

The Suspension of Constitutional Provisions Between Necessity and Emergency in Constitutional Systems A Comparative Study Between Palestine and Lebanon

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Abstract

The suspension of constitutional provisions presents significant challenges to political stability and legal sovereignty in Palestine and Lebanon. This study aims to examine the causes and consequences of constitutional suspension in both countries, focusing on their political and legal impacts while identifying shared and distinct factors influencing these crises. Using a comparative methodology, the research analyzes constitutional documents, legal frameworks, and political developments to understand the broader implications.

Findings highlight several critical issues: Internal Divisions: In Palestine, the political split between Fatah and Hamas has created parallel governments, undermined constitutional authority and deepened political fragmentation. In Lebanon, sectarian power balances prevent effective governance and constitutional reform, perpetuating political stagnation.

Judicial Weaknesses: In both countries, politicization of the judiciary and external interference have eroded the independence of judicial institutions, reducing their ability to enforce the rule of law.

External Interventions: Foreign influences, including international aid in Palestine and regional interference in Lebanon, exacerbate internal divisions and complicate the constitutional landscape. The study underscores the urgent need for reforms, including strengthening judicial independence, promoting national dialogue to achieve political reconciliation, and implementing comprehensive constitutional amendments to address systemic issues. Reducing external interventions and fostering inclusive governance mechanisms are also essential to safeguarding political stability and legal sovereignty in both countries.

Key Keywords: Constitutional Suspension, Political Stability, Judicial Independence.

Introduction:

The suspension of constitutional provisions in Palestine and Lebanon reveals significant challenges deeply rooted in their unique political and legal contexts. Both regions face issues related to constitutional sovereignty and the protection of human rights, influenced by their respective social and political dynamics.

In Palestine, the 2003 Basic Law lacks explicit provisions to ensure constitutional sovereignty, resulting in its subordination to ordinary laws. This absence complicates the enforcement of fundamental rights and freedoms within the Palestinian legal system (Hamad & Anwar, 2022). Conversely, Lebanon's sectarian political system hampers the application of constitutional rights, particularly for Palestinian refugees, whose human rights are often undermined by sectarian divisions (Samir, 2012).

The Palestinian constitutional framework emphasizes aligning domestic laws with international human rights conventions to balance state authority and individual freedoms (Totah, 2024). However, the lack of effective enforcement mechanisms remains a critical issue. In Lebanon, the political exploitation of sectarianism restricts fundamental rights for Palestinians, highlighting the tension between national identity and humanitarian needs (Samir, 2012).

Studying the suspension of constitutional provisions in the context of necessity and emergency is crucial to understanding how political crises and internal conflicts impact state stability and the rule of law. In both Palestine and Lebanon, the suspension of constitutional provisions poses significant challenges to political systems grappling with internal divisions and external interventions. In Palestine, the division between Fatah and Hamas has disrupted the enforcement of the amended 2003 Palestinian Basic Law, deepening the political crisis following the split between the West Bank and Gaza Strip in 2007. The Basic Law has failed to provide an effective mechanism to resolve constitutional disputes between different factions, perpetuating the crisis and complicating governance (Helfer, 2003).

The suspension of constitutional provisions is one of the most critical challenges facing political systems in countries with internal divisions and ongoing conflicts, threatening political stability and undermining the rule of law. In Palestine, internal conflicts between political factions, particularly between Fatah and Hamas, have disrupted the application of some provisions of the Palestinian Basic Law, exacerbating the country's political and social crises. This law, initially intended as a temporary framework for organizing political life until the establishment of an independent Palestinian state, has failed to provide sustainable solutions to internal disputes and has become incapable of meeting governance needs due to sharp divisions and external interventions. This situation reflects the absence of effective constitutional mechanisms to resolve conflicts and highlights the fragility of the constitutional framework in addressing political and social challenges in Palestine (Brown & Alsarghali, 2024).

In Lebanon, the political system suffers from delicate sectarian balances that lead to frequent suspension of constitutional provisions, adversely affecting the stability of government institutions and democratic processes. These suspensions stem from escalating political disputes that complicate government formation and presidential elections, leading to recurrent political vacuums. These sectarian and political balances, combined with external influences, further complicate the Lebanese political landscape and increase the likelihood of constitutional suspension. Amid these crises, this situation reflects the weakness of Lebanon's constitutional system and the difficulty of implementing the constitution in a context of persistent tensions, highlighting the need for constitutional reforms to strengthen judicial independence and activate the principle of separation of powers, which is foundational to Lebanon's political system (Abou Chakra & Ashi, 2019; Sfeir, 2021).

Khalil notes that "the Basic Law, despite being a cornerstone of the Palestinian political system, has exacerbated factional conflicts rather than providing clear solutions" (Khalil, 2013, p. 35). He explains in his analysis that "the current conflict within the Palestinian Authority partly stems from the Basic Law's failure to manage power struggles among rival factions" (Khalil, 2013, p. 36).

On another level, both Palestine and Lebanon face challenges related to international legitimacy and its impact on their constitutional systems. In Palestine, the political system seeks to balance international obligations with internal pressures, sometimes leading to deviations in applying the Basic Law (Frost & Brown, 2020). Meanwhile, in Lebanon, external influence, particularly from regional and international powers, complicates the constitutional crisis and further hinders effective law enforcement (Jeong & Salamey, 2021).

Moreover, geopolitical shifts and changes in the international landscape, such as reduced international financial support for the Palestinian Authority, have increased pressures on the Palestinian constitutional system, deepening existing constitutional crises (Sayigh, 2010).

Study Objectives:

This study aims to achieve several key objectives, including:

1. Understanding the reasons behind the suspension of constitutional provisions in Palestine and Lebanon.
2. Analyzing the political and legal impacts resulting from such suspension.
3. Providing a comprehensive comparison of the constitutional systems in Palestine and Lebanon to identify similarities and differences in causes and consequences.

Research Methodology:

This study employs a comparative approach to analyze the mechanisms of constitutional suspension in Palestine and Lebanon. Data will be collected from legal and political sources, including constitutional documents and research reports, to examine the effects of constitutional suspension on political and legal stability in both countries.

Research Problem:

This research seeks to address the central question:

"How does the suspension of constitutional provisions impact political and legal stability in Palestine and Lebanon, and what are the common and distinct factors contributing to this suspension in both countries?"

Research Hypotheses:

This study is based on the following hypotheses:

1. First Hypothesis: The suspension of constitutional provisions leads to political instability and increased internal divisions in both Palestine and Lebanon.
2. Second Hypothesis: Sectarian and political factors play a pivotal role in constitutional suspension in Lebanon, while factional divisions have a greater influence in Palestine.
3. Third Hypothesis: The failure to reform the constitutional system and ensure judicial independence contributes to the persistence of political crises in both countries.

Theoretical Framework

The Concept of Constitution and Its Suspension

A constitution is the supreme document that defines the structure of a state's political system and regulates the relationship between various authorities as well as between the state and its citizens. It serves as the legal and political foundation aimed at ensuring the stability of the system and protecting individual rights by delineating the powers of different authorities and setting limits for them.

On the other hand, the suspension of a constitution refers to the suspension or cessation of the implementation of some or all of its provisions, whether through formal political decisions or through actual practices that neglect or hinder its application (Elkins, et al., 2014). Such suspension often occurs in cases of emergency, necessity, or political crises, leading to the erosion of the rule of law and the destabilization of the political system.

Foundations of the Constitutional System and Challenges in Its Implementation

In both Palestine and Lebanon, the constitutional system is founded on principles designed to organize authorities and ensure the general rights and freedoms of individuals. In Palestine, the constitutional system is based on the 2003 Amended Basic Law, considered a temporary constitution until the establishment of an independent Palestinian state. However, political divisions and ongoing occupation have undermined its effectiveness, increasing the likelihood of its suspension (Brown, 2012; Khalil, 2013). In Lebanon, the constitutional system is grounded in the 1926 Constitution, amended by the Taif Agreement in 1989, aiming to achieve sectarian balance. Yet, challenges arising from the complexities of sectarian equilibrium and persistent political disputes frequently lead to the suspension of the constitutional system (Salamey, 2013; Baroudi, 2005).

Factors Influencing Constitutional Suspension

The suspension of constitutional provisions is attributed to several key factors. In Palestine, the political division between Fatah and Hamas is a major factor, resulting in the emergence of two competing authorities governing different areas according to their own agendas, making effective constitutional implementation challenging (Sayigh, 2010; Abu Amr, 2009). In Lebanon, sectarian balances and inter-sectarian relations are the primary factors, as sectarian disputes delay crucial decisions and complicate political affairs (Norton, 2018; Heydemann, 2004; Baumann, 2016). External interventions, whether in Palestine or Lebanon, also contribute to the complexity of constitutional crises and hinder the effective application of the law.

Historical Analysis of Constitutional Suspension and Major Political Events

The history of constitutional organization in Palestine and Lebanon reflects the complexities of each country's political and social contexts.

In Palestine, the Basic Law was issued in 2002 and amended in 2003 to introduce the position of Prime Minister, and again in 2005 to resolve conflicts and achieve legislative harmony. While intended as a temporary constitution amid the struggle with Israeli occupation, it has been repeatedly suspended due to political divisions between Fatah and Hamas, particularly after the split of authority between the West Bank and Gaza Strip in 2007 (Kovács, 2023; Khalil, 2013).

In Lebanon, the constitutional system was established with the 1926 Constitution, significantly amended by the Taif Agreement in 1989 to end the Lebanese Civil War. Despite this, political and sectarian complexities continue to impede the full implementation of the constitution (Salamey & Payne, 2020; Norton, 2018).

Both Palestine and Lebanon have experienced notable political events that have contributed to constitutional suspension.

In Palestine, the 2006 legislative elections, won by Hamas, marked a turning point that triggered conflict with Fatah. This conflict led to a geographic political division and the suspension of the Basic Law (Sayigh, 2010).

In Lebanon, the presidential vacuum following the end of Michel Suleiman's term in 2014 resulted in a political stalemate lasting more than two years, paralyzing government institutions due to sectarian disputes (Baumann, 2016).

Consequences of Constitutional Suspension

The suspension of constitutional provisions results in severe political and legal repercussions.

In Palestine, the suspension of the Basic Law has weakened constitutional institutions, exacerbated internal tensions, and negatively impacted public rights and freedoms. This has had devastating effects on Palestinian society at all levels, hindering state-building efforts and obstructing political stability (Abu Amr, 2009).

In Lebanon, constitutional suspension has led to persistent governmental paralysis and worsened the economic crisis, further destabilizing the country and complicating the resolution of sectarian conflicts (Baumann, 2016). Prolonged suspension undermines the rule of law and erodes trust in political and judicial systems, deepening the crisis of social and political stability in both countries (Hoigilt, 2016; Roumie, 2020).

Legal Analysis

Laws, Constitutional Procedures, and the Role of the Judiciary

The constitutional systems in Palestine and Lebanon face significant challenges in implementing laws and constitutional procedures.

In Palestine, the constitutional system is based on the 2003 Amended Basic Law. However, political divisions hinder its implementation and paralyze constitutional institutions. Amendments to the Basic Law were often reactionary responses to crises rather than part of comprehensive reform efforts (Brown, 2020; Khalil, 2013).

In Lebanon, the sectarian system perpetually disrupts the constitutional process, with sectarian disputes impeding government formation and presidential elections (Salamey & Payne, 2020).

Regarding the judiciary, Palestine's judicial system suffers from politicization and political interference, limiting its ability to uphold the rule of law despite constitutional guarantees of judicial independence (Jamal, 2009; Milton-Edwards & Farrell, 2024). In Lebanon, despite constitutional provisions for judicial independence, sectarian and political interference undermines the courts' effectiveness in safeguarding the constitution (Krayem, 2021; Norton, 2021).

Key Challenges Facing Constitutional Systems in Palestine and Lebanon

1. Internal Divisions and Political Conflicts

Internal divisions and political conflicts are among the most significant challenges confronting constitutional systems in both Palestine and Lebanon.

In Palestine, the ongoing conflict between Fatah and Hamas since 2007 has resulted in political and geographic divisions, leading to the formation of parallel governments in the West Bank and Gaza Strip. This division has weakened constitutional institutions, exacerbated legal and

administrative gaps, and disrupted the implementation of the Basic Law, undermining the political system's effectiveness (Kovács, 2023).

In Lebanon, the political system relies on delicate balances among religious sects, which perpetuate ongoing power struggles. These balances frequently obstruct government operations and delay critical political decisions, such as government formation and presidential elections. These internal conflicts complicate constitutional implementation and weaken the effectiveness of constitutional institutions (Salamey & Payne, 2020).

2. External Influences and International Interventions

External interventions play a significant role in destabilizing constitutional systems in both countries.

In Palestine, the political system heavily depends on international aid, often tied to specific political agendas, which affects Palestinian sovereignty and complicates political and constitutional matters (Rubin, 2009). Additionally, Israeli occupation poses a significant challenge to the Palestinian constitutional system through policies aimed at undermining the Palestinian Authority and disrupting its operations.

In Lebanon, regional powers such as Iran and Saudi Arabia directly interfere in domestic affairs by supporting specific factions within the country. These interventions deepen sectarian divisions, paralyze constitutional institutions, weaken law enforcement, and exacerbate political crises (Krayem, 2021).

3. Weakness of Constitutional and Judicial Institutions

Both Palestine and Lebanon suffer from weak constitutional and judicial institutions, hindering the application of the constitution and increasing the likelihood of its suspension.

In Palestine, the Supreme Constitutional Court was established to enhance constitutional oversight. However, its decisions are often politicized and lack independence, limiting its effectiveness in enforcing the rule of law (Jamal, 2009).

In Lebanon, although the constitution guarantees judicial independence, political and sectarian interference frequently restricts the courts' operations and their ability to review and protect the constitution. As a result, judicial decisions are often unable to fully enforce the rule of law, exacerbating constitutional instability in the country (Norton, 2018).

4. Lack of Political and Constitutional Reforms

Both countries face significant challenges due to the absence of effective political and judicial reforms.

In Palestine, the Palestinian Authority lacks the political will to implement comprehensive reforms or amendments to the Basic Law. This leaves constitutional institutions weak and unable to address current challenges. Political factions prefer maintaining the status quo over confronting the difficulties associated with reform (Milton-Edwards & Farrell, 2024).

In Lebanon, there is an urgent need to reform the sectarian system. However, political forces remain entrenched in their own interests, obstructing any serious attempts at reform. This perpetuates political paralysis and ongoing constitutional suspension, weakening the state's ability to address internal and external challenges (Jeong & Salamey, 2021).

Discussion of Challenges

The constitutional systems in Palestine and Lebanon face a range of complex, intertwined challenges that directly affect their stability and effectiveness. These challenges can be analyzed by examining their causes, potential consequences, and how they interact with one another.

1. Internal Divisions and Political Conflicts

Internal divisions, such as the ongoing conflict between Fatah and Hamas in Palestine, do not only weaken constitutional institutions but also lead to the formation of parallel governments operating independently. This deepens the political divide and disrupts efforts to unify authority.

This situation paralyzes the effectiveness of the political system and governance, negatively impacting citizens' rights and freedoms. It leaves devastating effects on Palestinian society across all dimensions, threatens Palestinian identity, and hinders the people's ability to achieve independence and develop a stable governing system.

In Lebanon, sectarian conflicts reflect a fragile political system heavily reliant on sectarian balances. These balances make it challenging to implement effective constitutional reforms. The conflicts perpetuate political stagnation and prevent decisive action that could improve the country's political and economic situation.

Both contexts underscore the destructive role of internal divisions and political conflicts, which not only hinder constitutional and judicial effectiveness but also exacerbate societal fragmentation and institutional decay.

2. External Influences and International Interventions

External interventions, whether through international aid in Palestine or support for different political factions in Lebanon, exacerbate internal divisions and complicate constitutional situations.

In Palestine, these interventions subject the political system to external pressures, weakening national decision-making sovereignty and intensifying existing constitutional challenges.

In Lebanon, regional interventions aggravate sectarian divisions and lead to paralysis in constitutional institutions. Such interventions deepen the political crisis and further complicate the application of the constitution, making it increasingly difficult to achieve political stability.

3. Weak Constitutional and Judicial Institutions

The weakness of constitutional and judicial institutions represents a fundamental challenge, as these bodies are responsible for implementing the constitution and protecting the rule of law.

In Palestine, the lack of independence of the Supreme Constitutional Court reflects the extent of political influence on the judiciary, diminishing its ability to address constitutional challenges.

In Lebanon, political and sectarian interference undermines the judiciary's effectiveness and erodes trust in the judicial system. This institutional weakness reinforces constitutional instability and hinders the achievement of justice.

4. Absence of Political and Constitutional Reforms

The lack of reforms is a key factor in the persistence of constitutional crises in both countries.

In Palestine, hesitation to implement constitutional reforms leaves the system vulnerable to internal and external challenges. Political factions prefer maintaining the status quo rather than risking significant changes.

In Lebanon, the sectarian system urgently requires reforms, but entrenched sectarian interests obstruct any progress. The absence of reforms perpetuates political paralysis and weakens the state's ability to address challenges.

Potential Solutions

To address these challenges, efforts should focus on:

1. Promoting National Dialogue: Encouraging political reconciliation and national unity.
2. Strengthening Constitutional and Judicial Institutions: Ensuring their independence to enhance their ability to protect the constitution and enforce the rule of law.
3. Reducing External Interventions: Limiting foreign influence that deepens internal divisions and complicates governance.
4. Implementing Constitutional Reforms: Developing reforms aimed at improving governance effectiveness, enhancing the political system, and safeguarding the rights of all citizens regardless of their organizational or political affiliations.

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