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The Constitutional Guarantee in the Balance of the Federal Government's Relationship with the Regions

Section One

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Introduction

One of the major pillars of federal systems is the balance of the central government's relationship with the regions. This is how effective and focused efforts enable the preservation of parity of powers and the correct functioning of state entities. The drafters of federal constitutions are attempting to strike a balance in the distribution of powers between the two branches of government. And if no federal system succeeds without this distribution and balance between the center and the regions, it is not enough to specify it alone through constitutional wording; there must also be guarantees that prohibit either of them from exceeding the rights granted to the other, ensuring the continuance of the federal balance, and retaining the constitutional entities (regions and states provinces) their autonomy, and the care of their local interests. As a result, the process of relative independence of the regions and relationship balance does not happen on its own; it must be surrounded by guarantees and include numerous aspects and features that enable its implementation in real world.

It also requires that these assurances not be limited to the federal government; rather, the constitutional guarantees must be applied to provinces that infringe on competencies that fall outside their jurisdiction. Therefore, the availability of securities to sustain the concept of the distribution of constitutional competencies is meant to avoid a breach in the direction of the consolidation of power in the hands of the federation on the one hand or the regions on the other. These guarantees are provided differently by federal systems, but the most effective in maintaining federal balance can be crystallized by three basic guarantees: the constitutional guarantee, the judicial guarantee, and the political guarantee.

The Nature of the Constitutional Guarantee

It should be noted that the federal system does not regulate its performance and work without the constitutional distribution of government powers between the two levels of government, the center and the region, and that, as a result, the continued establishment and success of this system cannot be achieved without the presence of insurance tools of a constitutional and legal nature that guarantee honoring for this distribution. This guarantee is represented by the existence of a written federal constitution that enjoys supremacy and sovereignty and is the highest and supreme law in the federal state, and its provisions cannot

be amended using the same procedures for amending ordinary laws, indicating that it is a rigid constitution as expressed.

The Constitutional Principle in Competence Distribution

The primary pillars upon which federal systems are built the stipulation of the competencies and powers of the federal government and the governments of the federation's regions or states lies at the heart of the constitutional document that formed the system. As stated in the federal constitution, the distribution of competencies among levels of government is the most significant subject. Rather, this is regarded as the core of the constitution[1].

The distribution of competencies in federal systems is based on the fact that there are federal institutions and authorities, as well as others located in regions, that carry out their tasks and responsibilities, and these institutions and authorities have specific competencies as defined by the federal constitution. One of the most significant aspects of the success and stability of the federal system, as well as its development, is constitutional precision in the distribution of competencies.

The principle of constitutional distribution is one of the most important features that distinguish the federal system from administrative decentralization systems in the unified and simple states because the unified state's constitution does not stipulate the competencies and powers of the decentralized units, but rather they are delegated by the central authority through ordinary laws and legislation.

As a result, there is no federal constitution that does not include the constitutional distribution of powers and competencies. Indeed, several constitutions have singled out large provisions and dwelt on distribution details. The Indian constitution of (1950) and the Basic Law of the Federal Republic of Germany of (1949) are two examples of such constitutions.

Because of the dual nature of federal systems, the constitutional basis for the distribution of competencies is critical in preserving federal balance because it is impossible to avoid the exchange and overlapping of powers, the interweaving of interests, and participation in

1. Mohammed Kamel Lela. Political Systems, The state and the governments, Nahdet Misr Publishing House, Cairo, page 130.

the conduct of the accuracy of governance in the federal state, which necessitates defining this overlap and integration in the Federal Constitution[2]. To preserve the autonomous legal existence of the To ensure the independent legal existence of the member territories or states of the system, as well as their involvement in the state's constitutional structure, and to prevent any level of government from intruding on the powers of the other level, this federal system does not exist without this distribution. The federal constitution must be written in order to offer a clear and precise text addressing the constitutional distribution of powers between the federal government and the regional governments. This is a logical requirement for any federal system, as the nature of the system necessitates that the constitution be codified so that each level of government is aware of its political rights, and that the federal constitution serves as a reference in the event of a dispute or conflict of competences[3].

This is explicitly stated in constitutional law. As long as the provisions of this agreement are significant, it is important to entrust it to be codified in a document and recorded, even though this is not required in theory, according to the federal principle, it must be stated that it is necessary from a practical standpoint. Where the English jurist (Dicey) believes that the formation of such a system must result in many types of misunderstanding and conflict and that the articles of the treaty or constitution must be recorded in writing[4].

As a result, the codification of federal constitutions, particularly the part relating to the constitutional organization of public authorities in the central and local federal states, as well as the texts relating to the declaration of their competencies and their relationship to one another. The codification ensures that no aggression will occur on the part of any of these authorities against the other.

2. Dawood Al-Baz, Political and Constitutional Decentralization in the United Arab Emirates, Dar Al-Nahda Al-Arabiya, Cairo, pg. 68

3. Ronaldo L. Watts, Dialogues on the Distribution of Powers and Responsibilities in Federal Countries, Forum of Federal Unions, p. 126

4. Omar Mouloud. Federalism and the Possibility of its Application in Iraq, 2nd Edition, Mokiryani Foundation for Printing and Publishing, Erbil 2003, pg. 240

Constitutional Supremacy

The Federal Constitution serves as the cornerstone for the federal system. It is the one who establishes the competencies and the process of distributing them between the center and the regions, thus it is extremely important from both a political and a legal standpoint. Its political significance stems from the fact that regions will not join the federation unless they are persuaded that the constitution protects their respective interests. The legal significance of the federal constitution is based on it serving as the legal foundation for the federal state[5].

In the same framework, the notion of the supremacy of the constitution - being the supreme law in the state, and the belief that its laws are characterized by the nature of sanctity and perpetuity, and that violating them is not permitted - has ancient origins in human thinking. It took various forms and expressions, embodied in the East by religious laws upon which man-made laws should be based and inspired by their provisions and rules, and in Western civilization by the theory of natural law, but this belief was not established as a constitutional principle until after the American and French Revolutions[6].

One of the effects of the constitution's supremacy concept is that the constitutional rules are binding on all governmental organizations. Any law or decision that contradicts these guidelines is null and void. This means that the federal and regional governments cannot violate the constitutional texts governing the allocation of powers. Because the constitution is the source of government authorities for each level of government, establishing the principle of the supremacy of the federal constitution over all levels of government requires a culture and political awareness to confirm its importance to the principle of basic constitutional coordination. As a result, most constitutions in federal systems proclaim - explicitly or implicitly - the principle of the supremacy of the federal constitution, and the American Constitution proclaimed in 1787 is one example of a constitution that officially stipulated the supremacy of the constitution.

5. Adel Al-Tabtabaei, The Constitutional System in Kuwait, a comparative study, p. 113

6. Ismail, Marza, Constitutional Law: A Comparative Study of the Constitutions of Arab Countries, Third Edition, Dar Al Malak, Baghdad, 2004, p. 373

In this context, the constitution of Iraq for the year 2005 stipulated the principle of constitutional supremacy. Article (13) affirmed the supremacy of the constitution in two paragraphs: First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception. Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.

Inflexibility in the Constitutional Amendment

Constitutions differ in terms of the processes for modifying them, depending on their degree of flexibility or rigidity. A flexible constitution is one that can be altered using the same methods as ordinary laws. The rigid or inflexible constitution is one that cannot be modified unless through procedures that differ from those used to amend laws. Perhaps the nature of federal systems requires that federal constitutions be inflexible and that their amendment necessitates following various and complex procedures in order to maintain stability and balance between the federal government and the regions in the state, provided that stagnation or inflexibility is not absolute; So that constitutions do not lose their ability to keep up with the various political, social, economic and other levels.

The complexity or difficulty of the procedures and conditions that must be met in the process of constitutional amendment is sometimes represented by the manifestations of constitutional stagnation, as federal constitutions of a rigid nature provide for a number of procedures that the process of amending the constitution must go through, and they are usually more complex than those used in the amendment of flexible constitutions. These procedures are often divided into three stages: proposing to alter the constitution, discussing the issue of the proposal, and ultimately final adoption of the amendment to the constitution. In general, regions and federal system members are involved in the process of revising the federal constitution. Furthermore, while the procedures for modifying federal constitutions differ from those for revising ordinary laws, some federal constitutions include a gradation in the intensity and complexity of the procedures required to amend its contents. In other words, the federal constitution may provide for different amendment methods depending on the constitutional provision to be altered. The Indian Constitution is one of the most well-known federal constitutions that clearly allows for this distinction. It was issued in 1950. It is

considered one of the rigid constitutions: it requires some special procedures to be amended, as is the Canadian Constitution, where the Canadian Constitution Decree of 1982 added paragraphs (38-49) that include amendment procedures, which differ depending on the texts to be amended, and these procedures involve varying degrees of Severity, and several procedures have been identified to amend different parts of the Constitution[7].

At other times, the manifestations of the inflexibility of the federal constitution are represented in the limits of amending its provisions, whether in relation to the substantive or temporal limits. A substantive limit is intended to prevent the amendment of some constitutional provisions, whether in an absolute or relative manner. Among the federal constitutions that provide for this type of prohibition is the Brazilian Constitution of 1934, which forbade prejudice to the federal form of the state. Likewise, the Basic Law of the Federal Republic of Germany included a substantive prohibition, as it prohibited making any amendment affecting the division of the Federation into states or affecting the basic role of the states in legislation, as well as prohibiting making any amendment affecting the basic rights specified in the Basic Law or affecting the organization of the state based on foundations Federal democracy[8].

As for the temporal limit, it is intended that the provisions of the constitution cannot be amended during a specific period of time. The goal of this limit is to preserve the stability of the political system introduced by the constitutional legislator, as well as to provide an

7. The Canadian Constitution Decree of 1982 added paragraphs (38-49) that include amendment procedures, and these procedures involve different degrees of severity, and five of them have been identified to amend different parts of the Constitution: First, a regular procedure that requires the approval of the Federal Parliament, in addition to the approval of which members Provincial legislatures comprising at least half of the total population of all states. Secondly, the Procedure requires the approval of Parliament and the unanimous approval of the provincial legislatures of a particular group of articles of the Constitution. Third, a two-pronged amendment to provisions relating to some but not all states. Fourth, amendments requiring the approval of Parliament only for articles not related to the states. Fifth, amendments by provincial legislatures relating to provincial constitutions. Ronald Watts reviews federal regulations, ibid, p. 127

8. The Basic Law of the Federal Republic of Germany of 1949, Article 79, the third paragraph, stipulates that no amendments may be made to this basic law that would secure the division of the federation into federal states or the participation of the states in principle in the legislative process in an effective manner or in a way that affects the basic rules contained in Articles 1 and 20.

opportunity to test its validity over time[9]. The US Constitution, which included a temporal restriction to prevent the change of some articles of the constitution, and not all of them, which are the texts relating to the powers banned to the states, are examples of federal constitutions that stipulated this type of limitation[10].

In this regard, many constitutional law jurists describe the Iraqi constitution of 2005 as one of the rigid constitutions. This is owing to the difficulties of the constitutional legislator's procedures and criteria for amending it. Where the provisions for making constitutional amendments were contained in two articles thereof; in Article (126), which states: The President of the Republic and the Council of the Ministers collectively, or one-fifth of the Council of Representatives members, may propose to amend the Constitution., and it was stated in the third clause: Other articles not stipulated in clause "Second" of this Article may not be amended, except with the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a general referendum, and the ratification by the President of the Republic within seven days. This article talked about the natural and normal way to amend the constitution.

Article (142), also stipulated the provisions of amending the constitution in an exceptional way, as it states: First: The Council of Representatives shall form at the beginning of its work a committee from its members representing the principal components of the Iraqi society with the mission of presenting to the Council of Representatives, within a period not to exceed four months, a report that contains recommendations of the necessary amendments that could be made to the Constitution, and the committee shall be dissolved after a decision is made regarding its proposals.

Second: The proposed amendments shall be presented to the Council of Representatives all at once for a vote upon them, and shall be deemed approved with the agreement of the absolute majority of the members of the Council. Third: The articles amended by the Council

9. Adel Al-Tabtabaei, ibid, 1985, p. 132

10. Article 5 of the US Constitution states the following text: The Congress shall, when the members of each House make it necessary, propose amendments to this constitution, provided that no amendment which may be made prior to the Year One thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the Ninth Section of the first Article.

of Representatives pursuant to item "Second" of this Article shall be presented to the people for voting on them in a referendum within a period not exceeding two months from the date of their approval by the Council of Representatives. Fourth: The referendum on the amended Articles shall be successful if approved by the majority of the voters, and if not rejected by two-thirds of the voters in three or more governorates. Fifth: Article 126 of the Constitution (concerning amending the Constitution) shall be suspended, and shall return into force after the amendments stipulated in this Article have been decided upon. This was confirmed by the Federal Supreme Court with the jurisdiction of the procedures contained in Article (142) in any constitutional amendment before resorting to the usual path of amendment drawn by the provisions of Article (126)[11].

As for the issue of substantive and temporal limits on the provisions of the Constitution, the Constitution also stipulates both, as Article (126-Second) stipulates the following: The fundamental principles mentioned in Section One and the rights and liberties mentioned in Section Two of the Constitution may not be amended except after two successive electoral terms, with the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a general referendum, and the ratification by the President of the Republic within seven days.

It is clear that the constitutional legislator has placed an objective and temporal restriction or limits in making amendments to some of the provisions of the constitution and its texts mentioned in Chapter One and Chapter Two, during two successive sessions, i.e. eight years after the adoption of the constitution.

From here, the impact of the constitutional stalemate on the stability of the federal system is evident, especially with regard to defining the competencies of the federal authorities and the authorities of the regions and taking into account the balance between them. As there is no great value and importance to the constitutional rules related to the distribution of competencies between the center and the regions, if the violation of these rules is an easy matter. The establishment of rights and the constitutional relationship between the center

11. Dr. Osama Al-Shabib, An Overview of the Constitutional Amendment in the Iraqi Constitution of 2005- In light of the Supreme Federal Court provision no. (54) for the year 2007. Al-Baidar Center for Planning and Studies, 2022.

and the region, with the imposition of inflexible procedures for amendment, gives a kind of firm and stable balance to both the federal authority and the authorities of the regions. Therefore, most of the federal constitutions tend to involve the regions or states in the process of amending the federal constitution, whether the participation is direct or indirect through their representation in the federal legislative assemblies.

In this context, the Iraqi constitution of 2005 emphasized the principle of balance in the relationship between the federal government and the regions (Kurdistan region). We referred to this in the discussion of the constitutional guarantee, but several problematic matters must be mentioned in this regard:

First: The existence of a written constitutional document proving the principle of balance in the relationship characterized by stagnation and transcendence is something that occurs in the Constitution of Iraq for the year 2005, but also some loopholes, confusion, and inaccuracy were found in the constitutional drafting of some articles that regulate the relationship of the federal government and the region, and this was the subject of controversy and confusion, to successive crises that have not been guided to a final and effective solution.

Second: On the other hand, one of the most important constitutional problems is the issue of duality in the political administration of the state. Iraq is a federal state in relation to the Kurdistan region and a decentralized state in dealing with the rest of the provinces. This is what caused the constitutional legislator to be confused, especially with regard to the specializations related to the region under the federal system and the specializations granted to the governorates under the system of administrative decentralization.

Third: The lack of application of the constitution in many of the provisions and texts that fall within the field of regulating the constitutional relationship between the federal government and the region, and fragmentation in the application according to political desires and goals, which increased the gap in the relationship and perpetuated crises in reality.

In conclusion, the existence of a written federal constitution that enjoys accurate and sound constitutional drafting, and stipulates the distribution of the constitutional competencies and tasks of the federal authority on the one hand, and the competencies and responsibilities of the regions on the other, as well as an emphasis on the principle of

constitutional supremacy and the stability of the text by restricting its amendment in order to prevent tampering. These constitutional provisions are among the most essential factors in keeping the federal relationship between the center and the regions balanced. It is worth noting that the constitutional text alone is insufficient in this regard unless it is synchronized with other judicial, political, and social factors so that stability and adherence to mutual duties and responsibilities between each party is the general goal of the federal state with all of its elements, components, and institutions of various scales, and constitutional and political levels.

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