on this research gap, the study adopts a comparative analytical approach to examine the legal organization of declaring a state of emergency and its practical applications, and its impact on the autonomy of units, in three federal systems in which the philosophy of the legislator and the degree of this autonomy differ: (the United States of America, India, and Iraq) within two related criteria: the first is the direct impact of declaring a state of emergency on the autonomy of units, and the second is the effectiveness of constitutional and oversight guarantees in limiting the federal authority's deviation in using this exceptional measure or normalizing it. The study concluded that the American constitutional system shows a tendency to normalize and politicize the declaration of a state of emergency due to the expansion of legislative authorization and the multiplicity of sources of emergency powers, which is indirectly reflected in the autonomy of federal units. In India, the ambiguity of some constitutional texts and the expansion of others, coupled with the experience of the 1975-1977 state of emergency declaration, contributed to highlighting the tendency towards centralization and the expansion of the impact of the state of emergency on the autonomy of the units, which necessitated the introduction of subsequent constitutional amendments. In Iraq, the absence of a complementary legislative regulation that regulates the provisions of the declaration of a state of emergency contributed to weakening the effectiveness of the constitutional text and the ambiguity of the potential impact of using the state of emergency declaration to undermine the autonomy of the region. Accordingly, the study calls for the development of a legal framework that regulates the declaration of a state of emergency in a federal context based on a balance between the requirements of necessity and the preservation of the autonomy of the units.

INTRODUCTION

Declaring a state of emergency is one of the most prominent means of emergency federal intervention to confront serious dangers that threaten the state's existence or its constitutional system. This means allows the federal authority to expand the scope of its powers in a way that ensures the restoration of public order. However, on the other hand, it may lead to compromising the autonomy of the federal units, which is one of the most important pillars of the federal state.

Despite the abundance of studies that have examined the state of emergency, most of them have limited their research to the angle of protecting national security and its impact on rights and freedoms, while the study of its impact as a means of emergency federal intervention on the autonomy of the units remains limited and unsystematic. Hence, addressing this research gap requires examining the declaration of a state of emergency within the scope of emergency federal intervention, and demonstrating the extent of its impact on

the balance between the requirements of protecting the security of the state and its constitutional system and the guarantees of autonomy for the units.

Based on the foregoing, this study raises a problem centered around a main question: To what extent does the declaration of a state of emergency, in light of its legal organization and practical applications, affect the autonomy of federal units in comparative constitutional systems? And to what extent are constitutional and oversight guarantees sufficient to limit or normalize the federal authority's deviation in using this exceptional measure?

In order to address this problem, the study required adopting the comparative analytical approach by studying and analyzing the legal organization of declaring a state of emergency, its practical applications, and its impact in three federal systems in which the philosophy of the constitutional legislator and the extent of his inclination towards centralism differ: the United States of America, India, and Iraq. The objectives of this study are to transfer the analysis of the declaration of a state of emergency from its traditional field related to rights and freedoms to the federal field as a means of emergency federal intervention and to focus on its impact on the autonomy of federal units, in order to contribute to the development of the theoretical and practical framework of this exceptional means and to control its limits within the scope of emergency federal intervention.

Based on this, the research requires defining the concept of declaring a state of emergency in the context of emergency federal intervention, then explaining its legal organization and practical applications in the constitutional systems under comparison, in preparation for evaluating its impact on the autonomy of federal units, by dividing it into three sections as follows:

Section One: The Concept of Declaring a State of Emergency and Autonomy in the Context of Emergency Federal Intervention

Section Two: Comparative Legal Framework for Declaring a State of Emergency and its Practical Applications

Third topic: Evaluating the impact of declaring a state of emergency on the autonomy of federal units

First topic

The concept of declaring a state of emergency and autonomy in the context of emergency federal intervention

Declaring a state of emergency is one of the most important means of emergency federal intervention to confront serious exceptional dangers that threaten the state and its constitutional system. The limits of this means cannot be controlled except by defining the concept of emergency federal intervention as a prelude to defining the concept of declaring a state of emergency and the autonomy of federal units, by dividing this topic into three requirements as follows:

First requirement

The concept of federal emergency intervention

The emergency federal intervention is the constitutional framework within which exceptional measures are implemented – foremost among them the declaration of a state of emergency – as this measure cannot be analyzed without defining the constitutional scope within which it operates. This necessitates that we review in this section the definition of emergency federal intervention and its executive means, as follows:

Section One: Definition of Emergency Federal Intervention

Comparative constitutional jurisprudence has differed in defining emergency federal intervention according to the angle from which it is viewed. One side has focused on its functional dimension as a guarantee for protecting constitutional legitimacy and the unity of constitutional standards within the federal state, defining it as: the action taken by the federal authority to influence the conditions or governance of its constituent units. It is one of the paths towards democracy, which may include reorganizing local institutions or taking temporary measures to guarantee the protection of fundamental rights.¹ Another aspect of jurisprudence focused on the executive and security dimension, defining it as: taking urgent executive measures to support the state government (a legitimate government loyal to the regime) when it is unable to confront a serious internal crisis that threatens public order and internal security, whether at the request of the state government or without its request, when a grave danger prevents it from acting or threatens the unity of the federation.² It is

¹ Jacqueline Mariela Behrend, "Federal Intervention and Subnational Democratization in Argentina: A Comparative Perspective", in Jacqueline Behrend and Laurence Whitehead (eds.), *Illiberal Practices: Territorial Variance within Large Federal Democracies* (Baltimore: Johns Hopkins University Press, 2016), p. 92.

² Signe Larsen, *The European Union as a Federation: A Constitutional Analysis*, A thesis submitted to the Department of Law of the London School of Economics for the degree of Doctor of Philosophy, London, July 2018, p. 181.

also defined as: a political and legal mechanism that allows the federal executive authority to intervene in the affairs of local units in order to protect the federal system and laws from internal violence or the abuse of power by local authorities.³

Another school of thought within jurisprudence, stemming from the contractual dimension of the federal state, views emergency federal intervention as a manifestation of the mutual obligations within the federal contract. It defines it as: a procedure imposed by the contractual federal relationship between the federal authority and the regions, exercised when regional governments are unable to control emergency situations within their jurisdictions. Its aim is to enable the federal authority to protect citizens, ensure security and stability, and maintain sound relations between different ethnic groups.⁴

Despite their differing starting points, the advanced definitions share a common thread: highlighting the elements of emergency federal intervention as an exceptional power granted to the federal government, linked to exceptional circumstances, and aimed at protecting the unity of the state and its constitutional order. This allows the federal government to utilize all legitimate constitutional means to achieve this objective, foremost among them the declaration of a state of emergency. However, these definitions are criticized for focusing on the functional role of the intervention power without framing it within a framework of legal controls governing its legitimacy. Therefore, emergency federal intervention can be defined as: an exceptional constitutional power granted to the federal authority and exercised according to specific legal mechanisms and means in exceptional circumstances that threaten the unity of the state and its federal constitutional order, within a framework of constitutional and legislative controls that prevent its deviation from its constitutional objectives.

Section Two: Means of Emergency Federal Intervention:Emergency federal intervention is exercised through a range of means that vary in their legal nature and their effects on the balance of the federal system and the autonomy of the federal state units. These means reflect the philosophy of each constitutional system in defining the limits of federal power when facing exceptional crises, and they can be classified as follows:

First - Direct constitutional means:This refers to the means that are directly based on the provisions of the constitution, which authorize the federal authority to intervene in the affairs of constituent units when there is a serious disruption in the functioning of their institutions or their inability to perform their functions in accordance with the provisions of the constitution. Among the most prominent of these means are the declaration of a state of emergency, as the broadest framework for activating federal intervention, and direct presidential rule, which is represented by the federal authority temporarily assuming the administration of the affairs of the constituent unit and transferring its legislative and executive powers to the federal level in order to restore the constitutional order and guarantee the unity of the state.⁵

Given the pivotal importance of declaring a state of emergency and the fact that most constitutional systems adopt it, this study is limited to addressing it.

Second - Security and military measures:This refers to the means by which the federal authority uses its security and military resources to confront threats affecting internal security, the safety of the state, or the unity of the federation. These means include deploying federal forces for relief and humanitarian support during disasters and crises that exceed the capacity of local authorities, as well as deploying them to maintain order and enforce laws when serious disturbances occur or local authorities are unable to implement federal laws.⁶

³ d. Shorsh Hassan Omar, Characteristics of the Federal System, A Comparative Analytical Study, 2nd Edition, Arab Center for Publishing and Distribution, TheAHarra, 2018, p. 295.

⁴ Shishay Abrha Mehari, State of exception under the federal constitution, A Thesis Submitted to the School of Law of Addis Ababa University, 2018, p 19-20.

⁵The United States Constitution does not provide for a declarationconditionEmergency, explicitlyHowever, the president exercises these powers based on his executive authority and the legislative framework governing them.In the National Emergency Act of 1976, eitherconstitutionIndiaFor the year 1950It stipulated an announcementconditionEmergency explicitly stated in the articleYN (352(related to national emergencies, and)360)Regarding financial emergencies,As for direct presidential rule, it was explicitly stated in Article (356,357From him,whileThe Constitution of the Republic of Iraq of 2005 explicitly stipulated the declaration of a state of emergency in Article (61/Ninth) thereof.Without including an organization similar to direct presidential rule.

⁶The provisions for these measures are found in the United States Constitution, Article I, Section 8, Clause 15, concerning the summoning of the militia to enforce the laws and suppress insurrection, and Article IV, Section 4, concerning the protection of the states from domestic violence, and the lawDisobedienceInsurrection Act, 10 USC §§ 251–255; the Constitution of India of 1950, Article 355, concerning the Union's obligation to protect the states and ensure the administration of government in accordance with the Constitution; and the Armed Forces (Special Powers) Act of 1958, Article 4; and the Constitution of the Republic of Iraq of 2005, Article 109, concerning the preservation of Iraq's unity and integrity, and Article 110(II) concerning the formulation of security policy.And the creationarmed forces.

Thirdly - Financial and economic means: This refers to the means by which the federal authority intervenes, using federal financial support tools, to achieve institutional stability within the units. The most prominent of these are federal financial aid and federal loans provided by the federal authority to the units to support them in order to prevent the exacerbation of crises and financial collapse that could threaten the stability of the federal system.⁷ Despite the differences in the means of emergency federal intervention in terms of their legal nature and mechanisms of activation, they share a structural effect on the federal system in terms of their temporary redistribution of powers between the federal and local levels, which would affect the autonomy of the federal units, thus requiring them to be subject to legal controls that prevent them from deviating from their constitutional purposes.

Second requirement

The concept of declaring a state of emergency

Declaring a state of emergency is one of the most important means of activating emergency federal intervention when the state faces serious dangers that threaten its constitutional system. This requires defining its legal concept, nature, and the extent to which it is subject to judicial oversight, given its direct impact on the autonomy of federal units. This requirement is divided into two sections as follows:

Section One: Definition of a State of Emergency Declaration: Declaring a state of emergency is one of the most important means by which the federal government can confront exceptional circumstances that threaten the state's existence or its constitutional system. Some legal scholars have distinguished between: the (realistic) concept of declaring a state of emergency, which is represented by the occurrence of a serious exceptional circumstance that threatens the state's existence or its public order and which ordinary legal rules are unable to address; and the (legal) concept, which is represented by the establishment of an exceptional legal system created by the legislative authority to address those circumstances. This system includes a set of rules and procedures that differ from the legal system prevailing in ordinary circumstances. In this regard, one view in legal scholarship holds that exceptional circumstances threatening the safety of the State, such as wars and natural disasters, may render ordinary rules and procedures insufficient to protect public order, thereby requiring an expansion of the powers of the competent authorities and empowering them to take prompt measures to confront such circumstances. However, since this may result in a direct infringement of rights and freedoms, legislative intervention is required to establish the necessary restrictions and safeguards to prevent the arbitrary exercise of these powers⁸.

On this basis, a crisis in itself is not considered a legal state of emergency, but rather the latter is realized by the existence of an exceptional legal framework that regulates the response to it, which is known in legal scholarship as emergency law or martial law.⁹ Since the subject of our study deals with this method within the framework of emergency federal intervention and its impact on self-determination, what concerns us is the legal concept of declaring a state of emergency and the controls and guarantees it requires.

Accordingly, some legal scholars have defined the declaration of a state of emergency as: a legal system established by urgent constitutional laws to protect national interests, resorted to only exceptionally and temporarily to address emergency circumstances that fall short of legitimate governmental mechanisms, and ending when its justifications cease.¹⁰ It is also defined as: a system based on simply granting the executive branch broader powers than it would have under normal circumstances, given the threats to the safety and security of the state.¹¹ It is defined as: the situation in which extraordinary legal powers granted to public authorities are used to confront imminent danger and its effects arising from an exceptional circumstance subject to control.¹² Or it is an exceptional system subject to the principle of exceptional legitimacy and ends with the disappearance of the exceptional circumstances that justified resorting to it.¹³

⁷ text constitution States United American For the year 1787 The rate on these means in Material First, Section (8), Item (1) about authority Congress in Spending (Spending Clause, Constitution India For the year 1950, The two articles (355) and (360) The two related With commitment Union Protected States and system Emergency Finance; Constitution Republic Iraq For the year 2005, Material (110/First and third) The two related By specialization Exclusive For the authorities Federal in fee Politics Economic and the state's finances.

⁸ Dr. Musaddaq Adil Talib & Al-Fari'ah Abdullah Jasim, "The Impact of Exceptional Circumstances on Personal Freedoms: A Comparative Study," Journal of Legal Sciences, College of Law, University of Baghdad, Fourth Special Issue for Faculty and Postgraduate Students' Research, 2018. DOI: <https://doi.org/10.35246/jols.v33is.202>.

⁹ Dr. Abdul Hamid Al-Shawarbi, Sharif Jadallah, The flaw of unconstitutionality and illegality of the decision to declare and extend State of Emergency and Military Orders, 1st Edition, Dar Al-Maaref, Alexandria, 2005, Page 62.

¹⁰ Dr. Zakaria Muhammad Abdul Hamid Mahfouz, The State of Emergency in Comparative Law and in the Legislation of the United Arab Republic, 1st ed., Al-Maaref Establishment, Alexandria, 1966, p. 13.

¹¹ Dr. Ta'ima Al-Jarif, The Principle of Legitimacy and the Controls of the State's Subjection to the Law, Modern Cairo Library, 1963, p. 152.

¹² Muhammad Ahmad Ibrahim, Guarantees for Individuals under Exceptional Circumstances in the International and Administrative Fields, A Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, 2008, p. 47.

¹³ Malik Mansi Al-Husseini, Dr. Musaddaq Adel Talib, The Constitutional and Legal Organization of the Declaration of War and State of Emergency in Iraq, Journal of Law, Al-Mustansiriyah University, Volume Three, Issue 8 and 9, 2010, p. 37. DOI: <https://doi.org/10.35246/jols.v0is.88>.

From the advanced definitions, we can conclude that declaring a state of emergency is based on essential elements, namely: the existence of a grave danger, the inadequacy of ordinary legal means to confront it, and the establishment of a special legal system that grants the executive authority extraordinary powers on a temporary basis, with the exercise of these powers subject to constitutional controls and judicial oversight.

Section Two: The Legal Nature of Declaring a State of Emergency: Legal scholars have differed in determining the legal nature of the decision to declare a state of emergency and the extent to which it is subject to judicial review. Some have argued that it is a sovereign act falling within the scope of political acts, which are exempt from judicial review. Others have distinguished between the declaration decision, which is considered a political act not subject to judicial review, and the measures issued based on it, which are subject to the review of the administrative judiciary. Still others have argued that the decision to declare a state of emergency is subject to judicial review to verify its compliance with constitutional controls and that it does not exceed the limits of necessity. For example, the jurisprudence of the Supreme Constitutional Court in Egypt has established that the decision to declare a state of emergency is a political act outside the scope of judicial review, while the orders and measures issued in implementation of it are subject to judicial review as administrative acts.¹⁴ We believe that the declaration of a state of emergency, although it has political aims related to the security and safety of the state, is issued by the executive authority based on a constitutional text or a legislative mandate derived from the constitution, according to the nature of each federal system. It creates legal effects that directly affect public rights and freedoms, and may extend to affecting the autonomy of federal units and the balance of power distribution between them and the federal authority, which is the essence of the constitutional system in the federal state.¹⁵ Therefore, it is an administrative decision of a special constitutional nature, and it is not correct to characterize it as a political act that is excluded from judicial oversight, but rather it remains subject to the principle of legality.

It is also necessary to distinguish between the decision to declare a state of emergency and the declaration of the emergency itself. The decision to declare a state of emergency is a legal act in which the federal government bases its decision on the constitutional document or federal legislation that authorizes it to declare a state of exception, as mentioned. The declaration of a state of emergency itself, however, is a means of emergency intervention, as it allows the federal government to exercise extraordinary powers to protect the constitutional order and the unity of the state. At the same time, it constitutes the legal framework from which other means of intervention derive their legitimacy when the crisis reaches a point that threatens the existence of the state, such as security or financial measures. The former is the legal basis that establishes the state of exception, while the latter is the means under which this state is exercised and upon which other measures are activated when necessary.

Based on the foregoing, declaring a state of emergency is an exceptional means that entails the redistribution of powers between the federal authority and the authorities of the units on a temporary basis, which makes its effect on the autonomy of the federal units a fundamental issue that requires determining its controls and guarantees to prevent the federal authority from deviating from the constitutional goals for which it was legislated.

Third requirement

The concept of autonomy for federal units

The autonomy of federal units is a fundamental constitutional pillar and an essential indicator of the existence of a federal state, as it represents the criterion that distinguishes it from a simple unitary state.¹⁶ This grants these units an independent legal personality, authorizing them to exercise their internal sovereignty within the framework of the federal constitution. This independence is manifested in a number of key aspects, most notably the following:

1- Constitutional independence: meaning that each unit has the right to establish its own constitution to regulate its legislative, executive, and judicial powers and all its affairs, in a manner that does not conflict with the federal constitution. This constitution is established by the constituent authority within it, which has the power to approve amendments to it within the limits stipulated by the federal constitution, and without the need for ratification by the federal authorities.¹⁷

¹⁴Dr. Ali Majeed Al-Akeeli and Dr. Lama Ali Al-Dhaheri, *Constitutional Extent Emergency Law: A Comparative Constitutional Study*, 1st Edition, Arab Center for Publishing and Distribution, Cairo, Egypt, 2018, pp. 97-100.

¹⁵Dr. Abdul Aziz Aliwi Abdul, *The Role of the Executive Authority in Federal Experiments: A study of selected models*, Journal of Political Science, University of Baghdad, Issue (62), 2021, p. 111. <https://doi.org/10.30907/jj.v0i62.592>

¹⁶Dr. Khalid Qabbani, *Decentralization and the Question of its Implementation in Lebanon*, T1, Oweidat Publications, Beirut, Lebanon, 1981, p. 161.

¹⁷Dr. Muhammad Awda Al-Daraji, *Sharing and Distribution of Wealth in a Federal Union State: A Comparative Analytical Study*, T1, Dar Al Nahda Al Arabiya, Egypt, 2018, p. 73- 75.

2- Organic independence: The territory is one of the fundamental pillars of the existence of the state as a federal unit, as the governing authorities in the state exercise their powers and internal sovereignty within the borders of their territory.¹⁸⁾Therefore, no federal authority may take any action concerning the fate of the unit regions, as most federal constitutions recognize the authority of the units over their regions, and explicitly stipulate that the borders of any region of the states may not be changed, or any part of it may be separated or annexed to another except with the consent of the federal unit authorities themselves. In addition to the approval of the federal state authorities¹⁹.

3- Functional independence: The federal units enjoy the ability to organize their affairs according to their own will and to exercise their powers without being imposed upon them by the federal authorities. The units exercise their three powers with complete freedom, and do not. It is limited only by the principles and provisions stipulated in the federal constitution - and the Supreme Court shall adjudicate any dispute that may arise between the federal government and the governments of the constituent units of the federal state.²⁰⁾.

4- Financial Independence: Financial independence means that the units have sufficient financial resources to enable them to carry out their mandated responsibilities and other constitutional functions. True autonomy cannot be achieved without empowering these units to manage their financial resources within the framework of the rules governing the distribution of financial resources and powers stipulated in the federal constitution.²¹⁾Based on the foregoing, emergency federal intervention grants the federal authority powers that may constitute a temporary constitutional constraint that would narrow the scope of the autonomy enjoyed by the units, thus affecting their ability to manage their internal affairs. This necessitates surrounding it with precise controls that ensure that the essence of this independence is not compromised or the federal nature of the state is not changed.

Second topic

Comparative legal framework for declaring a state of emergency and its practical applications

Regulating the declaration of a state of emergency has an impact on determining the limits of federal authority intervention and the autonomy of units, which requires studying its legal framework in comparative constitutional systems, and explaining its practical applications therein, by dividing this topic into two requirements as follows:

First requirement

Comparative legal framework for declaring a state of emergency

The legal framework for declaring a state of emergency varies in comparative constitutional systems, depending on each legislator's philosophy of balancing the requirements of protecting state security and its constitutional system with the autonomy of its federal units. This necessitates clarifying its constitutional and legislative basis, in light of a number of considerations related to the conditions of the declaration, the competent authority, its temporal and spatial scope, as well as oversight guarantees. This requirement is divided into three sections as follows:

Section One: The legal framework for declaring a state of emergency in the American constitutional system:

First - Constitutional Organization: The United States Constitution does not contain an explicit provision for declaring a state of emergency, but it does contain general provisions from which it can be inferred that it is possible to deal with exceptional circumstances, most notably The provision suspending the habeas corpus in cases of insurrection and invasion, which falls within the legislative authority of Congress, implicitly acknowledges the possibility of exceptional circumstances justifying the limitation of certain procedural safeguards and the adoption of extraordinary measures to address grave dangers threatening the state's existence or its constitutional order. The Constitution also grants the president implicit constitutional powers as commander-in-chief of the armed

⁽¹⁸⁾Dr. Zuhdi Yakan, Principles of Constitutional Law and Political Systems, Yakan Publishing House, Beirut, 1982.p132.

¹⁹⁾Article (4/3) of the United States Constitution of 1787 is considered that Text on: "no Compose state what By integrating Two states or more or By including parts from States without consent Councils Legislative States owner The matter As well as consent Congress. And the material (3) from constitution India For the year 1950. Which stipulated on grant Parliament power construction units New Change names Units and modification Its borders or Cancel it. He is What weakens an idea Independence organic For units State Federalism reveals a tendency towards centralization, and the article (117/Firstly) from constitution Republic Iraq For the year 2005 Which was approved This independence is implicit By its text on: "He acknowledges this Constitution when Its penetration province Kurdistan and his authorities Menu regional Challenge".

⁽²⁰⁾ Raed Hamdan Ajab, Dr. Maha Bahjat Younis, The Organic Independence of Regions According to the Constitution of the Republic of Iraq of 2005, Journal of Legal Sciences, College of Law, University of Baghdad, Special Issue (Sixth), 2019, p. 97. DOI: <https://doi.org/10.35246/jols.v33is.157> Dr. Ahmeddd Useful, General Theory of Constitutional Law and Political Institutions, 2nd edition, no printing location 2015, p. 38.

²¹⁾ Adel Al-Tabtabai, Autonomy of the States of the Federal State, Journal of Law and Sharia, Kuwait University Faculty of Law and Sharia, Volume 4, Issue (1), 1980 pp. 106-19.

forces, thus enabling him to play a significant role, particularly in crisis management.²² However, some legal scholars believe that the provisions of the US Constitution in this area are characterized by ambiguity and lack of clarity; as the scope of the president's powers in dealing with crises has remained linked to constitutional interpretation and the limits of the relationship between the legislative and executive branches.²³

2- Legislative organization: Given that the US Constitution does not explicitly provide for declaring a state of emergency, the federal legislature later intervened to fill this constitutional gap by enacting laws supplementing the Constitution, most notably the National Emergencies Act of 1976 (The National Emergencies Act established the procedural guidelines for declaring a state of emergency. It granted the president the authority to declare a national emergency whenever federal laws permit the exercise of special powers during an emergency. The declaration must be immediately submitted to Congress and published in the Federal Register. Emergency powers are only activated pursuant to this declaration. The Act also stipulated that the emergency can be terminated by a joint resolution of Congress and expires automatically after one year unless formally renewed by the president following the same procedures.²⁴

Therefore, the declaration of a state of emergency is based on legislative authorization rather than an explicit constitutional basis, which makes the scope and limits of this authority linked to legislation regulating emergencies through fragmented legal mechanisms such as the Insurrection Act of 1807, the Public Health Services Act of 1944, and the Stafford Act of 1988.²⁵

This legislative plurality results in a difference in the temporal and spatial scope of declaring a state of emergency, according to the applicable law. The extent of the impact of declaring a state of emergency on the autonomy of the units remains linked to the conditions of application and the effectiveness of the oversight guarantees.

Section Two: The legal framework for declaring a state of emergency in the Indian constitutional system:

First - Constitutional Organization: Unlike the United States Constitution, the Indian Constitution includes clear provisions granting the President, based on written advice from the Federal Cabinet, the power to declare a state of emergency if he is convinced that there is a threat to the security of India or any part of it due to war, aggression, or armed rebellion. This declaration is then subject to parliamentary approval within one month and remains in effect for six months, renewable under the same constitutional conditions.²⁶ This reflects the philosophy of the Indian legislator, as the fear of secession attempts and internal unrest was the direct reason for including explicit provisions enabling the federal government to declare a state of emergency and guarantee the unity of the country.²⁷

The Indian constitutional regulation is not limited to the national emergency stipulated in Article (352), but also extends to the financial emergency system in Article (360), which authorizes the President of the Republic to declare an emergency if he is convinced that the financial or credit stability of India or any part of it is threatened, provided that the declaration is subject to the approval of Parliament within two months of its issuance, and it continues to be in effect until the President decides to terminate it. This declaration entails enabling the federal authority to issue directives to the federal units on financial matters, including reducing the salaries of public employees, which reveals its nature as more infringing on the financial independence of the units compared to the declaration of a national emergency.

Therefore, this constitutional organization of the forms of declaring a state of emergency gives the federal authority a wider scope of intervention in the affairs of the units, which makes its effect on the autonomy of the federal units a fundamental issue that requires surrounding it with controls and guarantees that prevent it from deviating from the constitutional purposes.

Second - Legislative Organization: India has enacted a number of laws enabling the federal government to fulfill its constitutional obligations during crises, particularly those stipulated in Article 355 concerning the protection of units from internal and external

²² Ten Articles (1, 2) of the US Constitution For the year 1787, as amended.

²³ John Ferejohn & Pasquale Pasquino, The Law of the Exception: A Typology of Emergency Powers, International Journal of Constitutional Law (I.CON), Vol. 2, No. 2, 2004, p. 214.

²⁴ Tmaterial viewTan(201202) From the National Emergency ActThe opposite of the materialfig(16211622)From Title (50) of the United States Code of America.

²⁵ Insurrection Act of 1807, codified at 10 USC §§ 251–255; Public Health Service Act of 1944, codified at 42 USC § 201 et seq.; Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, codified at 42 USC §§ 5121–5207. All available at the official website of the Office of the Law Revision Counsel, US House of Representatives: <https://uscode.house.gov> Date of visit: 22/4/2026.

²⁶ Look Material(352)From the Constitution of India of 1950.

²⁷ Rishabh Aravindhan, A Comparative Legal Study of Emergency Provisions Under the Indian Constitution, SSRN Working Paper, August 9, 2025, p. 10.

threats. Among the most prominent of these laws are the National Security Act of 1980 and the Disaster Management Act of 1980.²⁸In 2005, it was noted that these laws did not regulate the declaration of a state of emergency itself, as constitutional provisions remained the governing framework. Rather, they played a complementary role in enabling the Union to manage crises, and their impact on the Union's autonomy remained contingent on their practical implementation. As for financial emergencies, no law was issued to regulate them, and they remained based solely on the constitutional text.

Third section: The legal framework for declaring a state of emergency in the Iraqi constitutional system:

First - Constitutional Organization:The 2005 Constitution of the Republic of Iraq explicitly addresses the declaration of a state of emergency in Article (61/9), granting the Council of Representatives the authority to approve its declaration upon a joint request from both the President of the Republic and the Prime Minister, by a two-thirds majority of its members. The declaration is limited to a period of thirty days, renewable under the same conditions. This constitutional provision reflects the Iraqi legislature's commitment to limiting exceptional powers, preventing the executive branch from unilaterally exercising them, and subjecting the declaration of a state of emergency to rigorous parliamentary oversight to safeguard rights and freedoms.

However, this constitutional framework has some shortcomings, most notably that it does not stipulate the possibility of declaring a partial state of emergency in specific parts of the country, nor does it outline mechanisms for coordination between the federal government and the Kurdistan Regional Government when such a declaration is made, merely referring to a subsequent law that will regulate these matters, which has not yet been issued.²⁹This legislative vacuum has led to ambiguity in determining the extent to which powers can be redistributed between the federal and local levels during the declaration of a state of emergency, and consequently, the extent to which the autonomy of the region is affected.

Second - Legislative Organization:National Safety Defense Order No. (1) of 2004³⁰ The legislative basis for declaring a state of emergency in Iraq, according to Article (130) of the Constitution of the Republic of Iraq of 2005, remains in effect unless it is repealed or amended in accordance with the provisions of the Constitution. However, its implementation remains restricted to the extent of its conformity with the provisions of Article (61/Ninth) of the Constitution, which has led to a duplication in regulating the declaration of a state of emergency, especially since the procedures for declaration under this order differ from the procedures outlined by the 2005 Constitution, whether in terms of the competent authority or in terms of temporal, spatial, and oversight restrictions.³¹This highlighted the need for modern federal legislation to regulate the declaration of a state of emergency.

Therefore, the legal framework for declaring a state of emergency in Iraq is characterized by a duality. On the one hand, it imposes strict constitutional restrictions that prevent the expansion of exceptional powers. On the other hand, it lacks detailed legislation that defines the impact of declaring a state of emergency on the redistribution of powers between the federal and regional authorities. This leaves the legal framework for declaring a state of emergency bound by formal procedural controls, without explicitly defining the effects of the declaration on the federal structure of the state or the limits of its infringement on the autonomy of the regions. This contrasts with the American system, which regulates it through clear legislation in multiple laws, and the Indian system, which surrounds emergencies with detailed constitutional provisions, although there are risks of expanding the powers of the central authority in both systems.

It is clear from the above that the comparative organization of declaring a state of emergency varies in comparative constitutional systems. In the United States of America, it is based on a constitutional basis that is characterized by a degree of ambiguity, in contrast to multiple legislative regulations. In India, it is based on an explicit constitutional regulation coupled with supplementary legislation. In Iraq, it is characterized by a duality between a restrictive constitutional text and a legislative regulation that predates the implementation of the 2005 constitution. This is reflected to varying degrees on the limits of federal intervention and the effectiveness of guarantees protecting the autonomy of the units.

Second requirement

Practical applications of declaring a state of emergency

The effectiveness of constitutional and legislative texts is demonstrated through practical applications that reflect the extent of adherence to or deviation from their provisions, and the impact of this on the balance of power between the federal government and the constituent units, as well as their autonomy. This section focuses on the practical application of declarations of a state of emergency in comparative constitutional systems, as a prelude to analyzing their impact on autonomy in the following section. Therefore, the

²⁸National Security Act, 1980 (Act No. 65 of 1980); Disaster Management Act, 2005 (Act No. 53 of 2005); Constitution of India, arts. 355&360. Available at the official website of the Government of India, Ministry of Law and Justice:<https://www.indiacode.nic.in/> Date of visit: 25/4/2026.

²⁹ TArticle (61/ Ninth) ofConstitution of the Republic of Iraq for the year 2005.

³⁰Published in the Iraqi Gazette, Issue No. (3987), On 3/7/2004.

³¹Articles (1, 2, 9) of the National Safety Defense Order No. (1) of 2004 are considered.

research necessitates examining the most prominent practical applications in comparative constitutional systems, which will be achieved by dividing this section into three subsections as follows:

Section One: Practical Applications of Declaring a State of Emergency in the American Constitutional System: A state of emergency has been declared in the United States of America regarding domestic affairs several times based on the provisions of the National Emergencies Act (National Emergencies Act 1976) to address crises of a security, political, or health nature. On September 14, 2001, President George W. Bush issued National Emergency Declaration No. 7463 following the terrorist attacks on the World Trade Center in New York and the Pentagon.³² This declaration is the first contemporary practical application of the presidential declaration of emergency at the domestic level to confront a serious security threat.

Presidential Declaration No. 9844, issued by US President Donald Trump on February 15, 2019, was a prominent practical application of declaring a state of emergency. It declared a "security and humanitarian crisis" on the southern border due to illegal immigration and drug trafficking, necessitating federal intervention beyond the capacity of border units in Texas, Arizona, California, and New Mexico. The declaration authorized the president to call up federal reserve military units and activate military construction powers to allocate funds from the Department of Defense for the purpose of constructing the border barrier.³³

On March 13, 2020, President Donald Trump issued National Emergency Declaration No. 9994 due to the outbreak of the virus (COVID-19), based on the National Emergency Act and Section (1135) of the Social Security Act, which allowed the mobilization of federal authorities to support units in confronting the health crisis.³⁴

Finally, on January 20, 2025, President Donald Trump issued National Emergency Declaration No. 10886 concerning the southern border of the United States, for the same reasons that led to its declaration in 2019. Under this declaration, reserve forces were called up and military construction authorities were activated.³⁵

Advanced applications reveal the diversity of fields in which the declaration of a state of emergency and its executive tools have been applied in the American constitutional system, according to the nature of each crisis.

Section Two: Practical Applications of Declaring a State of Emergency in the Indian Constitutional System: A state of emergency was declared in India three times under Article (352) of the Constitution: the first declaration was made in 1962 because of the war with China, and then it was declared again in 1971 after the outbreak of war with Pakistan under the Defence of India Acts of 1962 and the Defence and Internal Security Act of 1971 (both of which were later repealed), both of which were related to protecting national security from external aggression.

The third declaration was issued on June 25, 1975, when the President of the Republic declared, based on Article (352) of the Constitution³⁶ The state of emergency was declared under the pretext of "internal unrest" threatening national security. This declaration marked the first declaration of a state of emergency during peacetime, unlike the two previous instances (1962 and 1971), which were linked to external aggression. This declaration remained in effect until March 21, 1977, and resulted in the suspension of constitutional

³² Congressional Research Service, National Emergency Powers, CRS Report No. 98-505, Updated November 19, 2021, p.17. and see also: Proclamation 7463 of September 14, 2001, Declaration of National Emergency by Cause of Certain Terrorist Attacks, Federal Register, Vol. 66, No. 181, September 18, 2001, p. 48199. Available at: <https://www.govinfo.gov/pdf> Date of visit: 12/6/2026.

³³ Congressional Research Service, op.cit, p.17. And see also: Proclamation 9844 of February 15, 2019, Declaring a National Emergency Concerning the Southern Border of the United States, Federal Register, Vol. 84, No. 34, February 20, 2019, pp. 4949–4950. Available at: <https://www.govinfo.gov/pdf> (Date of visit: 11/6/2026).

³⁴ Congressional Research Service, op.cit, p. 17. and see: Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, Federal Register, Vol. 85, No. 53, March 18, 2020, pp. 15337–15338. Available at: <https://www.govinfo.gov/pdf> Date of visit: 11/6/2026.

³⁵ N The announcement explicitly states the cancellation of the advertisement (9844) for 2019, It is the announcement which had been previously cancelled under President Biden. Presidential Decree (10142) of January 20, 2021.

See: Proclamation 10886 of January 20, 2025, Declaring a National Emergency at the Southern Border of the United States, Federal Register, Vol. 90, No. 14, January 22, 2025, p. 8327. Available at: <https://www.presidency.ucsb.edu> Date of visit: 14/6/2026.

³⁶ In 12 June/June 1975 she ruled court (God Abad) Invalid election (Indira) Gandhi) For committing it violations electoral general 1971, So she demanded opposition By resigning, But it I resorted to The court Upper that Allowed she has By staying temporarily Under certain conditions. And instead Commitment By ruling, Prepared with Her supporters Plans To stay in Authority included arrest Leaders opposition And imposed censorship on Media. And in 25 June/June 1975 I convinced president "The Republic" Prime Religion on Ahmed" By an announcement Emergency Interior Based on to Material (352) On the pretext to threaten Security National. And it continued Emergency (21) month Suspended During it Rights Basic And it was modified Laws In what Enhances Her authority, So he transformed advertisement Emergency from procedure constitutional exceptional to Means Political To exclude opposition and focus Authority Executive By hand President Ministers.

See: Ramesh Subramanian, ICTs for Surveillance and Suppression: The Case of the Indian Emergency 1975–1977, Journal of International Technology and Information Management, Vol. 30, Issue 4, 2021, pp. 72-73.

guarantees under Articles 358 and 359.³⁷And fundamental rights and freedoms, including freedom of expression, movement, and protection from arrest, and the Internal Security Law was used (MISA) to arrest opposition leaders. This period also witnessed the introduction of fundamental constitutional amendments, most notably Amendments 38 and 42, which strengthened the powers of the federal government and reduced judicial review.³⁸

Third section: Practical applications of declaring a state of emergency in the Iraqi constitutional system Since the entry into force of the Constitution of the Republic of Iraq of 2005 until the present time, no state of emergency has been declared based on Article (61/Ninth) of the Constitution.³⁹Despite the occurrence of events that warranted the possibility of announcing it, including the control of some Iraqi provinces by ISIS in 2014, and the outbreak of the COVID-19 pandemic in 2020, this is attributed to a set of factors, which are as follows:

First - Legal factors: These factors include the strict procedural restrictions imposed by the constitution for declaring a state of emergency, which requires a joint request from the President of the Republic and the Prime Minister and the approval of a two-thirds majority of the members of the House of Representatives. This was evident in 2014 when the government was unable to declare a state of emergency to confront ISIS.⁴⁰Because the legal quorum for the parliament to convene was not met⁴¹.

The constitution also stipulates that the declaration of a state of emergency be regulated by a special law. However, the Council of Representatives has not yet enacted this legislation, and the National Safety Defense Order No. (1) of 2004, issued under the Iraqi State Administration Law for the Transitional Period of 2004, remains in effect. This order grants the Prime Minister broad powers that are inconsistent with the philosophy of the 2005 constitution, which is based on protecting rights and freedoms. Therefore, the federal government avoids activating this order for fear of being accused of reverting to exceptional legislation that contradicts the principles of democratic transition established by the 2005 constitution.

³⁷Article 358 stipulates the suspension of the rights and freedoms outlined in Article 19 of the Constitution during a state of emergency declared due to war or external aggression. This allows the government to take exceptional measures and enact legislation to protect national security, measures that expire upon the termination of the emergency. Article 359 grants the President of the Republic the authority to suspend the application of the constitutional rights listed in Chapter Three during a state of emergency, with the exception of Articles 20 and 21, which pertain to protection from retroactive punishment and the right to life and personal liberty. The right to litigation regarding these matters is also suspended for the duration of the emergency. Therefore, these two articles do not lead to a comprehensive suspension of constitutional rights, but rather define the scope of the suspension in a limited manner.

³⁸This phase ended with the lifting of the state of emergency on March 21, 1977, following the defeat of the Congress Party in the general elections and the formation of the Janata Party government, and the subsequent establishment of the Shah Commission to investigate the abuses that occurred during that period.

See: Santosh Kumar, Ritu Kataria & Saurabh Kalia, The Emergency in India: A Historical Overview, Press Information Bureau (PIB), DD News, 24 June 2025, available at: <https://ddnews.gov.in/en/the-emergency-in-india-a-historical-overview> Date of visit: 17/6/2026.

³⁹It is necessary to point out here the practical application of the continued validity and extension of the state of emergency in Iraq. (Before the entry into force of the Constitution of the Republic of Iraq of 2005, with the exception of the Kurdistan Region), Based on National Safety Defense Order No. (1) of 2004, the Prime Minister declared a state of emergency on 7/11/2004 for a period of sixty days, with the exception of the Kurdistan Region..

Human Rights Watch, Country Summary: Iraq, January 2005, p. 3, available at: <https://www.hrw.org/legacy/wr2k5/pdf/iraq.pdf> Date of visit: 10/4/2026

And it continued After that Extensions Based on For the material(2)via Data patrol successive For the duration(30)One day, as in Statement number(6)For the year2005,This includes extending the state of emergency declaration for (30) days-Except for the Kurdistan Region-Effective from the date of expiry of Statement No. (5) of 2005, published in the Iraqi Gazette, Issue No. (3996), 17/3/2005.The statement number(8)For the year2005,This includes extending the state of emergency declaration for (30) days-Except for the Kurdistan Region-Effective from the date of expiry of Statement No. (7) of 2005, published in the Iraqi Gazette, Issue No. (3999), 16/6/2005.The statement number(11)For the year2005, This includes extending the state of emergency declaration for (30) days-Except for the Kurdistan Region-Effective from the date of expiry of Statement No. (9) of 2005, published in the Iraqi Gazette, Issue (4002), 16/8/2005Arrival to statement extension advertisement condition Emergency in general Iraq- Except province Kurdistan-For the duration(30)One day.Published in the Iraqi Gazette, Issue (4039), 18/4/2007.The matter that Reflects continuation the job In case Emergency via Extension sequential It extended to what after force constitution Republic Iraq For the year2005despite subjugation Extension Later For approval council Deputies.

⁴⁰ International IDEA, Assessing the Iraqi Constitution's Impact on State and Society (Stockholm: International Institute for Democracy and Electoral Assistance, 2022, p. 65.

⁴¹The House of Representatives session scheduled for 12/6/2014 to vote on the request to declare a state of emergency was postponed due to the lack of a quorum, as (128) members out of (328) attended. <https://www.bbc.com/arabic> Date of visit: 18/5/2026.

secondly- Political and historical factors: The Iraqi constitution was drafted under exceptional circumstances following the change of the previous political system, amidst time constraints and sharp disagreements regarding the form of the federal state and the nature of the relationship between the central government and the regions. These circumstances led the drafting committee to focus on completing the draft within the allotted time, at the expense of the precision of its organization. Furthermore, Kurdish fears of central government dominance and a return to authoritarianism led the committee to avoid including explicit provisions regulating the means of intervention by the federal government, lest they be used in the future as a pretext for recentralization.⁴² Therefore, much of the material came in general and ambiguous language.⁴³ Some studies have even described the constitution as "a victim of a hasty drafting process" that carried the seeds of future conflict between the federal government and the regions.⁴⁴

Therefore, the procedural strictness in the constitutional regulation of declaring a state of emergency, and the absence of legislative regulation consistent with the provisions of the constitution, practically contributed to hindering its activation, despite the fulfillment of its objective requirements in some cases.

It is clear from advanced practical applications that the effect of declaring a state of emergency on the autonomy of federal units varies between comparative constitutional systems, according to the nature of the constitutional system and the philosophy of each legislator, which we will explain in detail in the following section.

Third topic

Assessing the impact of declaring a state of emergency on the autonomy of federal units

Declaring a state of emergency in federal systems raises a delicate issue concerning its impact on the autonomy of federal units. This necessitates evaluating this impact in light of comparative constitutional applications, based on the analytical approach adopted in the study and based on two interrelated criteria. The first is the direct impact of declaring a state of emergency on the autonomy of federal units, and the second is the effectiveness of constitutional and oversight guarantees in limiting the federal authority's abuse of this measure or normalizing it. This section is divided into three requirements as follows:

First requirement

Assessing the impact of declaring a state of emergency on US autonomy.

American jurisprudence has taken three main directions in assessing the declaration of a state of emergency, which show a clear divergence in appreciating its impact on the autonomy of federal units and the balance of the relationship between them and the federal authority. We will review their study as follows:

The first trend focuses on the risk of politicization: Declaring a state of emergency can transform from an exceptional measure into a domestic governance strategy, especially with the emergence of what is known as a "partisan emergency"—situations in which the president declares a state of emergency despite significant partisan disagreement about its very existence. A prime example is President Trump's 2019 declaration of a national emergency to fund the border wall, despite congressional opposition to allocating the necessary funds. This declaration was challenged by several federal agencies, including California, on several grounds. *California v. Trump* and *Sierra Club v. Trump* argue that the transfer of military funds is illegal, based on the emergency declaration, and that the executive branch has overstepped its authority over congressional appropriations.⁴⁵ This sparked controversy regarding the limits of executive power and its impact on the interests and powers of government units, as well as calls from some Democrats for President Biden to

⁴² This what He appears in statements Kurds that via About her President Administrative authority Coalition The dissolved temporary By saying: "**In Our discussions Previous in Baghdad via Kurds on Their hesitation By submitting second For the ruling Baghdad**", As well as in say Mr.(C.T)President Administrative: "**we Kurds We want also that Dealing document with Our concerns, Especially Our demand system federal To preserve on Our independence Self as to learn...**". Paul Bremer, *A Year in the Making in Iraq*, translated by Omar Al-Ayoubi, Arab Book House, Beirut, 2006. Dr. Hamid Hannoun Khalid, *Principles of Constitutional Law and the Evolution of the System Political In Iraq*, previous source, p. 240.

⁴³ Among the most prominent texts that came in general and complex wording in the 2005 Constitution are Articles (111 and 112) relating to oil and gas, Article (115) which stipulated the primacy of the regional law in case of conflict in shared jurisdictions, Article (121/Second) which allowed the region to amend the application of national legislation within the region, Article (142) which granted three governorates the right to object to constitutional amendments, and Article (126/ Fourthly) which stipulated the approval of the legislative authority in the region for any amendment that diminishes its powers.

⁴⁴ International Crisis Group (ICG), *Unmaking Iraq: A Constitutional Process Gone Awry*, Middle East Policy Briefing No. 19, Amman/Brussels: International Crisis Group, 26 September 2005, p. 1 and see also: Ashley S. Deeks and Matthew D. Burton, *Iraq's Constitution: A Drafting History*, *Cornell International Law Journal*, Vol. 40, No. 1, 2007, pp. 84–85..

⁴⁵ See: *California v. Trump*, 963 F.3d 926 (9th Cir. 2020) available at: https://cdn.ca9.uscourts.gov/datastore/opinions/2020/10/09/19-17501.pdf?utm_source=chatgpt.com Date of visit 2/18/2026. And see also: *Sierra Club v. Trump* available at: <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/10/09/19-16396.pdf> Date of visit: 22/5/2026.

declare a state of emergency on contentious issues such as climate change or abortion rights following the case ⁴⁶*Dobbs v. Jackson* (2022) is a recent example of the expansion of emergency declarations beyond their traditional uses in security or health. Another example is President Biden's reliance on the COVID-19 pandemic public health emergency declaration as a legal basis for addressing the student debt crisis, a move rejected by the Supreme Court in *Biden v. Nebraska* (2023).⁴⁷ This trend shows how extending the state of emergency into political and economic spheres increases the risk of politicizing it and turning it into a means of managing partisan disputes instead of confronting real dangers, which may practically lead to expanding the scope of intervention into areas that affect the interests of the units and thus their autonomy.

The second approach focuses on the gradual normalization of the emergency situation: Some American legal scholars argue that exceptional policies adopted during times of emergency tend, over time, to become normalized and routine practice, leading to a gradual expansion of federal government powers and a decrease in restrictions on them.⁴⁸ This could lead to compromising the autonomy of federal units.

The third approach: the middle approach, which focuses on the problem of excess and deficiency: This trend views the declaration of a state of emergency as a double-edged sword; on the one hand, its overuse may lead to political purposes unrelated to a real danger, as in Trump's 2019 declaration regarding the southern border, and on the other hand, its excessive restriction may weaken the federal government's ability to respond to crises in a timely manner, which is known as the concept of inaction. ⁴⁹ This approach emphasizes the need to strike a balance between empowering the government to take necessary measures and preventing it from exceeding constitutional limits or diminishing the powers of local authorities. Therefore, this perspective underscores that excessive declarations of emergency can lead to a concentration of federal executive power beyond what is necessary, while insufficient declarations can burden local authorities with crises beyond their capacity.

It is clear from the foregoing that declaring a state of emergency in the American constitutional system reflects an overlap between the legal and political aspects. While formally a structured tool with specific procedures outlined in the National Emergencies Act, its practical application is influenced by political circumstances and the president's stance toward Congress. Therefore, it may sometimes be used to achieve political or partisan objectives under the pretext of necessity, particularly when the president's party holds a majority in Congress. This weakens the effectiveness of oversight and transforms the exception into a routine practice. Nevertheless, this tool remains part of the American legal system, reflecting an ongoing effort to maintain a balance between the requirements of executive effectiveness and the autonomy of government units.⁵⁰ This reflects, in light of the aforementioned judicial applications, the varying effectiveness of supervisory safeguards in limiting the politicization of this medium.

Second requirement

Assessing the impact of declaring a state of emergency on autonomy in India

Some Indian constitutional scholars argue that while declaring a state of emergency is important in confronting threats to national security and unity, it has been susceptible to politicization and deviation from its constitutional objectives. This was demonstrated by the experience of the 1975–1977 state of emergency, during which the right to litigation was suspended, and the Supreme Court upheld this measure in the case of (*ADM Jabalpur v. Shivkant Shukla* 1976), despite its violation of the fundamental principle of the Constitution, which it had established a few months earlier, as it decided that this principle does not restrict presidential orders issued under Article (359) of the Constitution.⁵¹ The declaration of a state of emergency under Article (352) resulted in the extension of the Union's authority to areas that originally fell within the jurisdiction of the units, which led to a reduction in their autonomy for the duration of the declaration.

⁴⁶In this case, the Supreme Court overturned the federal constitutional recognition of the right to abortion and reorganized the matter. Units.

⁴⁷ Nathaniel Glass, *Partisan Emergencies*, *Virginia Law Review*, Vol. 111, 2025, p. 381-382.

⁴⁸ Eric A. Posner and Adrian Vermeule, *Accommodating Emergencies*, University of Chicago Public Law and Legal Theory Working Paper No. 48, 2003, p. 6.

⁴⁹ David Landau, *Rethinking the Federal Emergency Powers Regime*, *Ohio State Law Journal*, Vol. 84, 2023, p. 647.

⁵⁰ It should be noted that congressional objection to a declaration of a state of emergency is not sufficient in itself to revoke it, because the president can exercise his veto power against the revocation decision, pursuant to the Supreme Court ruling in the case of (*INS v. Chadha* 1983), and in this case the veto can only be overridden by obtaining a two-thirds majority in both houses. This majority is often difficult to achieve, especially if the president's party has a majority in Congress, which makes the president's power in this area stronger than the power of Congress, as happened in 2019 when President (Trump) vetoed the congressional resolution to end the state of emergency related to funding the border wall.

⁵¹ SP Sathe, *Judicial Activism: The Indian Experience*, *Washington University Journal of Law & Policy*, Vol. 6, 2001, pp. 47–48. and see also: *Habeas Corpus in Times of Emergency: A Historical and Comparative Analysis*, *Pace International Law Review Online Companion*, Vol. 1, No. 9, 2010, pp. 92–93.

Despite its negative aspects, this experience led to an important legislative review, as the 44th Amendment of 1978 was introduced to Article 352 of the Indian Constitution to ensure it would not be misused in the future, and the phrase "internal disorder" was replaced therewith. Internal disturbance) using the term "armed rebellion" to restrict the scope of cases in which a state of emergency may be declared, limiting it to dangers involving armed violence that threaten state security. The amendment also included some procedural controls and enhanced parliamentary oversight of the use of this exceptional power to limit the potential for politicization and deviation from constitutional objectives in a way that would compromise the autonomy of federal units.⁵²

Regarding the constitutional regulation of financial emergencies in Article (360), it contains a problem that affects the federal balance, as the excessive breadth of the concept of "financial instability" grants the federal government broad discretionary power in declaring it, and consequently issuing binding directives to units regarding the management of their financial affairs, including reducing the salaries of their employees, which constitutes a direct infringement on their financial independence. Conversely, the narrow scope of its effects and its limitation to specific financial measures render it an inadequate means of addressing complex economic crises, which has prevented its practical implementation.⁵³ Therefore, the financial emergency represents a tool that gives the Union ample room to intervene in exchange for a narrowing of effectiveness, reflecting the vulnerability to influence on the autonomy of the states more than it is a means of achieving financial balance and stability.

Third requirement

Assessing the impact of declaring a state of emergency on autonomy in Iraq

The legal framework for declaring a state of emergency in Iraq raises a dilemma regarding its effectiveness in balancing the requirements of protecting national security and the constitutional order with the autonomy of the regions. Some legal scholars argue that the mechanism for declaring a state of emergency in the 2005 Constitution provides a strong guarantee for the protection of rights and freedoms. The requirement for a joint request from the President of the Republic and the Prime Minister, followed by approval from the Council of Representatives by a two-thirds majority, achieves a balance between the executive and legislative branches and prevents the concentration of power in the hands of a few. This view is supported by another group of legal scholars who believe that the reasons and conditions for declaring a state of emergency must be clearly defined and stipulated in the Constitution or in the Emergency Law in order to restrict the executive branch's power and prevent it from declaring a state of emergency arbitrarily.⁵⁴

However, this regulation is criticized for being overly strict, making it difficult to confront sudden dangers that may threaten the country. The matter becomes even more complicated if the House of Representatives is dissolved, because the constitution does not regulate this situation, meaning it is impossible to obtain its approval for a period that may extend up to (75) seventy-five days.⁵⁵ This is a critical period during which the state may face grave dangers without the possibility of declaring a state of emergency. Furthermore, the automatic resignation of the Prime Minister upon the dissolution of Parliament renders the requirement of a joint request unattainable. Therefore, legal scholars argue that while the constitutional legislator intended to provide safeguards against tyranny, they went too far in imposing restrictions, rendering the text practically ineffective during crises.⁵⁶

⁵² The Constitution (Forty-Fourth Amendment) Act, 1978, Government of India, Ministry of Law and Justice, Legislative Department, available at: <https://www.legislative.gov.in/static/uploads/2025/08/7af1daa22d65f9d04c00ae9b9aa5a799.pdf>

⁵³ These criticisms reinforced the discussions that took place in the Constituent Assembly, as it emphasized Some of the Members argue that the text undermines the foundation Federal The state and gives free rein to the executive authority in the legislative bodies of the federation and units and diminishes the powers Units Financial, in addition to weakening the democratic foundation and leading to the squandering of the intrinsic value of fundamental rights.

See: Jagriti Thakur, Financial Emergency and its Effects on The Country, International Journal of Research Publication and Reviews, Vol. 4, No. 5, May 2023, p. 4596. and see also: Aarushi Gupta, Financial Emergency: Not Needing the Hour, April 22, 2020, available at: <https://www.jurist.org/commentary/2020> Date of visit: 2/10/2025.

⁵⁴ Dr. Maher Faisal Saleh, Dr. Intisar Hassan Abdullah, Mustafa Talaa Khalil, State of Emergency under the Constitution of the Republic of Iraq of 2005: Solutions and Treatments, Journal of Legal Sciences/College of Law - University of Baghdad/Special Issue for Research of the Public Law Branch Conference held under the title "Constitutional and Institutional Reform: Reality and Expectations" for the period 11/14-21/2018, p. 157. <https://doi.org/10.35246/jols.v0iis.88>.

⁵⁵ Article (64/Second) stipulates that: "The President of the Republic, upon dissolving the House of Representatives, shall call for general elections in the country within a maximum period of sixty days from the date of dissolution..." Article (54) also stipulates that: "The President of the Republic shall call the House of Representatives to convene by presidential decree within fifteen days from the date of ratification of the results of the general elections... and it is not permissible to extend beyond the aforementioned period." From the sum of these two texts, it appears that the period between the dissolution of the House of Representatives and the convening of the new House may reach (75) days.

⁵⁶ Dr. Tahseen Saeed Al-Husseini, The Constitutional and Legislative Organization of Declaring a State of Emergency: A Comparative Study (Egypt-Iraq), 1st Edition, Egyptian Publishing and Distribution, Cairo. Egypt, 2019, pp. 96-99.

In our view, the problem does not lie in the method of declaring a state of emergency itself, but rather in the absence of legislation that complements the provisions of the constitution and addresses its shortcomings by outlining detailed procedures, coordination mechanisms with the region, and the distribution of powers during a state of emergency. This absence has contributed to the ineffectiveness of Article (61/9) of the constitution and rendered it ineffective in practice. It has also led to crisis management using alternative, unregulated legal instruments within the framework of the state of emergency, such as the decisions issued by the National Security Council during the Kurdistan Region referendum in 2017.⁵⁷ The decisions issued by the Supreme National Health and Safety Committee during the Coronavirus pandemic, most notably the complete closure of borders and ports of entry, and the establishment of local crisis cells in the governorates, including the Kurdistan Region, to manage daily measures⁵⁸ This raises the issue of the distribution of powers between the federal and regional authorities, weakens the practical effectiveness of constitutional guarantees, and negatively impacts the clarity of the limits of the region's autonomy.

Conclusion

In light of the foregoing comparative constitutional analysis, the study concludes with a number of key findings and proposals, which we will review as follows:

First - Conclusions

- 1- Declaring a state of emergency is the most important means of emergency federal intervention to ensure the survival and unity of the state during crises, but at the same time it may lead to direct or indirect infringement on the autonomy of the units, depending on the nature of the legal organization.
- 2- Comparative constitutional systems have varied in terms of the legal regulation of declaring a state of emergency. The American constitutional system is based on a fragmented and multi-sourced legislative basis, while the Indian constitutional system is based on an explicit and broad basis for the authority to declare a state of emergency. As for the Iraqi constitutional system, it is based on a dual basis represented by a restrictive constitutional text and a legislative regulation that preceded the entry into force of the Constitution of the Republic of Iraq for the year 2005 and is inconsistent with its philosophy.
- 3- Practical applications have shown that the impact of declaring a state of emergency on the autonomy of units varies according to the effectiveness of legal controls and oversight guarantees. In the United States of America, the application showed a tendency towards politicization and normalization as a result of the expansion of legislative authorization and the multiplicity of its sources. In India, there is a clearer tendency to reinforce centralism when expanding the interpretation of the justifications for the emergency. As for Iraq, the absence of legislation supplementing the constitution has led to weakening the effectiveness of the constitutional text and managing crises by means that are not organized within the emergency text, which has been reflected to varying degrees on the clarity of the limits of infringing on the autonomy of units.
- 4- The effectiveness of parliamentary and judicial oversight guarantees is the decisive factor in protecting the autonomy of units during emergencies. The clearer, more specific, and more effective the legal regulation is, the less likely deviation or normalization there is, and vice versa.

Second - Proposals

- 1- The declaration of a state of emergency must be surrounded by clear procedural and substantive controls that limit its potential for expansion and politicization. In particular, the temporal and spatial scope of the declaration must be precisely defined in the relevant legislation to prevent its broad interpretation or the extension of its effects beyond the requirements of federal necessity.
- 2- Strengthening parliamentary and judicial oversight of emergency declaration decisions and procedures, to ensure that they do not become a routine practice that infringes on the autonomy of the units.
- 3- In Iraq, a federal law must be enacted to regulate the declaration of a state of emergency in accordance with Article (61/Ninth) of the Constitution, and to clearly define its procedures, effects, limits, and mechanisms for coordination between the federal government and the Kurdistan Regional Government, in order to prevent ambiguity in the distribution of powers in this area and to ensure that the declaration of a state of emergency does not become a pretext for expanding federal centralization.

⁵⁷The council took Exceptional measures included military redeployment in Kirkuk and disputed areas, control of airports, oil fields, and border crossings, as well as enforcing the law in federal headquarters and the base (K1) See: Jabbar Abdul Khaliq Al-Asad Al-Abadi, 'The Federal Authorities' Commitment to Preserving the Unity of Iraq: A Comparative Study, Master's Thesis, Al-Alamein Institute for Graduate Studies, 2019, pp. 236-239.

⁵⁸ UNIVERSAL HEALTH AND PREPAREDNESS REVIEW (UHPR), National Report of the Republic of Iraq, April 2023, p. 6.

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