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The status and process of emergency conditions in Egypt's constitutional law

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| Article Info | Abstract |
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| Article Type: Research Article | <p>Egypt can be considered one of the countries that has spent more than 80% of its rule under emergency conditions over the last hundred years, in such a way that the exceptional situation has become a normal condition. In fact, the former president of Egypt, Hosni Mubarak, spent almost his entire thirty-year tenure under emergency conditions. It can be safely said that managing affairs in emergency situations with extra-legal tools has become an undesirable practice in Egypt due to its longevity, and governments have been unwilling to set these tools aside; consequently, a form of legal authoritarianism has prevailed in the country. The use of an extraordinary status in Egypt's constitutional system has a very long history. Among Egypt's constitutions, the 2012 Constitution of Egypt can perhaps be considered more democratic in terms of the model adopted for the establishment of a state of emergency, because it set specific conditions for the application of this tool and attempted to prevent it from being easily accessible to the government by referring the matter to a referendum. It seems that the adoption of such a strict approach was due to the inappropriate and intentional use of this mechanism throughout the history of public law in the country.</p> <p>Although under the current constitution the political system of the country is formally governed democratically, the design of the institution of emergency conditions in the Egyptian constitutional framework, and the ease with which this tool can be used, have led the executive branch toward authoritarianism. In such a way, by invoking Article 3 of the Emergency Conditions Law, the President can prevent other branches of power from functioning and exercise extensive legislative and judicial authority. The powers of the President are very broad and can be said to cover the general affairs of the country. Moreover, because the process of approving and extending emergency conditions is not difficult, this situation can transform the President into a de facto dictator in the administration of the country.</p> <p>At present, in various legislative, executive, judicial, and military</p> |
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fields, extensive powers are granted to the President during a state of emergency. For example, in the legislative field, according to paragraph one of Article 3, the President has the authority to limit the general freedoms of the people, such as freedom of movement or freedom of assembly. Based on paragraph three of the same article, the authority to close markets wholly or partially also falls within his competence. Furthermore, paragraph six of this law grants the President the authority to suspend the right of residence in certain areas, and according to paragraph seventeen, the President may declare a state of general quarantine and restrict communication between different regions. Several powers are also assigned to the President in the judicial field. For instance, he has the authority to confiscate or use movable or immovable property under the General Mobilization Law. The possibility of establishing military and field courts is another presidential power, which is addressed in detail in Article 8 of the Emergency Conditions Law.

The powers vested in the President in the executive field are likewise extensive. For example, he may alter the working hours of ministries and departments or close them partially or entirely. In the criminal field, pursuant to Article 15, the President has the authority to reduce or annul the sentences of convicted individuals. In the military field, based on Article 4, it is possible to transfer certain governance powers that normally fall within the competence of the executive branch to the military. It should be noted that the delegation of such powers to the military lies within the President's authority. The impartiality of the judicial system has been challenged due to the appointment of military court judges from among high-ranking officers, as well as the jurisdiction of these courts over emergency-related matters and the limitation of public courts to civil lawsuits.

Undoubtedly, the recognition of a situation known as emergency conditions in the Egyptian Constitution provides the government with the possibility of using this mechanism, while the scope of powers granted to the government under such conditions has been delegated by the Constitution to ordinary legislation. A careful examination of these powers reveals the extensive scope of presidential authority in Egypt. This situation can seriously challenge the principles of public rights recognized in the Egyptian Constitution, such as the separation of powers and the fair distribution of authority.

Since many provisions of this law can be interpreted in a manner that raises concerns about the suspension of the Constitution, the scope of interpretation of the Emergency Conditions Law has been a matter of dispute among jurists. The Supreme Constitutional Court of Egypt has stated in its jurisprudence that "the law enacted for emergency conditions must adhere to the principles of the legislative system, and, most importantly, must not conflict with other constitutional principles, because the possibility of establishing emergency legislation in the Constitution does not imply permission

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| | <p>to violate other constitutional principles through such legislation.” Accordingly, in legal doctrine, the limits of presidential authority under the Emergency Conditions Law are accepted only insofar as they do not conflict with the Constitution. Nevertheless, it should be noted that in many cases brought before this court alleging a conflict between presidential orders issued during emergency situations and the Constitution, the Supreme Constitutional Court has dismissed the claims at various times on the grounds that the subject matter did not fall within constitutional review. This practice can be regarded as inconsistent with democratic principles in the administration of the country. Therefore, it is appropriate for the Egyptian government to seek solutions to national challenges through democratic methods and by relying on the models endorsed by the Constitution.</p> <p>This research seeks to answer the question of how the country is administered during emergency situations under Egypt’s constitutional law. The hypothesis of the research is that, within Egypt’s constitutional system, the administration of state affairs during a state of emergency is entrusted to the President, resulting in a form of authoritarian governance. This research has been conducted using a descriptive-analytical method based on library sources and reliable websites.</p> |
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