

Original Research

Received 12 May 2026

Revised 21 June 2026

Accepted 18 July 2026

Natural Resources for Human Health 2026, Vol. 6 (6s): 571–588

KEYWORDS:

Emergency federal intervention, proportionality test, structural constitutional principles, comparative constitutional systems, constitutional judicial review.

The effectiveness of the proportionality principle in regulating the limits of emergency federal intervention: a comparative study

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ABSTRACT: Emergency federal intervention is considered one of the most serious exceptional powers granted to the federal government, given its potential to infringe upon the structural constitutional principles upon which the federal state is based, particularly the principle of the autonomy of federal units and the balanced distribution of powers between them and the federal authority. In this context, the principle of proportionality emerges as the legal tool for evaluating the legitimacy of exercising this power. However, most comparative constitutional systems have applied the proportionality test within the framework of balancing exceptional measures with the severity of the existing threat and its impact on rights and freedoms, without systematically extending this to testing the proportionality between the means of emergency federal intervention and the severity of the existing threat and its impact on the structural constitutional principles of the federal system. Based on this research gap, this study adopts a comparative analytical methodology, guided by the elements of the three-part proportionality test, to examine and analyze the principle of proportionality in three federal systems where the legislator's philosophy in distributing powers and the degree of autonomy of federal units differs (the United States of America, India, and Iraq). The study concluded that they share a common characteristic: the absence of a systematic, organized, and explicit proportionality test. In the United States, proportionality appears fragmented and without a structured judicial proportionality test. In India, its application in the context of emergency federal intervention remained implicit and limited due to the centralizing tendencies of the constitutional system and legislative restrictions on judicial oversight. In Iraq, the absence of federal legislation following the entry into force of the constitution to regulate emergency federal intervention, as well as the lack of practical applications of this power, prevented the existence of judicial applications or the development of effective oversight of proportionality, thus keeping this principle within its theoretical scope without practical application. Hence, this study came to contribute to the development of previous traditional jurisprudential studies by expanding the scope of the proportionality principle to include the protection of the structural constitutional principles of the federal system, and it proposes activating the three-part test of proportionality in this field, since the effects of federal intervention are not limited to individual legal positions only, but extend to the federal constitutional structure.

INTRODUCTION

Emergency federal intervention is one of the most serious exceptional powers granted to the federal government, given its potential direct impact on the fundamental constitutional principles upon which the federal state is based, particularly the

principle of autonomy for federal units and the balanced distribution of powers between them and the federal government. While protecting the unity of the state and its constitutional order may justify activating this power in the face of grave dangers, its broad scope and the absence of objective controls governing it could transform it into a tool for centralized domination and a deviation from constitutional objectives.

In this context, the principle of proportionality stands out as the legal tool for assessing the legitimacy of intervention and controlling its limits. However, the prevailing trend in jurisprudence and jurisprudence in comparative constitutional systems is to limit the application of the proportionality test to the scope of balancing exceptional measures with the seriousness of the existing danger and its effects on rights and freedoms, without extending methodologically to testing the proportionality between the means of federal intervention and the seriousness of the existing danger and its effects on the structural constitutional principles of the federal system.

The problem of the study is represented in a main question which is: To what extent does the principle of proportionality contribute to achieving a balance between the requirements of the means of intervention and the serious danger that exists in a way that achieves the protection of the structural constitutional principles on which the federal state is based?

To answer this question, we adopted a comparative analytical research methodology by analyzing constitutional and legislative texts, political practice, and judicial applications in three federal systems in which the philosophy of the legislator and the degree of centralization of federal authority vary (the United States of America, India, and Iraq) to verify the extent to which the judiciary in these systems has adopted a systematic and organized proportionality test in this context or not.

The importance of the study lies in two aspects: the theoretical aspect through expanding the scope of the proportionality criterion to include the protection of the structural constitutional principles on which the federal state is based, and the practical aspect through demonstrating its effectiveness and the determinants of this effectiveness in comparative constitutional systems, and proposing the activation of the tripartite test of proportionality in this field, since the effects of federal intervention are not limited to individual legal positions only, but extend to the federal constitutional structure.

In accordance with the above, the nature of the study required dividing it into two sections: In the first, we review the concept of the proportionality criterion in the context of emergency federal intervention by studying the concept of both emergency federal intervention and the proportionality criterion, and in the second, the comparative legal organization of the proportionality criterion test and the determinants of its effectiveness by studying the proportionality test in comparative constitutional systems and the determinants of its effectiveness in them, leading to drawing conclusions and putting forward proposals that contribute to the development of this criterion.

FIRST TOPIC

Proportionality in the context of emergency federal intervention

Examining the principle of proportionality requires studying the conceptual framework within which it is tested and on which the limits of judicial oversight are determined, namely, emergency federal intervention. It is also necessary to define the concept of the principle of proportionality as an objective standard that governs the limits of the use of this exceptional power, by dividing this discussion into two requirements as follows:

FIRST REQUIREMENT

The concept of federal emergency intervention

Defining the concept of emergency federal intervention constitutes the framework within which the limits of judicial oversight of the proportionality principle are determined, as it is the main legal tool for assessing the legitimacy of the intervention and its effects. This necessitates defining it, distinguishing it from other similar constitutional mechanisms, and explaining its legal nature by dividing this requirement into three branches, as follows:

Section 1: Definition of Emergency Federal Intervention: Most definitions of emergency federal intervention in comparative constitutional jurisprudence share the characteristic of being an exceptional power that temporarily infringes upon the autonomy of the federal state's constituent units. This power is linked to circumstances or crises that justify the redistribution of powers within the federal state. The exercise of this power may be initiated directly by the federal government or at the request of the governors of the constituent units. It has been defined as: a constitutional mechanism

that allows the federal government to intervene in the affairs of the states to prevent disturbances to the existing order, thereby temporarily suspending their autonomy in order to achieve a higher interest, namely the integrity of the union and its inviolability.¹ It was also defined as: the federal government taking urgent executive measures to support the unity 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 unity government or without its request, when a grave danger prevents it from acting or threatens the unity of the federation.² It is also defined as: a political and legal mechanism that allows the federal executive authority, as in the United States, 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

The advanced definitions are criticized for not highlighting the nature of emergency federal intervention and the necessity of subjecting it to controls that prevent its deviation from constitutional purposes. In order to avoid these gaps, we define emergency federal intervention as: an exceptional constitutional obligation, which falls on the shoulders of the federal government, and is exercised according to specific legal mechanisms, in exceptional cases that threaten the federal constitutional system, or the security, sovereignty and stability of the state, within a framework of constitutional and legislative controls that prevent it from deviating from its purpose as a guarantee to protect the federal constitutional system, to a means of the federal government's arbitrariness and tyranny, while being subject to effective oversight to ensure its legitimacy.

Section Two: Distinguishing between emergency federal intervention and similar constitutional mechanisms: Defining the meaning of federal government emergency intervention requires distinguishing it from two fundamental constitutional mechanisms: federal oversight and federal enforcement. While these mechanisms overlap in that they both grant the federal government means to intervene in state affairs, each has a different legal nature and constitutional objectives. This distinction is therefore essential for defining the scope of the study and determining the area in which the principle of proportionality is tested, as follows:

First - Distinguishing between emergency federal intervention and federal oversight: Federal oversight is a constitutional obligation of the federal government, incumbent upon it as part of its responsibility to implement federal laws. It empowers the government to request reports from administrative units, access files, or dispatch representatives to verify compliance. This oversight is limited in scope and differs from emergency federal intervention in both subject matter and scope. Its focus is solely on monitoring the legality and appropriateness of implementing federal laws, and its scope remains confined to general oversight without control over organization, resources, or budget, and without coercive measures. However, uncovering serious violations through this oversight may lead to the activation of other mechanisms, including emergency intervention.⁴ Emergency federal intervention falls under exceptional powers and is exercised in cases of fundamental dysfunction or clear violation of the constitution. It may go beyond ordinary oversight mechanisms to include direct federal administration or the suspension of certain powers of the constituent units. This distinction is of great importance, as defining the scope and subject matter helps determine the extent to which the principle of proportionality applies and its impact on structural constitutional principles.

Secondly, distinguishing between emergency federal intervention and federal enforcement: Federal enforcement is a coercive measure taken to compel a federal unit that has failed to meet its constitutional obligations to comply. In some comparative constitutional systems, it may extend to depriving the unit of certain political rights or appointing a federal commissioner to manage its affairs. Emergency intervention, on the other hand, refers to taking urgent measures to support a

¹DIMOULIS, Dimitri (Coord.). Dicionário brasileiro de reito constitucional. São Paulo: Saraiva, 2007, p. 196.

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, p181

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

⁴ Christine Elmers, Die Praxis der Bundesauftragsverwaltung: Eine Untersuchung am Beispiel des Vollzugs des Bundesausbildungsförderungsgesetzes, Dissertation, Westfälische Wilhelms-Universität Münster, 2014, Duncker & Humblot, Berlin, 2015, pp. 103-110.

federal government when it is unable to address a serious internal crisis. Despite their theoretical differences, the boundaries between the two mechanisms can blur in the context of security crises, where the federal government may be forced to resort to what some legal scholars call unwanted intervention. (Under-Ground Intervention) or forced intervention in cases where support is not requested or is refused⁵ Furthermore, many comparative constitutional systems—including those under study—do not explicitly distinguish between the two. Constitutional texts grant the federal government broad powers to intervene to protect the constitutional order or to take necessary measures to preserve the unity of the state, as in Iraq. Therefore, the overlap between federal implementation and emergency federal intervention highlights the necessity of subjecting the means employed by the federal government—regardless of their legal characterization—to the principle of proportionality as an objective criterion for determining the limits of federal power. This principle enables the assessment of the suitability of the means to the constitutional objective and the verification of their necessity in light of the structural principles upon which the federal system is based.

Third section: The legal nature of emergency federal intervention The emergency intervention of the federal government raises two main issues. The first concerns its constitutional nature: as a constitutional power of an exceptional nature, does the federal government possess discretionary or limited authority in exercising it? The second issue relates to the legal nature of the executive action through which it is exercised. Regarding the constitutional characterization of emergency federal intervention, while it is a constitutional power vested in the federal government, the scope of its use is determined by the constitutional context and the circumstances justifying it. Its use is restricted when the constitution or law stipulates the federal government's obligation to protect the unity of the state or public order, a principle supported by some constitutional provisions in the United States, India, and Iraq.⁶ This is also supported by comparative judicial applications.⁷ Conversely, its use is discretionary when exercised at the request of the constituent units or in the absence of binding objective conditions. We tend to favor the mandatory nature of exercising the power of intervention—when its legal conditions are met—to prevent the federal government's inaction or arbitrariness and to guarantee the constitutional principles upon which the federal state is based, foremost among them the independence of the constituent units and the balanced distribution of powers. Our view is reinforced by Dacey's distinction between discretionary power and legal obligation, as he argues that the

⁵ Signe Larsen, Op. cite, P178-182.

In the context of Arab jurisprudence, see: Jamila Muslim Sharabji, Federal Union: An Applied Study on the Arab World, PhD thesis, Faculty of Law, Cairo University, 2003, pp. 156-157.

⁶ Article 4(4) of the amended 1787 United States Constitution obligates the federal government to guarantee the republican system of government in the states and to protect them from invasion and internal unrest. Published on the official website of the U.S. National Archives: <https://www.archives.gov/founding-docs/constitution-transcript> Date of visit: 1/2/2026. Article 355 of the Constitution of India, 1950 (as amended), stipulates the duty of the Union to protect the states from aggression or disorder and to ensure that their governments function in accordance with the Constitution. Published on the official website of the Ministry of Law and Justice: <https://www.archives.gov/founding-docs/constitution-transcript> Date of visit: 1/2/2026. Article (109) of the Constitution of the Republic of Iraq of 2005, which obligates the federal authorities to maintain the unity, sovereignty, and federal system of the state. Published in the Iraqi Gazette, Issue (4012), dated 28/12/2005.

⁷ As the US Supreme Court confirmed in (Texas v. White (1869) held that the preservation of the states and their governments falls within the purposes of the Constitution related to the protection of the Union. See paragraph (5) of the Supreme Court decision: published on the Court's official website: <https://supreme.justia.com/> Date of visit: 28/4/2025. The Indian Supreme Court in SR Bommai (1994) ruled that the use of intervention powers in the event of a state's constitutional collapse is linked to the duty to preserve the unity of the state. See paragraph (57), page 25 of the decision, published in PDF format at the following link: https://cip.org.in/wp-content/uploads/2017/06/SR_Bommai_vs_Union_Of_India The visit took place on 16/5/2025. The Iraqi Federal Supreme Court, in its decision No. 122/Federal/2017 dated 6/10/2017, also indicated the obligation of the federal authorities to preserve the unity and sovereignty of the country, based on Article (109). This decision is published on the official website of the Federal Supreme Court: <https://www.iraqfsc.iq/krarid> Date of visit: 28/4/2025.

breadth of executive discretion may threaten the rule of law and allow for arbitrariness or negligence in the performance of constitutional duties.⁸

As for the legal nature of the executive action Federal emergency intervention is exercised through the actions of the executive branch, which are divided into material and legal acts. The latter include administrative decisions and administrative contracts. What concerns us in this context are the administrative decisions taken by the federal government when undertaking emergency intervention. These are defined as: "A legal act issued by an administrative authority at its sole discretion, with the aim of producing a specific legal effect"⁹ Based on this, the executive action embodying emergency federal intervention is considered an administrative decision with political aims, as it is issued by an administrative body unilaterally with the intention of producing a legal effect, namely protecting federal public order or preserving the unity of the state. We are of the view that although the declaration of a state of emergency pursues political objectives related to the security and integrity of the State, it is issued by the executive authority pursuant to a constitutional provision or a legislative delegation derived from the Constitution, depending on the nature of each federal system. It produces legal effects that directly affect public rights and freedoms and may also extend to the autonomy of the federal units and the balance in the distribution of powers between those units and the federal authority, which constitutes the core of the constitutional system of the federal State¹⁰. This characterization raises the issue of whether this decision is subject to judicial review. One view holds that this decision is political in nature, falling under the category of political acts, and is therefore excluded from judicial review due to its connection with assessing exceptional circumstances, as demonstrated by some comparative judicial applications.¹¹ However, the element of jurisdiction—even under the adoption of political action theory—remains subject to judicial review.¹² In contrast, the prevailing trend in democratic constitutional systems is to subject these decisions to judicial review, based on the principle of constitutional supremacy and the rule of law.¹³ This is embodied in the development of American constitutional law since *Sterling v. Constantin* (1932)¹⁴ Up to *(Youngstown)* (1952)¹⁵ And in the Indian judiciary, in the ruling *SR Bommai* (1994) who confirmed that federal intervention is subject to judicial review in order to protect the federal structure.¹⁶ The 2005 Constitution of the Republic of Iraq also enshrined the principle that administrative decisions are not immune from appeal, thus opening the way – depending on the nature and effect of the decision – for judicial review by the

⁸ Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed. (Liberty Classics, 1982), originally published by Macmillan, London, 1915 pp. xxi and p 110.

⁹ Shab Touma Mansour, *Administrative Law*, Book Two, First Edition, 1980, Baghdad, p. 397.

¹⁰ Abdul Aziz Aliwi Abd, *The Role of the Executive Authority in Federal Experiences: A Study of Selected Models*, Journal of Political Science, University of Baghdad, No. 62, 2021, p. 111. <https://doi.org/10.30907/jj.v0i62.592>

¹¹ This is exemplified in the decision of the Argentine Supreme Court in the case of *Cullen v. Llerena* (1893) and the decision of the Indian Supreme Court in the case of *Bhut Nath Mete* (1974).

See: Jonathan M. Miller, *Courts and the Creation of a Spirit of Moderation: Judicial Protection of Revolutionaries in Argentina, 1863-1929*, *Hastings International and Comparative Law Review*, Volume 20 Number 2, 1997, pp. 283-290.

¹² Germán J. Bidart Campos, *Manual de la Constitución Reformada*, Quinta edición actualizada, Editorial Sociedad Anónima Editora, Buenos Aires, Argentina, 1997, p. 240.

¹³ David Dyzenhaus, *The Constitution of law Legality in a Time of Emergency*, Cambridge university press, New York, United States of America, 2006, p.218.

¹⁴ F. David Trickey, *Constitutional and Statutory Bases of Governors, Emergency Powers*, *Michigan Law Review*, Vol. 64, issue 2, 1965, pp. 301-303.

¹⁵ Available at: <https://tile.loc.gov/storage-services/service/ll/usrep/usrep343> Date of visit: 24/5/2025.

¹⁶ For more details see: Shreya Mazumdar, *The Power of Judicial Review During State Emergency in India*, *International Journal of Social Science and Humanities Research*, Vol. 3, Issue 3, 2015, p 293-294.

administrative judiciary and constitutional review by the Federal Supreme Court.¹⁷ Accordingly, the executive action of the emergency federal intervention, despite its political aims, remains in essence an administrative decision issued by the executive authority, and subjecting it to judicial oversight, particularly oversight of proportionality, is a guarantee to protect legitimacy and prevent abuse in the use of this exceptional power.

SECOND REQUIREMENT

The concept of proportionality

In this section, we review the concept of the proportionality principle by defining it and explaining its scope of application in the field of emergency federal intervention, as well as identifying the elements of its testing by which the legitimacy of the means of this intervention is measured, as follows:

Section 1: Defining the principle of proportionality in the context of emergency federal intervention: The principle of proportionality is the practical embodiment of the principle of proportionality itself, a legal principle originating in administrative jurisprudence and later incorporated into constitutional law. Legally, proportionality refers to the set of rules that define the conditions under which constitutionally protected rights may be restricted, ensuring a balance between the legal measure taken and the legitimate objective sought.¹⁸

Within the scope of administrative law, proportionality means (a characteristic of a logical and consistent relationship linking the elements of an administrative decision or a general legal act, such that the source of the administrative decision must not neglect or deviate from it in accordance with the requirements of legitimacy).¹⁹

In the realm of constitutional law, its application manifests in two forms: the first is proportionality in legislation, defined as: the relationship between the cause of legislation and its subject matter, i.e., the degree of compatibility and convergence between the factual and legal situation that led the competent authority to consider issuing the legislation and the subject matter of the legislation itself, i.e., the legal effect intended to be achieved by this legislation.²⁰ One view in legal scholarship holds that the principle of proportionality contributes to limiting the legislature's discretionary power when regulating and restricting rights and freedoms, while at the same time providing a basis for constitutional judicial review of the legislature's exercise of that power ²¹. In the field of constitutionality, proportionality means: the compatibility between legal texts or instruments—legislative, regulatory, or individual—and the rights and freedoms of individuals, whether explicitly stipulated in the constitution or included in the fundamental principles, rules, and provisions of the constitution.²² .

¹⁷Article (100) of the Constitution of the Republic of Iraq of 2005 is considered.

¹⁸ Ariel L. Bendor & Tal Sela, "How Proportional is Proportionality?," *International Journal of Constitutional Law* (I•CON), Vol. 13, No. 2, 2015, p. 530.

¹⁹ Dr. Sami Jamal Al-Din, *The Mediator in Lawsuits to Annul Administrative Decisions*, 1st Edition, Al-Maaref Establishment, Alexandria, 2004, 649. Among the applications of the principle of proportionality in administrative law is proportionality between the penalty and the violation, which requires reasonableness in the selection of the administrative penalty, as well as adherence to the principle against imposing multiple penalties for the same act, subject to certain exceptions. Shorouq Abdul Aziz Hassan & Waleed Mirza Al-Makhzoumi, "Restrictions on the Judge's Authority in Reviewing the Application of the Principles Governing the Administration's Contractual Punitive Power in Comparative and Iraqi Law," *Journal of Legal Sciences*, College of Law, University of Baghdad, Special Issue for Postgraduate Students' and Faculty Research, Part I, 2026, p. 326. DOI:<https://doi.org/10.35246/gg9qjh28>.

²⁰ Dr. George Shafiq Sari, *Proportionality Control within the Scope of Constitutional Law, A Comparative Applied Analytical Study of Some Systems*, Dar Al Nahda Al Arabiya, Cairo, 2000, p. 17.

²¹ Dr. Issam Saeed Abdul-Obaidi, "The Principle of Proportionality as a Constraint on the Restriction of Constitutional Rights," *Journal of the College of Law for Legal and Political Sciences*, University of Kirkuk, Vol. 8, No. 29, 2019, p. 245.

²²Dr. George Shafiq Sari, previous source, p. 18. See also Dr. Marwan Al-Mudarris, *The Constitutional Court's oversight of the principle of proportionality in the Kingdom of Bahrain*, *Journal of Law*, Issue (1), 2017, p. 176.

It is noted from the advanced definitions that the majority of jurisprudence has tended to confine this criterion to the scope of general rules and the protection of rights and freedoms, without examining it as an objective constraint that governs federal intervention decisions as administrative decisions with political aims, by stipulating that the means of intervention must be commensurate with the severity of the danger that threatens the federal system, in a way that ensures the protection of the balance of the federal system and the autonomy of the units.

Section Two: Scope of application of the proportionality principle in emergency federal intervention: The principle of proportionality is exercised within the scope of constitutional law, starting with the field of public rights and freedoms. This field represents the traditional scope in which the constitutional judge examines the legitimacy of the restrictions imposed on them, and investigates the extent to which there is a balance between these rights and freedoms and the constitutionally recognized public interest.²³ However, the scope of the proportionality principle is not limited to this area. It can extend to include the effects of federal intervention on the constitutional structure of the federal state, since intervention decisions and procedures not only affect individual legal positions but also impact the structural constitutional principles upon which the federal system is based, most notably the autonomy of the constituent units and the balance of the relationship between them and the federal authority. In this context, the proportionality principle emerges as a supervisory standard that ensures that the measures taken do not exceed the limits of federal necessity or disrupt the structural balance upon which the federation is based.²⁴ This principle becomes increasingly important in cases where constitutional principles of equal value conflict, such as the conflict between the requirements of protecting the unity of the state and rights and freedoms on the one hand, and the autonomy of the constituent units and the balance of the relationship between them and the federal authority on the other. It works to achieve harmony between them with the least possible harm to the constitutional system as a whole.²⁵ This is a dimension that has not received sufficient analytical attention in constitutional jurisprudence when discussing emergency federal intervention. This necessitates studying it as an independent scope for the application of this rule.

Section Three: Elements of the Proportionality Test in Federal Emergency Intervention: The proportionality test consists of three stages: suitability, necessity, and balancing benefits and harms (or proportionality in the narrow sense). In the first stage, the judge verifies that the restriction imposed by the legislature or executive authority on a right or freedom is suitable for the constitutional objective it aims to achieve. The second stage involves assessing necessity and verifying that the restriction imposed on the right or freedom is necessary to achieve the legitimate objective and causes the least harm to the right in question. The third stage involves assessing proportionality in its narrow sense, that is, balancing the advantages achieved by limiting rights and freedoms against their disadvantages. This stage is a systematic intellectual process for reaching a reasonable solution.²⁶

When applying these three stages to emergency federal intervention, the principle of proportionality examines the means adopted by the federal government through these same three stages. In the suitability stage, judicial oversight focuses on the validity of the intervention method in achieving the declared constitutional objective, given the federal government's discretionary power in choosing the method. In the necessity stage, it is verified that no other alternative exists capable of achieving the same objective with less infringement on the structural constitutional principles upon which the federal system

²³Dr. George Shafiq Sari, *Proportionality Control within the Scope of Constitutional Law, A Comparative Applied Analytical Study of Some Systems*, Dar Al Nahda Al Arabiya, Cairo, 2000, p. 127.

²⁴In the same vein, see: Dr. Abdelhak Belfaqih, *The Principle of Proportionality as a Criterion for Achieving Balance between Rights, Freedoms, and the Public Interest in the Interpretations of Constitutional and Administrative Jurisprudence – The Case of Morocco and Tunisia*, *Dialogue of Judges through the Methods of Work and Interpretations of Constitutional and Administrative Jurisprudence* (collective work), introduction by Abdelmalek El Ouazzani, 1st edition, Cordoba Press, Morocco, 2023, p. 84

²⁵ Denis Fernando Balsamo, *Intervenção Federal no Brasil*, Dissertação de Mestrado apresentada à Faculdade de Direito da Universidade de São Paulo, 2013, pp. 183-184.

²⁶ Ana Catharina Machado Normanton, *Intervenção Federal to pôr fim ao grave comprometimento da Ordem Pública*, *Revista Internacional de Direito Público – RIDP*, Belo Horizonte, ano 5, n. 8, jan./jun. 2020, pp. 255–256.

In the context of Arab jurisprudence, see: Dr. Abdul Haq Belfaqih, previous source, pp. 107-110.

is based. If the chosen method is deemed suitable and necessary, the process moves to the third stage, which is proportionality in the narrow sense. This stage involves a balance between the benefits gained from the emergency federal intervention and the harms inflicted on the constitutional federal structure, such that the measure is only acceptable if its constitutional benefit outweighs its harm.

SECOND TOPIC

Comparative legal framework for testing the proportionality criterion and its effectiveness determinants

This section deals with the comparative legal framework for testing the principle of proportionality in the context of emergency federal intervention, by explaining how it is applied in comparative constitutional systems, and the factors affecting its effectiveness in controlling the limits of exercising this power, through dividing it into two requirements as follows:

FIRST REQUIREMENT

The test of proportionality in comparative constitutional systems

This requirement examines the proportionality test, by outlining its constitutional and judicial applications, to reveal the extent to which it has crystallized as a supervisory standard for the legitimacy of emergency federal intervention in comparative constitutional systems, by dividing it into three branches as follows:

Section One: The Proportionality Test in the American Constitutional System: The principle of proportionality is a fundamental principle of law adopted by constitutional courts and international judicial bodies as a standard for assessing the legitimacy of restrictions on rights and freedoms. This principle has been applied across national legal systems, forming a common approach in evaluating numerous constitutional and human rights cases. However, the American constitutional system is an exception to this trend. It has not adopted an explicit, general doctrine of proportionality, but rather its application has appeared partially in specific constitutional areas, such as the provisions of the Eighth Amendment concerning cruel and unusual punishments and excessive fines, as well as the limitations derived from the due process requirement in the Fifth and Fourteenth Amendments when constitutional rights are infringed upon. In these areas, the principle of proportionality imposes restrictions on the scope of the legitimacy of government actions, motivated by the desire to achieve justice for individuals and to limit the abuse of power.²⁷ However, these applications remain separate and unconnected, and do not constitute a unified framework for oversight as is the case in some comparable constitutional systems such as Canada and Germany.²⁸

This partial application does not extend to the realm of emergency federal intervention by the federal government, raising questions about the basis for testing the relationship between the severity of the threat and the means of intervention. In this context, proportionality—in the absence of an explicit methodological doctrine—can be tested by relying on the constitutional structure of the federal system itself. This structure derives the principle of proportionality from the balance between protecting the state and guaranteeing the autonomy of the federal units. Any intervention in the jurisdictions of these units is thus an exception limited by the constitutional purpose for which it was enacted. Consequently, the legitimacy of emergency federal intervention measures is measured by the extent to which they achieve this purpose and are not diverted toward achieving other objectives.²⁹ This is supported by the Supreme Court's decision in the case of (*In re Debs* (1895) in which it supported the federal government's actions to end the Pullman strike even without a request from state authorities, as it had disrupted interstate commerce, hindered mail delivery, and impeded the enforcement of federal laws.³⁰ The Supreme Court also decided in *Sterling v. Constantin*, 287 US 378 (1932) held that the executive branch's declaration of a state of emergency does not preclude judicial review of its actions, and that courts have the authority to verify the factual basis

²⁷ Vicki C. Jackson, *Constitutional Law in an Age of Proportionality*, *The Yale Law Journal*, vol. 124, 2015, pp. 3104-3110.

²⁸ For more details See: Vicki C. Jackson, *op.cit.*, pp.3121-3125.

²⁹ Consider Article (4/4) and Article (1/8/Fifteenth) of the United States Constitution of America of 1787, as amended.

³⁰ *In re Debs*, 158 US 564 (1895) available at:

<https://www.govinfo.gov/app/details/USREPORTS-158/USREPORTS-158-564> Date of visit: 6/2/2026.

justifying intervention. The court emphasized that discretionary power in exceptional circumstances is not absolute, allowing for an assessment of the legality of the measures taken in light of their actual justifications.³¹ Although these decisions did not show an explicit proportionality test, they reveal the Supreme Court's approach based on balancing the autonomy of the units and the justifications for protecting the federal state's entity, which can be used to derive a functional standard for testing the proportionality criterion in the context of emergency federal intervention by measuring against the constitutional principles on which the federal state is based, foremost among them the balance of the distribution of powers, the autonomy of the states, and the protection of rights and freedoms.

If the constitutional legislator granted Congress the power to enact laws "necessary and appropriate" to carry out federal functions³² Congress must remain bound by the "principle of the federal system's balance" and not use this authorization as a basis for expanding the federal government's powers in a way that infringes upon the autonomy of the constituent units. Rather, it must regulate the means of emergency federal intervention so that their use is kept to a minimum and resorted to only as the last resort to achieve the constitutional goal of intervention, in a manner measured by the extent to which the means of intervention adhere to the constitutional principles upon which the federal system is based, foremost among them being the protection of the autonomy of the constituent units and the balance of the distribution of powers between them and the federal government.

This test becomes even more effective in cases not explicitly addressed by the Constitution, such as disasters and epidemics, since these fall under the jurisdiction of the constituent units. This is based on the constitutional principle that powers not explicitly granted to the United States by the Constitution, nor withheld from the states, are reserved for each of those states or for the people. This makes federal intervention an exceptional constitutional prerogative, requiring a more rigorous test to ensure that its scope and effects are limited to protecting the constitutional principles governing the federal system and preventing any deviation from them. The rule of (*Jacobson v. Massachusetts*, 197 US 11 (1905)) was one of the first rulings to address the oversight of restrictions imposed in exceptional circumstances. The court determined that individual liberty is not an absolute right to be exercised in all cases, and that it may be subject to restrictions imposed by law for the protection of public health. The court affirmed that such restrictions are lawful unless they are arbitrary, oppressive, or lack a genuine connection to the danger they aim to address.³³ Although this case concerns state authorities, it reveals the Supreme Court's approach to assessing exceptional restrictions based on the constitutional principles upon which the federal systems is based, which can be used as a guide when testing the proportionality criterion in the context of emergency federal intervention.

Section Two: The Proportionality Test in the Indian Constitutional System: The Indian Constitution does not contain an explicit provision stipulating proportionality between the means of intervention and the severity of the threat when the federal government exercises its emergency powers. However, an analysis of the emergency provisions indicates that the constitutional legislator did not intend to grant the government unchecked power in this area. The requirement of a specific and grave threat to the security, stability, or financial stability of the state implies that the measures taken must be proportionate to this threat and achieve the objective for which the intervention was authorized. Furthermore, the temporary nature of the exceptional expansion of powers reflects the Constitution's concern to prevent such intervention from becoming a permanent state of affairs.³⁴

This principle is also derived from the constitutional structure of rights and freedoms, since, despite the permissibility of suspending some rights or expanding the powers of the federation during a state of emergency³⁵ The constitution maintained

³¹ *Sterling v. Constantin*, 287 US 378 (1932), available at: <https://www.law.cornell.edu/supremecourt/text/287/378> Date of visit: 2/2/2026.

³² Article (1/8/19) of the United States Constitution of America of 1787, as amended, is considered.

³³ Lindsay F. Wiley & Stephen I. Vladeck, *Coronavirus, Civil Liberties, and the Courts: The Case Against "Suspending" Judicial Review*, *Harvard Law Review Forum*, Vol. 133, No. 9, July 2020, p. 190.

³⁴ Articles (352, 353, 360) of the Constitution of India, 1950, as amended, are considered.

³⁵ Article (353) states: "During a state of emergency, it follows: a) Notwithstanding anything contained in this Constitution, the executive power of the Union may be extended to give directions to any State as to the manner in which it is to exercise executive power in that State..."

a minimum level of inviolable guarantees, particularly after the 44th Amendment of 1978, which prohibited any infringement on the right to life and personal liberty.³⁶ Furthermore, the federal units continue to exist as established constitutional entities.³⁷ Therefore, direct presidential rule remains a temporary measure that does not lead to the permanent replacement of the powers of the units with federal authority, which confirms that the constitutional texts implicitly contain a criterion that balances the means of intervention and the seriousness of the danger in order to protect the supreme constitutional principles, especially the structural ones.

This was exemplified in the judicial application of the Indian Supreme Court in the case *SR Bommai v. Union of India* (1994), which subjected the legitimacy of declaring direct presidential rule to objective scrutiny based on verifying the existence of objective evidence proving the failure of constitutional mechanisms in the state, and affirmed that the power of the federation is not absolute discretion, and that intervention must remain directed towards achieving constitutional purposes without exceeding its necessary scope.³⁸ This approach reveals a judicial practice of functional proportionality testing that balances the severity of the threat with the means of intervention, thereby strengthening the protection of federal balance and preventing the political exploitation of exceptional powers. The proportionality test has evolved more clearly in Supreme Court rulings. Om Kumar (2001), Anuj Garg (2007), and Puttaswamy (2017) argue that the Indian Supreme Court has gradually established a proportionality test, requiring the state to justify its interventions on legal grounds and with a legitimate aim, while also examining the necessity of the means and their impact on rights. These decisions have shifted the burden of proving proportionality to the state and mandated consideration of less infringing alternatives, reflecting an objective oversight of the legitimacy of public authority intervention.³⁹ Although this test originated in the field of fundamental rights, it provides a benchmark that can be used to evaluate exceptional federal interventions in light of the protection of constitutional principles.

Third section: The test of proportionality in the Iraqi constitutional system: The 2005 Constitution of the Republic of Iraq does not explicitly stipulate the principle of proportionality when the federal government exercises its powers of emergency intervention. However, the possibility of subjecting this power to a proportionality test can be implicitly inferred from the provisions regulating the restriction of power and the protection of rights and freedoms, particularly the constitutional legislator's prohibition of enacting any law that contradicts the principles of democracy or the rights and freedoms enshrined in the Constitution, and its emphasis that rights and freedoms may only be restricted or limited by or pursuant to a law, provided that such restriction or limitation does not infringe upon their essence.⁴⁰ Furthermore, the constitutional legislator explicitly adopted the federal form of the state, and recognized the Kurdistan Region and its existing authorities as a federal region, as an authentic constitutional entity enjoying legislative, executive, and judicial powers.⁴¹ It

³⁶Article (359) stipulated: “1- Wherever a declaration of emergency is in force, the President may declare by decree that the right to transfer any court to apply the rights granted by Chapter Three, with the exception of Articles (20 and 21), as stated in the decree, and all proceedings pending in any court for the application of said rights, shall remain suspended for the duration of the declaration, or for any shorter period as may be specified in the decree.” Article (20) stipulated: “1- No person shall be convicted of any offence which did not violate a law in force at the time it was committed, nor shall that person be subjected to a heavier penalty than that which may be imposed by law at the time the offence was committed. 2- No person shall be prosecuted and punished for the same offence more than once. 3- No person accused of any offence shall be compelled to be a witness against himself.” Article (21) stipulated: “No person shall be deprived of his life or personal liberty except in accordance with the procedures prescribed by law.”

³⁷Article (356) of the Constitution of India, 1950, as amended, is considered.

³⁸ S.R. Bommai v. Union of India, (1994) 3 SCC 1, Supreme Court of India, full text available at: https://indiankanoon.org/doc/60799/?utm_source=chatgpt.com Date of visit: 7/2/2026.

³⁹ Swarup Mukherjee, Balancing Liberty and Legality: The Expanding Horizon of the Doctrine of Proportionality in Indian Administrative Law after Puttaswamy, International Journal on Science and Technology (IJSAT), Vol. 16, Issue 4, October–December 2025, p. 1 -3. and see also: Aparna Chandra, “Proportionality in India: A Bridge to Nowhere?”, University of Oxford Human Rights Hub Journal, Vol. 3, 2020, pp.63-65.

⁴⁰Articles (2, 46) of the Constitution of the Republic of Iraq of 2005 are considered.

⁴¹Articles (1, 117/First, 121/First) of the Constitution of the Republic of Iraq of 2005 are considered.

represents an objective standard on which the extent to which intervention exceeds the limits of protecting the union and undermines the federal structure itself can be tested.

However, this test remained theoretical in reality; the implicit constitutional basis was not accompanied by a legislative framework regulating the means of emergency federal intervention and its objective criteria, and the relevant existing legislation regarding National Safety Defense Order No. (1) of 2004 was also lacking.⁴² This allows the executive branch to take wide-ranging measures such as imposing restrictions on freedom of movement, managing facilities, or issuing binding orders.⁴³ Without establishing criteria by which the proportionality between the means of intervention and the severity of the risk could be tested. As a result, there were no practical cases that enabled the judiciary to systematically apply the proportionality test, which limited the development of the proportionality principle as a regulatory tool.

The principle of proportionality finds implicit support in the decisions of the Iraqi Constitutional Court. The Supreme Federal Court, in its decision No. (24/Federal/2022) dated 13/2/2022, embodied the approach of balancing the requirements of necessity with constitutional principles when interpreting the continuation of the President of the Republic despite the time limit of his term. It prioritized the continuity of public authorities and avoiding a constitutional vacuum over strict adherence to the letter of the law.⁴⁴ Although this decision does not pertain to emergency federal intervention, it reveals the judiciary's willingness to utilize the proportionality test as a constitutional interpretation tool, thus supporting the possibility of subjecting future exceptional interventions to a similar test. Therefore, this judicial decision constitutes an important precedent that can guide the assessment of the legality of any future emergency intervention by the federal government.

SECOND REQUIREMENT

Determinants of the effectiveness of the proportionality principle in comparative constitutional systems

The principle of proportionality is influenced by a range of legislative, practical, and judicial factors that determine its actual scope of application. This requirement, therefore, examines these determinants in comparative constitutional systems by analyzing legislative delegation, practical political practice, and the reality of judicial testing of the principle, as follows:

First branch: Broad legislative delegation: The effectiveness of the proportionality principle is linked to the nature of the legislative formulations regulating emergency federal intervention in comparative constitutional systems, due to their significant impact on subjecting the means of intervention to objective control. Exceptional circumstances that threaten the safety of the State, such as wars and natural disasters, may render ordinary rules and procedures insufficient to address them, thereby requiring an expansion of the powers of the competent authorities to take the measures necessary to confront such circumstances. Since the exercise of these exceptional powers may affect rights and freedoms, it is necessary to establish restrictions and safeguards that prevent their arbitrary exercise⁴⁵. This is supported by another view in legal scholarship, which holds that the grounds 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 authority, so that it is not free to declare a state of emergency whenever it chooses⁴⁶. We will review its study as follows:

First - The United States of America: The federal government's emergency intervention was regulated by several laws, most notably the Insurrection Act of 1807, the National Emergencies Act of 1976, and the Stafford Act of 1988. However, these

⁴²Published in the Iraqi Gazette, Issue No. (3987), dated 7/3/2004.

⁴³Article (3) of the National Safety Defense Order No. (1) of 2004 is considered.

⁴⁴Published on the official website of the Federal Supreme Court: <https://www.iraqfsc.iq/> On 2/2/2026.

⁴⁵ 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, p. 413. DOI: <https://doi.org/10.35246/jols.v33is.202>

⁴⁶ Dr. Maher Faisal Saleh, Dr. Intisar Hassan Abdullah & Mustafa Talaa Khalil, "The State of Emergency under the Constitution of the Republic of Iraq of 2005: Solutions and Remedies," Journal of Legal Sciences, College of Law, University of Baghdad, Special Issue of the Public Law Branch Conference entitled "Constitutional and Institutional Reform: Reality and Prospects," 14–21 November 2018, p. 157. <https://doi.org/10.35246/jols.v0is.88> .

laws do not establish an explicit principle of proportionality that balances the means of intervention with the severity of the threat. The Insurrection Act was formulated in broad authorizing terms that empower the president to use the armed forces and take "whatever measures he deems necessary" to suppress insurrection and enforce federal laws.⁴⁷ Without requiring the use of the least restrictive means, the National Emergency Law was limited to regulating the formal procedures for declaring a national state of emergency.⁴⁸ Without establishing an objective standard of proportionality, the Stafford Act, while making federal aid contingent on the disaster exceeding the state's capacity and limited to addressing direct threats to life and property, granted the executive branch broad discretion in determining the type and extent of federal assistance.⁴⁹ Therefore, the legislative framework is characterized by delegated flexibility that limits the protective role of the proportionality rule.

Second - India: A review of legislation governing federal emergency intervention, particularly the Armed Forces (Special Powers) Act of 1958 and the Disaster Management Act of 2005, reveals that the legislature adopted broad authorizations that did not link the use of intervention measures to objective, binding standards of proportionality. The former authorized the use of lethal force, arrest, and search based on a broad assessment of necessity, while restricting judicial review to the condition of central government approval before any legal action could be taken.⁵⁰ The second, however, granted federal authorities the power to take whatever measures they deemed appropriate without linking them to the degree of risk in the units. This allowed for the imposition of uniform measures that limited the functional independence of the units and weakened the preventive role of the proportionality officer.⁵¹

Thirdly - Iraq: The Iraqi legislature did not adopt a unified federal law regulating the means of emergency intervention, its justifications, and its objective controls. Rather, the regulation of this authority was included in scattered legislative texts, including those predating the establishment of the federal system, such as the Public Health Law No. (89) of 1981, as amended.⁵² Among them is what preceded the issuance of the Constitution of the Republic of Iraq for the year 2005, towards the National Safety Defense Order No. (1) of 2004 issued based on the Iraqi State Administration Law for the Transitional Period for the year 2004. The executive authority was granted broad exceptional powers and was satisfied with procedural regulations without setting objective criteria linking the means of intervention to the severity of the danger or determining its effects on the autonomy of the federal units, which weakened the preventive role of the proportionality criterion as a prior restriction on the exercise of emergency federal intervention.

Section Two: Practical Political Practice: The parameters for testing the proportionality criterion are not limited to the legislative delegation formulation, but are also affected by the practical political practice of exceptional powers, which requires explaining its impact on controlling the limits of federal intervention in comparative constitutional systems, as follows:

First - The United States of America: Some practical applications reveal the broad discretionary power of the federal government in activating emergency federal intervention without a genuine adherence to the principle of proportionality. The deployment of federal forces in Portland in 2020—despite objections from state authorities—demonstrated the potential for intervention to be used to protect federal interests without demonstrating the inability of local authorities to act. This sparked controversy regarding the infringement on the jurisdiction of federal units, ultimately leading to challenges to the intervention as an encroachment on the units' police powers and a violation of the Tenth Amendment to the Constitution.⁵³ The 2025 federalization of the California National Guard also highlighted the limitations of oversight regarding the executive branch's

⁴⁷ See: Section 252 of Title 10, USC (Insurrection Act of 1807).

⁴⁸ See: Sections 201, 202, and 204 of Title 50, USC (National Emergencies Act of 1976).

⁴⁹ See: Sections 401 and 403 of Title 42, USC (Stafford Act of 1988).

⁵⁰ Articles (4/A/C, 6) of the Armed Forces (Special Powers) Act of 1958 are considered.

⁵¹ Article (35) of the Disaster Management Law of 2005 states: "1- Subject to the provisions of this Law, the central government shall take all measures which it deems necessary or appropriate for the purpose of disaster management..."

⁵² Published in the Iraqi Gazette, Issue No. (2845) dated 8/17/1981 and amended by virtue of the Public Health Law Amendment Law No. (20) of 2021 published in the Iraqi Gazette, Issue No. (4621) dated 4/26/2021.

⁵³ Whitney K. Novak & Michael A. Foster, Federal Law Enforcement and the Portland Protests: Legal Considerations, CRS Legal Sidebar, No. LSB10529, Congressional Research Service (Library of Congress), July 31, 2020, pp. 1-3.

discretion in determining the conditions for intervention, given the absence of clear justifications for applying Section 12406 of the United States Code without federalization orders from the state governor.⁵⁴ These applications indicate that the delegated formulation of emergency legislation has enabled political considerations to overcome supposed substantive constraints, thereby weakening the preventive effectiveness of the proportionality rule.

Secondly - India: Practical applications reveal the extent to which federal authorities have used emergency powers beyond the objective limitations of the proportionality principle. The state of emergency (1975–1977) was used to consolidate executive power under the pretext of protecting national security, based on the provisions of Article (352) of the Constitution. This later necessitated the introduction of Amendment (44) to this article to limit its misuse.⁵⁵ Furthermore, the repeated application of direct presidential rule, despite the recommendations of the Sarkaria Committee as a last resort, demonstrated the broad interpretation of the intervention terms, which weakened the autonomy of the constituent units, rendering them subordinate to the federal authority, and undermining the federal parliamentary democratic foundation of the state.⁵⁶ These practices indicate that the broad discretion of the federal government, coupled with legislative shortcomings, has limited the preventive effectiveness of the proportionality regulator in protecting the balance of the federal system and the autonomy of the units.

Thirdly - Iraq: The impact of political practice on the effectiveness of the proportionality criterion in the Iraqi federal system differs from that of comparable federal systems whose practices have revealed a violation or actual test of this criterion. The absence of an explicit constitutional regulation of the authority for emergency intervention, as well as the legislative vacuum in regulating exceptional powers in accordance with the provisions of the 2005 Constitution, has contributed to limiting the federal government's recourse to issuing emergency federal intervention decisions that are subject to the proportionality test or to constitutional judicial oversight. This has led to the disruption of the activation of the proportionality criterion as an objective constraint governing emergency intervention and has weakened its effectiveness in protecting the constitutional principles on which the federal state is based.

This problem is compounded by the ongoing constitutional dispute over the disputed territories, as the 2005 Constitution of the Republic of Iraq recognized the Kurdistan Region without precisely defining its borders.⁵⁷ The resolution of the status of these areas was referred to Article (140), which has not fulfilled its requirements despite its continued validity according to the interpretation of the Supreme Federal Court.⁵⁸ This has left the geographical scope of some federal powers disputed. This was

⁵⁴ Newsom et al. v. Trump et al., No. 3:25-cv-04870-CRB (US District Court for the Northern District of California), 2025, pp. 9–13. available at: https://www.govinfo.gov/app/details/USCOURTS-cand-3_25-cv-04870 Date of visit: 22/2/2026.

⁵⁵ SP Sathe, Judicial Activism: The Indian Experience, Washington University Journal of Law & Policy, Vol. 6, 2001, pp. 92–93. And see also: 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.

⁵⁶ K. Suryaprasad, Article 356 of the Constitution of India: A Critical Study, Ph.D. Thesis, University of Kerala, Thiruvananthapuram, 1999.

⁵⁷ Article (117) of the Constitution of the Republic of Iraq of 2005 is considered.

⁵⁸ The Federal Supreme Court, in its decision No. (71/Federal/2019) dated 31/7/2019, stated: "...Article (140) of the Constitution of the Republic of Iraq of 2005 entrusted the executive authority with taking the necessary steps to complete the implementation of the requirements of Article (58) of the Iraqi State Administration Law for the Transitional Period, in all its clauses that remain in force based on the provisions of Article (134) of the Constitution. This is to achieve the objectives set forth in Article (58), which aims to achieve justice in areas that have been subjected to demographic changes through displacement, forced migration, and resettlement, in accordance with the steps outlined in the aforementioned Article (58). Since these steps have not been completed, and indeed some of them have not been taken, the objective of enacting and legislating Article (140) of the Constitution remains required and obligatory for all. The deadline specified therein was set for organizational purposes and to urge those concerned to implement it, and does not affect its essence or the achievement of its objective. Accordingly, the Federal Supreme Court decided that the article remains in force." (140) of the Constitution of the Republic of Iraq at the present time and until its requirements are implemented and the objective of its legislation is achieved in accordance with the steps outlined in Article (58) of the Iraqi State

reflected in the deployment of federal forces in these areas during the fight against ISIS, and then their redeployment following the Kurdistan Region's referendum in 2017.⁵⁹ This raises a question about the nature of this intervention, and whether it falls within the exercise of original federal powers or represents an exceptional intervention imposed by necessity, which in turn weakens the effectiveness of the proportionality rule in determining the constitutional limits of emergency federal intervention.

Third branch: The absence of actual testing of the proportionality criterion: The judiciary plays a major and influential role in determining the effectiveness of the proportionality principle, as the subjection of emergency federal intervention to a systematic judicial test, or the absence of such a test, has an impact on determining the scope of the intervention's legitimacy. We will review its study as follows:

First - The United States of America: Although the principle of proportionality can be derived from the constitutional structure of the federal system, the American judiciary has not applied an explicit test of it in the field of emergency federal intervention, as judicial applications have been content with verifying the justifications for intervention without developing a systematic proportionality standard.

Second - India: Despite the principle of proportionality being firmly established in the Indian judiciary in the field of fundamental rights, as previously explained, its application in the context of emergency federal intervention has remained limited; the Supreme Court has not developed an explicit proportionality test for reviewing emergency powers, and its role has been limited—as in the case *Bommai* — on verifying the objective conditions for intervention. Hence, the proportionality criterion remained an implicit standard guiding oversight rather than an actual, organized judicial test.

Thirdly - Iraq: The absence of an explicit constitutional regulation of emergency federal intervention, the legislative vacuum in regulating exceptional powers in accordance with the provisions of the Constitution of the Republic of Iraq of 2005, as well as the lack of practical application of this power since the entry into force of the Constitution, and the continuation of constitutional problems related to the disputed areas, prevented the proportionality criterion from being subjected to a systematic judicial test before the Constitutional Court, which kept it as an implicit theoretical constraint rather than an actually applied standard, and weakened its effectiveness as an objective preventive constraint that governs the legitimacy of intervention and protects the constitutional principles on which the federal state is based.

CONCLUSION

In light of the preceding analysis of the study topic, we present the most prominent conclusions reached, and the suggestions they entail, as follows:

First - Conclusions:

- 1- The principle of proportionality in comparative constitutional systems is not explicitly stated in a constitutional or legislative formulation that regulates emergency federal intervention, but is implicitly derived from the duties of federal authorities and the structural principles of the federal system, which leads to a difference in its effectiveness as a supervisory standard according to the nature of the legislative and judicial structure in each system.
- 2- The constitutional judiciary in the United States of America did not adopt an explicit systematic proportionality test in the field of emergency federal intervention, and oversight was limited to examining the justifications for intervention and the limits of discretionary power without developing an organized standard. Furthermore, broad delegated formulations and executive discretion limited its preventive effectiveness.
- 3- The test of proportionality in the Indian constitutional system remained implicit and limited in the context of emergency federal intervention, as judicial oversight was limited to verifying the objective conditions for intervention without developing

Administration Law for the Transitional Period... Decision published on the official website of the Supreme Federal Court: https://www.iraqfsc.iq/karid/71_fed_2019.pdf Date of visit: 26/3/2026.

⁵⁹Raed Hamdan Ajab Al-Maliki, *The Autonomy of Federal States and its Applications in Contemporary Constitutions: A Comparative Study*, PhD Dissertation, Faculty of Law, University of Baghdad, 2017, pp. 138-140.

a systematic and organized test. This was influenced by centralization, broad legislative delegation, and the restriction of judicial oversight.

4- In the absence of federal legislation regulating emergency federal intervention after the entry into force of the Constitution of the Republic of Iraq of 2005, in addition to the absence of practical applications of this power, and the continuation of constitutional problems related to the disputed areas without developing a judicial test of proportionality, which kept this rule in its theoretical framework, despite the existence of an implicit constitutional basis that allows for its activation in the future.

5- The effectiveness of the proportionality principle is not determined merely by its explicit or implicit inclusion in the constitution or legislation, but rather by the integration of three main determinants: defining the scope of legislative authorization, rationalizing political practice, and subjecting federal intervention decisions and procedures to effective judicial oversight, since the disruption of any of them leads to weakening its preventive effectiveness in regulating the limits of emergency federal intervention.

Second - Proposals:

1- The constitutional or ordinary legislator - according to the structure of each system - must explicitly stipulate that emergency federal intervention measures be subject to a proportionality test as an objective criterion for assessing the legitimacy of the intervention.

2- Reducing the broad delegation formulations in legislation regulating emergency federal intervention, by establishing an objective standard that facilitates testing the proportionality criterion, based on the suitability of the means to the severity of the existing danger, its necessity as a last resort, and its effects on the autonomy of units and the balance of the distribution of powers.

3- In Iraq: The Iraqi Parliament must enact a federal law regulating emergency federal intervention in a manner consistent with the provisions of the Constitution of the Republic of Iraq of 2005, including the justifications for intervention, its means, procedures, the standard of proportionality, and mechanisms for judicial oversight and appeal, in order to activate the proportionality principle and transform it from a theoretical constraint to an applicable preventive and supervisory constraint.

4- The need for the constitutional judiciary to move towards expanding the scope of the proportionality rule to include the protection of structural constitutional principles and not limiting it to the field of protecting rights and freedoms, in order to enhance its supervisory role in assessing the legitimacy of emergency federal intervention.

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