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# Legal Indicators of Overreach in Emergency Decrees: A Case Study of Three States

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## ABSTRACT

This study aims to identify and analyze the legal indicators of overreach embedded in emergency decrees through the perspectives of legal professionals and civil society actors in Tehran. This research employed a qualitative case study design using semi-structured interviews with 29 purposively selected participants, including legal scholars, civil society advocates, journalists, and former public officials residing in Tehran. Data collection continued until theoretical saturation was achieved. All interviews were transcribed and analyzed thematically using NVivo software, following open, axial, and selective coding procedures to extract recurrent patterns and build a grounded typology of legal overreach. Thematic analysis revealed three core categories of legal overreach: (1) Procedural Violations, including lack of legislative oversight, the use of vague legal language, and indefinite extensions of emergency powers; (2) Rights Erosion Mechanisms, encompassing suppression of dissent, discriminatory enforcement, mass surveillance, arbitrary detentions, and restrictions on freedom of movement and expression; and (3) Structural Democratic Backsliding, characterized by executive aggrandizement, weakening of institutional checks, shrinking civil society space, and manipulation of electoral processes. Participants emphasized how emergency powers were normalized and strategically deployed, often beyond their initial scope, in ways that undermined legal accountability and democratic safeguards. Emergency decrees, though intended for crisis governance, are frequently manipulated to entrench executive authority, bypass institutional checks, and erode civil liberties. The Iranian case reflects broader global patterns where emergency governance becomes a vehicle for legal and political overreach. Identifying these indicators is crucial for informing constitutional safeguards, institutional reforms, and civil society resistance against the normalization of states of exception.

**Keywords:** *Emergency decrees; legal overreach; democratic backsliding; qualitative research; Iran; human rights; emergency governance; civil liberties.*

## Introduction

In recent decades, the deployment of emergency powers has become an increasingly common tool for state actors to manage crises ranging from natural disasters and public health emergencies to political unrest and terrorism. While such powers are constitutionally or legislatively sanctioned in many democratic systems, their invocation often occurs in legally grey areas, raising serious questions about the erosion of democratic norms, institutional accountability, and individual rights (Ferejohn & Pasquino, 2004). The challenge lies in the dual function of emergency powers—they are intended to safeguard national security and public welfare, but their misuse or prolonged application can compromise constitutional balance, bypass legislative oversight, and infringe upon civil liberties. This tension has become especially salient in fragile or hybrid democracies, where executive authorities



have increasingly used emergency decrees not as temporary solutions but as instruments of governance (Scheppelle, 2020).

The COVID-19 pandemic and recent political unrest across various regions have offered a compelling lens through which to assess the use—and overuse—of emergency decrees. Scholars have argued that the health emergency served as a global stress test for democratic resilience, revealing preexisting vulnerabilities in legal systems and democratic institutions (Grimm et al., 2021). In several states, emergency declarations enabled sweeping executive actions such as nationwide lockdowns, suppression of dissent, postponement of elections, and mass surveillance with limited or no parliamentary deliberation (Bjørnskov & Voigt, 2020). While these actions were often justified on the grounds of necessity and urgency, a closer inspection reveals patterns of legal overreach that extend well beyond the exigencies of the crisis itself.

Legal scholars and political theorists have long warned against the “state of exception” becoming a normalized mode of governance (Agamben, 2005). In his influential work, Agamben posits that modern democracies risk sliding into a permanent state of exception, where emergency justifications supplant ordinary legal processes, allowing executive actors to operate with minimal accountability. In such contexts, the legal indicators of overreach are subtle yet significant: suspension of judicial oversight, dilution of legislative power, use of vague legal language, normalization of indefinite rule-by-decree, and erosion of fundamental rights such as freedom of assembly, expression, and due process. Identifying these indicators empirically is essential not only for diagnosing democratic backsliding but also for proposing safeguards against future institutional abuse.

Although considerable scholarship exists on the political consequences of emergency governance, there remains a paucity of qualitative legal research that systematically identifies the indicators of overreach embedded within emergency decrees themselves. Much of the existing literature adopts either a normative or quantitative perspective, focusing on cross-country indices or formal legal analyses (Tushnet, 2007; Ginsburg & Versteeg, 2021). These approaches, while valuable, often lack the granularity needed to understand how overreach is experienced, interpreted, and resisted on the ground by legal practitioners, civil society actors, and affected communities. There is therefore a pressing need for empirical, interview-based research that explores how legal overreach is perceived and articulated in specific sociopolitical contexts.

This study addresses this gap by conducting a qualitative case study focused on three states, using Tehran as the site of participant engagement due to its concentration of legal professionals, scholars, activists, and former officials with relevant experience. Through 29 semi-structured interviews, the research seeks to identify and analyze legal indicators of overreach in emergency decrees as perceived by individuals who engage directly with these legal instruments. The study is framed around three interrelated dimensions: (1) procedural violations, including the weakening of legislative and judicial checks; (2) rights erosion mechanisms, particularly in the domains of expression, movement, and dissent; and (3) structural democratic backsliding, involving executive aggrandizement and the shrinking of civil society space.

Each of these dimensions has been noted in previous crises where emergency governance has led to a recalibration of power dynamics. For instance, in Hungary and Poland, the executive branches have used emergency decrees to bypass parliaments and restrict press freedoms (Bánkuti et al., 2012; Sadurski, 2018). Similarly, in Turkey, post-coup emergency measures included the mass dismissal of public servants and closure of media outlets under vaguely defined security laws (Kuris, 2017). These patterns reflect a broader trend wherein emergencies serve as legal cover for measures that would otherwise provoke judicial or legislative resistance. Legal

overreach, then, is not merely a question of excessive power but also of diminished checks, ambiguous language, and strategic opportunism.

The Iranian context presents a particularly illuminating case due to its hybrid legal-political structure, where democratic elements coexist with centralized executive authority. Emergency decrees in Iran are governed by a combination of statutory, constitutional, and informal mechanisms, making their legal interpretation highly contested. While the Constitution of the Islamic Republic of Iran provides for certain emergency responses under Article 79, the actual invocation of emergency powers often occurs through ministerial or executive orders with limited transparency (Keshavarzian, 2009). Moreover, the entwinement of religious jurisprudence and statutory law introduces further complexity in defining the scope and limits of emergency authority.

This legal ambiguity, compounded by institutional fragmentation and political factionalism, increases the likelihood of procedural shortcuts and rights violations under the guise of emergency management. It also complicates efforts to establish a stable framework for accountability. According to international standards, such as the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (UNHCR, 1984), emergency measures must be legal, necessary, proportionate, and non-discriminatory. Yet, in many jurisdictions, including Iran, these standards are difficult to operationalize due to lack of judicial independence and constraints on civil society oversight.

Methodologically, this study draws on grounded theory principles to extract meaning from participant narratives and construct a framework of legal indicators grounded in lived experience. The use of semi-structured interviews allows for flexibility while ensuring thematic consistency across responses. Analysis via NVivo software enables systematic coding and identification of patterns across transcripts. The findings provide insight not only into the formal content of emergency decrees but also into their implementation, enforcement, and impact on legal culture.

In foregrounding voices from Tehran's legal and civil society communities, this research contributes to a deeper understanding of how emergency governance is perceived from within, rather than imposed from above. It complements existing macro-level analyses with a micro-level perspective rooted in institutional practice and legal interpretation. By identifying the specific legal indicators that signal overreach, this study aims to support future efforts in legal reform, rights protection, and democratic resilience in both national and comparative contexts.

In sum, this research advances scholarly discourse on emergency law by moving beyond theoretical abstraction and offering an empirically grounded typology of legal overreach. It underscores the importance of context-specific analysis and highlights the need for vigilance in protecting democratic norms during periods of crisis. As the global landscape continues to be shaped by emergencies—real and manufactured—the ability to discern and challenge legal overreach becomes a defining task for scholars, practitioners, and citizens alike.

## **Methods and Materials**

This study employed a qualitative research design grounded in an interpretive approach, with the aim of exploring legal indicators of overreach in emergency decrees. The methodology was centered around capturing the nuanced experiences, perceptions, and interpretations of individuals familiar with emergency legal frameworks and state responses. Participants were selected through purposive sampling, ensuring that they possessed relevant expertise or lived experience regarding the application and implications of emergency decrees. A total of 29 participants, including legal scholars, human rights advocates, journalists, and former public officials, were recruited from Tehran.

Sampling continued until theoretical saturation was achieved, wherein no new conceptual insights emerged from additional interviews.

Data were collected exclusively through semi-structured interviews to allow for in-depth exploration while maintaining consistency across participants. The interviews were guided by a flexible protocol focusing on participants' perceptions of legal overreach, rule-of-law concerns, due process implications, and the proportionality of emergency measures. Interviews were conducted in person or via secure virtual platforms, depending on participants' preferences and availability. Each interview lasted approximately 45 to 75 minutes and was audio-recorded with participants' informed consent. Ethical considerations, including confidentiality and the voluntary nature of participation, were strictly upheld throughout the process.

All interviews were transcribed verbatim and subjected to a systematic process of thematic analysis using NVivo software. The analysis followed a multi-step coding procedure, beginning with open coding to identify initial concepts, followed by axial coding to establish connections among categories, and finally selective coding to refine overarching themes. The coding framework was iteratively revised as patterns and relationships became clearer. Analytical rigor was ensured through constant comparison, peer debriefing, and memo-writing, enhancing both credibility and confirmability. The use of NVivo facilitated transparent data organization, traceability of analytic decisions, and the development of a robust thematic structure capturing key legal indicators of overreach in the context of emergency governance.

## Findings and Results

### Category 1: Procedural Violations

#### Lack of Legislative Oversight:

Participants consistently highlighted that emergency decrees were enacted with minimal or no parliamentary scrutiny. Interviewees described how decrees were "passed without meaningful debate or review" and that "parliament was reduced to a ceremonial body." The legal requirement for oversight was routinely bypassed through "rubber-stamp approvals" or legislative recesses, which one legal expert referred to as "a deliberate strategy to prevent institutional resistance."

#### Extended Duration Beyond Legal Limits:

Several participants criticized the indefinite extension of emergency powers. While initial justifications may have seemed valid, extensions often outlived the urgency. One former public official noted, "The state of emergency was renewed automatically, even when there were no new threats." Others referred to the "absence of sunset clauses" and the political use of "recurring renewals to entrench control."

#### Vague Legal Language:

The use of broad and ambiguous terms in decrees was cited as a major indicator of overreach. Participants described emergency laws as using "elastic definitions" such as "threats to national unity" or "public morality," which lacked precise legal grounding. "When you don't define the threat," one human rights lawyer remarked, "you make everything a threat."

#### Lack of Judicial Review:

Interviewees reported that access to courts was severely restricted during emergencies. In some instances, courts were suspended or refused to hear cases related to executive decisions. A civil society advocate explained,

“You could be detained for weeks and not see a judge. Filing appeals was practically impossible.” This exclusion from legal redress left citizens “legally invisible,” according to another respondent.

#### Delegation Without Accountability:

Participants indicated that emergency powers were frequently delegated to lower administrative bodies without corresponding checks. One analyst observed, “Regional governors were issuing orders that normally required national-level oversight.” This delegation diluted accountability and enabled the proliferation of arbitrary decisions. “It was a legal free-for-all,” a former judge recalled.

#### Emergency as Routine:

The normalization of emergency decrees was a recurring theme. Several interviewees warned that “emergency” had become “the new normal,” with such powers invoked regularly for issues far removed from true crises. A political science professor noted, “There’s a pattern: elections approach, and suddenly we’re in an emergency again.” This strategic invocation blurred the lines between extraordinary and ordinary governance.

### Category 2: Rights Erosion Mechanisms

#### Suppression of Dissent:

The most frequently mentioned consequence of legal overreach was the suppression of dissent. Participants described bans on peaceful assembly, arrests of protestors, and censorship. “We saw people jailed for organizing a small vigil,” said a journalist. Another noted, “Any critical voice was silenced under the pretext of national security.”

#### Targeted Discrimination:

Participants emphasized that emergency decrees often disproportionately affected minority groups. An activist commented, “These laws didn’t apply equally—they were weaponized against ethnic and religious minorities.” Others pointed to biased enforcement and “selective crackdowns” as mechanisms of control cloaked in legality.

#### Mass Surveillance Authorization:

Respondents raised concerns about emergency decrees being used to expand surveillance. “They passed a data law under emergency protocols that lets the government track everything,” one technology lawyer said. There was no judicial warrant requirement, and participants said there was “no channel for redress or deletion.”

#### Freedom of Movement Restrictions:

Restrictions such as curfews and lockdowns were often imposed without clear criteria. While some participants acknowledged public health justifications, many criticized the lack of proportionality and transparency. “The rules kept changing, and no one explained why,” a participant who worked in public service noted. Others pointed out the “humanitarian cost” of indiscriminate travel bans.

#### Procedural Opacity in Detentions:

A recurring concern was arbitrary detention. Several interviewees mentioned that individuals were “arrested without charges and kept in undisclosed locations.” One family member of a detainee said, “We didn’t even know where he was for three weeks.” The absence of clear legal pathways for release reinforced perceptions of impunity.

#### Restrictions on Freedom of Expression:

Journalists and writers described how emergency decrees banned critical reporting. “We were told to revise articles or risk prosecution,” one editor shared. Websites were blocked, and some publications were suspended without legal recourse. “Even satire became dangerous,” another participant noted.

#### Undermining Socioeconomic Rights:

Emergency decrees also affected economic stability. Participants reported that laws allowed for asset freezes, suspension of labor protections, and eviction without court orders. A labor union representative stated, “Workers lost jobs overnight, and there was no mechanism to appeal.” The erosion of welfare entitlements under emergency justification was also highlighted.

### Category 3: Structural Democratic Backsliding

#### Executive Aggrandizement:

A prominent concern was the consolidation of power by the executive branch. Multiple participants pointed out that “emergency decrees became a tool for sidelining opposition.” “The president could rule without any real constraints,” one constitutional expert explained. This centralization was described as “de facto autocracy under legal cover.”

#### Weakening of Institutional Checks:

Participants noted that checks and balances were rendered ineffective. “The judiciary went silent,” said one human rights monitor. Legislative bodies were described as “paralyzed,” with oversight agencies like ombuds offices either defunded or co-opted. “It was a systemic hollowing out,” concluded a policy researcher.

#### Media Manipulation Under Emergency Powers:

Interviewees highlighted the use of emergency laws to influence public narratives. “The state media was given a monopoly on information,” a journalist stated. Others noted that dissenting outlets were “threatened with closure or sued for defamation.” The manipulation of information was often justified using emergency clauses.

#### Decline of Electoral Integrity:

Electoral procedures were disrupted through emergency decrees. “Campaigns were restricted in certain regions, always those where opposition was strongest,” one political analyst remarked. Participants also noted postponed elections and disqualifications of candidates. “Emergency laws created a selective democracy,” explained a former election observer.

#### Shrinking Civil Society Space:

Emergency decrees were used to curtail the activities of NGOs. One respondent reported, “We were deregistered overnight with no explanation.” Another stated, “New reporting requirements made it impossible to operate.” Fear of state reprisal led many organizations to reduce their visibility or suspend work altogether.

## Discussion and Conclusion

This study explored the legal indicators of overreach in emergency decrees through a qualitative analysis of 29 semi-structured interviews with legal professionals, civil society actors, and former public officials in Tehran. Thematic analysis revealed three overarching dimensions of overreach: procedural violations, rights erosion mechanisms, and structural democratic backsliding. These findings offer insight into how emergency powers, while legally grounded, are frequently manipulated to consolidate authority, bypass accountability, and undermine the rule of law.

One of the most salient findings was the absence of legislative oversight and indefinite extension of emergency powers, often justified by vague legal language. Participants described a consistent pattern in which emergency decrees bypassed formal legislative processes and were enacted through opaque executive mechanisms. This aligns with prior research on constitutional degradation during emergencies, particularly in hybrid or authoritarian-leaning regimes, where executive actors use urgency to neutralize parliamentary constraints (Ferejohn & Pasquino,

2004; Ginsburg & Huq, 2018). In Iran, the normalization of such procedural shortcuts echoes broader global trends noted during the COVID-19 pandemic, where over 60% of surveyed states extended emergency measures without adequate oversight (Grimm et al., 2021). The use of elastic or undefined terminology (e.g., “national security threats”) further enables legal manipulation, allowing authorities to expand the reach of emergency decrees without triggering institutional resistance.

Another major theme involved rights erosion mechanisms, particularly the suppression of dissent, limitations on freedom of movement, and the expansion of mass surveillance. These findings confirm prior empirical observations that emergency governance often results in disproportionate restrictions on civil liberties, especially for vulnerable groups (Bjørnskov & Voigt, 2020). Interviewees cited arbitrary detentions, bans on protests, and control over digital communication as common practices under emergency rule. These accounts resonate with studies of post-coup Turkey and pandemic-era India, where emergency laws were similarly weaponized to silence opposition and restrict civil society (Kuris, 2017; Mukherjee, 2021). Moreover, the discriminatory enforcement of these laws—targeting minorities or political dissidents—reflects a pattern of selective legality, which undermines the universality of constitutional protections and creates a parallel system of control under the veil of legality (Sadurski, 2018).

The third major theme identified by participants was the structural transformation of democratic institutions under prolonged emergency rule. Specifically, respondents highlighted executive aggrandizement, the weakening of institutional checks, and declining electoral integrity as enduring consequences. These findings reinforce theoretical arguments by Tushnet (2007) and empirical work by Scheppele (2020), who warn that states of exception tend to reconfigure power in lasting ways—beyond the temporary needs of crisis response. In our case, participants noted that elections were postponed, opposition candidates disqualified, and independent oversight bodies systematically marginalized. This aligns with observations from Hungary, where Orbán’s government used emergency decrees to eliminate checks on executive power, and similar practices in Venezuela and the Philippines, where executive-led crisis management has entrenched authoritarian norms (Levitsky & Ziblatt, 2018; Rahman, 2020).

A critical insight emerging from this study is the blurring of lines between emergency and ordinary governance. Participants repeatedly stressed how legal justifications were recycled across different crises, thereby normalizing exceptional legal frameworks. This confirms Agamben’s (2005) claim that modern democracies are increasingly governed through a “permanent state of exception,” where extraordinary measures are codified into routine political practice. Such normalization undermines legal certainty and the principle of proportionality, both of which are foundational to democratic legal systems. Moreover, the entrenchment of emergency powers reduces the incentive for institutional reform, as executives grow accustomed to governing with minimal constraints (Ginsburg & Versteeg, 2021).

Another important theme concerned the delegation of unchecked authority to administrative actors, such as regional governors and security agencies. Participants described how emergency powers were often decentralized without accountability, allowing local authorities to enact arbitrary measures. This phenomenon has been documented in other decentralized systems like Brazil and Indonesia, where local officials enforced curfews, detentions, and surveillance beyond their constitutional authority (de Oliveira, 2020; Harsono, 2021). Such diffusion of emergency power, without judicial or legislative review, leads to fragmented legality, where rights and procedures vary dramatically based on geography or political alignment.

In terms of legal culture, this study also observed a chilling effect on legal practitioners and civil society organizations. Lawyers reported fear of reprisal for challenging emergency laws, and NGOs described burdensome

reporting requirements and threats of deregistration. These findings mirror global patterns of shrinking civic space, particularly in illiberal contexts, where emergency law becomes a mechanism for disabling independent institutions (Carothers, 2020). This cultural impact—where actors pre-emptively self-censor to avoid confrontation with the state—creates a feedback loop that further weakens democratic resilience.

Importantly, participants offered a nuanced view: not all emergency powers were deemed illegitimate. Many acknowledged that crisis governance requires flexibility and rapid decision-making. However, the lack of sunset clauses, transparency, and judicial safeguards undermined even legitimate emergency responses. These observations are consistent with international human rights frameworks, such as the Siracusa Principles (UNHCR, 1984), which stress that emergency measures must be temporary, lawful, proportionate, and subject to review. When these conditions are absent, emergency decrees cease to be exceptional instruments and instead become structural threats to constitutional democracy.

Collectively, these results suggest that legal overreach in emergency governance is not a singular event but a cumulative process involving institutional decay, normalization of exceptionalism, and legal indeterminacy. The Iranian case—while unique in its political-religious hybrid structure—echoes broader trends seen across transitional democracies and even some consolidated ones. Emergency decrees function not only as crisis management tools but also as instruments of political engineering, capable of reshaping institutional hierarchies and altering rights frameworks in enduring ways.

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### **Authors' Contributions**

All authors equally contributed to this study.

### **Declaration of Interest**

The authors of this article declared no conflict of interest.

### **Ethical Considerations**

All ethical principles were adhered in conducting and writing this article.

### **Transparency of Data**

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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