



## **The Legal Effect of the Head of State's Objection to Draft Laws in Parliamentary Systems**

**Jasim M. Shallal**

Faculty of Law, Damascus University, Department of Public Law

Received: November 8, 2021; reviews: 2; accepted: June 29, 2022.

### **Abstract**

The right to object to bills is one of the most important means of mutual control between the legislative and executive authorities in the parliamentary system, in addition to its important role in achieving the foundations of balance between them. Since it is not only considered a shield to protect the privileges of the executive authority from the abuses of the legislative authority, but it constitutes a sufficient guarantee against the enactment of improper or defective laws, the legislature is not immune to error. The right to object to bills is the constitutional right owned by the head of state as head of the executive authority, and accordingly it authorizes him to refrain from ratifying bills approved by the Legislative Council, which would prevent or delay the issuance of the law permanently, and therefore it is considered a dangerous and effective weapon in the work Parliament, not only by resorting to it, but merely threatening to use it may suffice and cause Parliament to reverse its position. Although the purpose of approving the right of objection is to protect the nation from the enactment of improper or defective laws, the abuse of this right by the president may, in turn, lead to the abort of many good and necessary legislations for the renaissance of this nation, which confirms the need to encompass the use of this right more closely. Some guarantees that prevent its abuse, especially in light of the parliamentary system that exempts the head of state from any political responsibility.

### **Keywords**

The head of state - the parliamentary system - the right of ratification - the right to object to bills

**JEL Classifications:** J11, F43

### **1. Introduction**

It is well known that the most important thing that distinguishes the parliamentary system from other political systems is how it determines the

relationship of the legislative and executive branches with each other, it does not separate the two powers in question rigidly as in the presidential system, and does not confuse them as in the council system (the Government of the Parliamentary Assembly), but is based on the flexible separation based on cooperation and balance, particularly between the legislative and executive branches, so that the legislative process is shared between the two authorities, that In specific cases, the executive branch is entrusted with acts within the scope of legislative work, including the right to propose laws and to issue regulations of various kinds.

While the above is a manifestation of cooperation between the legislative and executive branches, the power to veto bills passed by Parliament is a means of mutual control between the two powers and maintaining a balance between them, since they are not only a shield for protecting the privileges of the executive from the excesses of the legislature, but also a sufficient guarantee against the enactment of improper or flawed laws, the legislator is not a prostitute or abuse of power, as this right often leads to direct parliament's attention to matters that it had overlooked when the bill was passed.

There is no doubt that the authority of the Head of State to veto bills passed by the Legislative Council is a dangerous and very influential weapon on the work of Parliament, not only by resorting to its use, but simply waving it may do the trick and force Parliament to reverse its position, so the right of objection is the most important among all checks and balances in the parliamentary system.

Given the seriousness of the right of the Head of State to object and fear of abuse of this right, which in turn may lead to the abortion of many good and necessary legislativeities for the renaissance of this nation, it emphasizes the need to inform the use of this right with the greatest guarantees that prevent its abuse, so the constitutional legislator in various constitutional systems has been keen to find solutions whereby the president's objection is overcome and dropped, where the legislature can overcome it by re-establishing it by a majority that concerns constitutions by defining it.

The recognition of the right of the Head of State to veto bills passed by the Shariah Council would make this right an effective tool for the President, as it would prompt Parliament to take greater care of the content of the bills sent to the President for ratification.

### **Problematic Research**

The research on the issue of the right of the Head of State to veto bills raises considerable debate, especially with regard to the statement of the legal nature of the right to object; is it legislative or executive in nature? Is the achievement of mutual control and balance between the legislative and executive branches a justification for giving the Head of State such a dangerous weapon, which may equal the will of the President with the will of parliament elected by the people and expressed by their will? Is the Head of State wrong or abusive? Based on the above, this study will seek to answer the following questions:

1. What is the concept of the right to object and what is its legal nature and types? Is the right of ratification the same as the right of objection?
2. What is the constitutional framework for the right to veto bills in comparable constitutions?
3. What are the flaws that justify the head of state's right to veto bills?  
What are the legal implications of the right of objection? Do they vary by type?

### **The Importance of Research**

The importance of research is reflected in the great importance of the right to veto bills in both political and legislative life, so that it is one of the most important traditional rights enjoyed by the Head of State in the legislative process under the parliamentary system, so constitutions are keen to regulate this right as an important element of balancing the legislative and executive branches, it is not enough to respect the principle of separation of powers to initiate all the powers of competence established by the Constitution, but they must be armed to ensure that they stop the encroachment of other authorities, therefore the need to complement the principle of separation of powers with another principle of balance and mutual control arose.

### **Research Objectives**

This research seeks to achieve several objectives, perhaps the most important of which are:

- 1- Research into what the right of objection is and study its types and the provisions governing it.
- 2- To indicate the right to ratify and to look at the most important points of its right of objection.
- 3- Looking into the reasons why the Head of State has refrained from ratifying the bills.
- 4- Highlighting the legal (projection and conciliation) implications of the exercise of the right of the Head of State to veto bills.

### **Research Methodology**

In our research, we will follow this comparative analytical method, as the optimal method of legal research, where we will analyse the right of objection and its types and justifications to its legal implications, comparing the right of objection between the legislation in question and the treatment of the constitutional regulation of this right in states with a parliamentary system.

### **Search Plan**

To brief the subject of the research comprehensively, we chose to divide the study into an introduction, two researchers and a conclusion containing the most

important findings and recommendations that are the result of this legal scientific research, as follows:

First: What is the right to veto bills

The first requirement: the concept of the right of objection and its types

Demand II: The concept of the right to ratification and its distinction from the right to object

The second topic: the justifications for the failure of the head of state to ratify the bills and their implications

Demand 1: Reasons why the Head of State has failed to ratify the bills

Requirement 2: The legal implications of the failure of the Head of State to ratify the bills

## **First Research**

### **What is the Right to Veto Bills?**

#### **Boot and Split**

There is no doubt that the opposition to laws has an effective and influential role on the part of the President on the work of the legislature, not only by resorting to its use, but simply waving it or threatening to use it may do the trick, forcing Parliament to reverse its position and respond to the President's wishes to amend, add or delete a particular paragraph in the disputed bill. This veto power is not only a means of protecting the privileges of the executive from the excesses of the legislature, but also constitutes an additional guarantee against the enactment of improper or flawed laws due to haste, negligence or otherwise; the legislator is not infallible from making a mistake, and therefore it was necessary to find real control over laws passed by the Legislative Council, by a body that differs in composition and competence, and which, according to its position, is moving away from the atmosphere of excitement and emotion that dominates parliamentary debates, Free from the partisan and nervous spirit that leads to the waste of the rights of political and religious minorities (Al-Bahri, 2008), the right of the Head of State to veto bills passed by the Legislative Council.

Based on the foregoing, our handling of this research will be divided into two main demands as follows:

The first requirement: the concept of the right of objection and its types

Demand II: The concept of the right to ratification and its distinction from the right to object

#### **The First Requirement: The Concept of the Right of Objection and Its Types**

In this requirement, we must first clarify the meaning of the right of objection, and then discuss the types of veto right, as follows:

## **Section 1: Definition of the Right of Objection**

### **First: Objection Language**

The objection is a single latin origin, meaning in English (Veto), and this vocabulary dates back to the beginning of the 17th century, and has no effect in the French academic dictionary.

### **Second: Objection is a Term**

The conventional meaning of the objection goes to rejection or prohibition, i.e. the right of the Head of State to reject bills approved by the legislature, and in this regard it is noted that the legislation did not establish a specific definition of the right of objection, but constitutional jurisprudence addressed this through a number of definitions that establish an accurate concept of the right of objection; The law was passed despite the objection of the Head of State (Khalil, 1979), and is also known as: "The right of the Head of State to delay the promulgation of the law and then return it to Parliament for a final decision after examining the objections of the Head of State".

It is noted on these definitions that they have limited the right to object to one type of objection, namely, the arrestary objection, while the objection is broader, so that there is another type of objection, namely, the absolute objection, which we will show in the second section of this requirement.

Others also defined it as "an authority that enables the Head of State to stop the law approved by Parliament", and this definition is taken into account, on the one hand, taking into account the subsequent objection to the law and neglecting the previous objection, i.e. objecting to bills, since the correct concept of objection is within the stages of the preparation of the law, and on the other hand it also did not include all types of objection, as it was limited only to proportional objection without absolute objection.

The objection can be defined as "that constitutional right or the authority of a branch of government to refuse to approve the procedures proposed by the other branch, in particular the authority of the head of the executive branch to reject the bill passed by the legislative branch, thus preventing or delaying the conversion of such a bill into a final applicable law" (Al-Bahri, 2005/2006).

Through previous definitions, we conclude that the right of objection is the primary tool for balancing regulations based on the principle of flexible separation of powers, so that the executive branch represented by the Head of State can return the legislature to the path in which the public interest is achieved, and therefore represents the constitutional authority of the Head of State to reject the bill approved by Parliament, thereby leading to the final termination or temporary disruption of the bill pending the termination of the bill. The competent authority makes its final decision.

## **Section 2: Types of Veto**

Jurisprudence agrees that the right of objection is either absolute, or relative:

### **Absolute veto:**

It is a right characterized by my final and final right, where the objection of the Head of State leads to the grave of the bill once and for all. There is no constitutional means for parliament to overcome it, and when using this right, the Head of State does not abide by the need to express his objection or to express it in certain periods of time; This system, as it is no longer used in the states that kept it.

It should be noted that the United Kingdom, the cradle of the traditional parliamentary system, has taken this kind of objection, giving the King the right to veto the bills with a projection that leads to the grave of the bill once and for all, and has been to accept or reject the bill before it without the possibility of overcoming it.

### **2. Relative (arrest) veto:**

If the absolute right of objection or what has been termed a refusal to ratify is a grave of the law, the relative objection is quite the opposite, as parliament can overcome this objection by re-approving the law in accordance with the conditions set by the Constitution, and the President of the Republic usually adheres to the use of this right for periods of time that constitutions are concerned with determining, and he is obliged to state the reasons for his objection to the possibility of its appreciation and judgment (Al-Bahri, 2012).

It is worth mentioning that the relative objection has multiple images that differ in the extent to which the last word of parliament, where there are four images of this objection, which we will address as follows:

#### **1- Simple objection:**

It is a form of relative objection that does not require a strict majority of the President's objection, but requires simple approval, it did not request a special majority but is sufficient to approve the text of the ordinary majority in both houses to become final and must be issued (Sabri, 1949).

In this regard, the jurist (Carrie de Malper) went on to question this kind of objection when he said: "The right to request a second deliberation cannot be considered a contribution to the legislative process, since this privilege never constitutes an objection in the true sense of this expression, so the alleged or alleged presidential objection is in fact nothing more than a presidential licence to draw the attention of both houses to certain disadvantages that the executive

believes are appropriate to the procedures of the bill voted by parliament (Asfour, 1980).

This type of objection has been introduced by the constitutions of many States, for example, the Iraqi Constitution, which was in force in 2005 in the first parliamentary session of its effectiveness, as article (138/b) prohibits: (if the Presidency does not approve, laws and resolutions are returned to the House of Representatives for review of the objects, voted by majority, and sent back to the Presidency for approval), and this text concludes that if the Presidency objects for the first time On the bill, it requires a majority vote on the basis of article 138/b to overturn it. That is, it requires a regular majority.

## **2. Objection described:**

It is the most common picture among constitutions, and according to this objection the bill is returned to parliament indicating the reasons for the objection, in which case if parliament (one or two houses) approves the bill by a special majority determined by the Constitution that is more than the percentage required to vote on it the first time, the bill is approved and the head of state has no right to veto it again, (Asfour, 1980).

Among the constitutions adopted with this type of objection is the Permanent Iraqi Constitution 2005 at the first parliamentary session of its entry into force, which article (138/c) stipulates that: (if the Presidency does not approve laws and resolutions again within 10 days of their arrival, they will be returned to the House of Representatives, which has a three-fifths majority of its members, which is not subject to objection, and is approved), and this article indicates that if the Presidency does not approve them for the first time Second on the bill, parliament is required to drop this objection by a three-fifths majority, i.e. by a special majority.

## **Carrier interception:**

His image is that the power to decide the final decision on the fate of the law passed by Parliament and objected by the Head of State to a neutral third party other than Parliament, which is responsible for the dispute between the President and the President and The (Al-Bahri, 2012), is either represented by the people so that they can express their opinion by popular referendum of acceptance or rejection and then called (by objection the popular carrier), or represented by a political body called the objection then (objection to a political body) (O. H. Fahmy, 1980).

Based on the foregoing, we conclude that the objection has two types, either absolute or relative, and perhaps the criterion of distinction between them lies in the extent to which Parliament is able to overcome the President's objection. If Parliament is able to lift the impact of the objection by re-approving the bill by a majority determined by the Constitution, there is a relative objection, but if it

cannot and the objection is able to cross the bill once and for all, this objection is absolute, in addition to that the relative objection is necessary. The Head of State has raised the objection and submitted it within periods specified by the Constitution, unlike in the absolute objection that does not require it.

## **Demand II: The Concept of the Right to Ratification and Its Distinction from the Right to Object**

In this requirement, we will talk about what the right to ratify is, and then we will address the most important characteristics of the right to object to ratification, as follows:

### **Section 1: Definition of the Right to Certify**

Jurisprudence dealt with the definition of the right to ratification, as part of the jurisprudence defined it as: "The authority of the Head of State to participate in legislation by passing the law enacted by Parliament is that recognition without which the law cannot see existence and access" (Othman, 1952). We draw from this definition that he pointed out that the approval of the Head of State is on the laws enacted by Parliament, which is contrary to the nature of the legislative process, so that there is no ratification after the legislation, and that the objection after the legislation is only judicial, while the presidential objection is considered a stage of legislation, in addition to the fact that it was only taken with absolute objection and did not include proportional objection.

The other side of the jurisprudence also defined it as: "The approval of the legislation passed by parliament by the Head of State, if he does not ratify it, means that he objects to it"<sup>1)</sup> and in this direction the Iraqi constitutional legislator took article (77) of the Constitution in 2005, which stipulated within the powers of the Head of State that: (approves and issues laws enacted by the House of Representatives....) The same applies in Lebanon, where the Lebanese constitutional legislator stipulated in article 51 that: (The President of the Republic shall issue laws in accordance with the deadlines set out in the Constitution after they have been approved by the Council...).

We also see the same trend in the amended German Constitution of 1949, which states: (Laws enacted in accordance with the provisions of this Basic Law are ratified...).

However, the researcher disagrees with this trend, given that the term law, as is known in constitutional jurisprudence, is called the bill after its legislation has been completed and approved by parliament and then ratified by the Head of State and published in the Official Gazette, in which case it becomes part of the legal system, while the bill is still under consideration by parliament and the Head of State and has not been fully approved.

Accordingly, we conclude that the right to ratification is an integral part of the legislative process, a right of determination that makes the Head of State a

legislative member equal to Parliament, and his refusal to ratify results in the inability to pass the required legislation.

## **Section 2: The Nature of my Right to Certify and Object**

If it is difficult to separate the right of ratification from the right of objection because the one who has the ratification has the objection, it is the authority of the Head of State to ratify the laws that highlights its legislative role, and the fact that the right to ratification and the right of objection are two sides of the same coin, at least objectively.

Constitutional jurisprudence in this regard has been divided into two different directions; one is that the right to ratification is a legislative act, exercised by the Head of State as an inherent member of the legislature, which is an integral part of the legislative work, as the President's approval of the vote leads to the law's entry into force and promulgation, while disapproval of ratification leads to the permanent abortion of the law. 1987 p. 189) The right of objection is not considered part of the legislative work; it is an executive act exercised by the Head of State as a contributor to legislative work, because the will of the Head of State is not equal to that of parliament, but the will of the latter exceeds that of the Head of State, and accordingly, if Parliament insists on the bill it passed, it must be passed despite its objection. 1985, p. 304).

The other side of jurisprudence considers that the difference between these two rights lies in the fact that ratification is the right to decide and is therefore an absolute power, while the right of objection is a right of prohibition with a specific authority, which is supported by the jurist (Sabri, 1949).

The researcher considers that the right of ratification and the right of objection are two completely different means, where the researcher agrees with the view that the right of ratification is an integral part of the legislative process, considering that the bill does not acquire the status of the final legal rule except with the approval of the head of state on this bill, in addition to the fact that the application of the law depends on its ratification, if it refuses to ratify the bill the bill is repealed permanently and cannot be passed even if it is approved by parliament. Unanimously, therefore, the authority of the Head of State to ratify is absolute and not limited by another authority, while the right of objection is an executive right granted to the Head of Executive in order to show Parliament the shortcomings of the bill, so that his objection constitutes an additional guarantee against the enactment of improper or flawed laws due to haste, negligence or otherwise, and parliament is free to review the bill and correct or confirm its mistakes in this case by voting. It has a majority determined by the Constitution, so the right of objection is merely an arrest of bills, since the will of the Head of State is not equal to the will of the parliament representing the people and expressing its will.

Thus, we have finished studying what the right to object to the bills, where we discussed the concept and types of the right of objection, as we have outlined

the right to ratify as an integral part of the legislative process, and we also highlighted the most important points that distinguish the right of ratification from the right of objection, and then we will move in the second research to study the justifications for the failure of the Head of State to ratify the bills and their implications.

## **Second Research**

### **Justifications for the Failure of the Head of State to Ratify the Bills and Their Implications**

#### **Boot and Split**

It is well known that the law goes through a series of successive procedures before it sees the light of day integrated and achieved its legislative effects, and these procedures begin by proposing a particular bill and discussing it within parliament, and then voting on it and approving it in accordance with the conditions set by the constitutions, regulations and internal regulations of parliament, and then presenting the bill to the Head of State for issuance within a specified period of time; The Head of State found that the bill had some formal or substantive flaws, or that it had not achieved the objectives envisaged by the Government in its promulgation, that within a specified period of time it had the right to refuse to pass the law (Al-Bahri, 2012), which had one of the two legal implications; either this refusal would lead to the absence of the bill and its failure to come to light, or it might see the light of day after a series of procedures and votes, which we will address in the following demands:

Demand 1: Reasons why the Head of State has failed to ratify the bills

Requirement 2: The legal implications of the failure of the Head of State to ratify the bills

#### **Demand 1: Reasons why the Head of State Has Failed to Ratify the Bills**

Since the introduction of this approach by the late great jurist Dr. Abdul Razzaq al-Sinhoury in 1952, if there are to be five basic conditions or pillars of administrative decision: (jurisdiction, form, shop, reason and purpose) to be considered a legitimate administrative decision, so is the legislation, which must meet the same requirements or previous pillars in order to be considered constitutional legislation; Just as an administrative decision becomes illegal if one or more conditions of validity are null and void, the legislation is unconstitutional in the event that one or more of its pillars are nullified.

To conclude, the nullity of the bill, which may be a reason for the Head of State's failure to ratify it, can be traced back to formal and substantive nullity, which we will address in the study as follows:

## Section 1: Formal Causes

The formal reasons for violating the Constitution are that the rules of jurisdiction are violated in the promulgation of legislation, and in violation of the rules of form to be followed in its age;

### First: Violating the Rules of Jurisdiction

The idea of jurisdiction in constitutional law is linked to the principle of separation of powers, which aims to distribute powers between state bodies and regulate state action in a manner that prevents interference and friction between the authorities and does not attack the work of another authority (Jamal El-Din, 2004).

The jurisdiction is intended: (the inalienable legal capacity or ability of a public authority to take specific legal actions in terms of its subject matter and scope of spatial and temporal implementation), while the defect of non-jurisdiction can be defined as: (the inability of a particular authority to engage in specific legal conduct that the legislator has made the jurisdiction of another authority) <sup>(3)</sup>.

The defect of violating the rules of jurisdiction takes several forms, which may be personal, objective, temporal or spatial; if the Constitution defines a particular body for exercising the power of legislation, it is only the one that is competent to make laws, which is called the personal element of jurisdiction, which is known to legislate only within the scope specified in the Constitution, which is called the substantive element of jurisdiction, and if the Constitution sets a time limit for the exercise of the power of legislation, it is bound by it, which is known as If a particular place of exercise of its functions is specified, the legislature is obliged to do so, which is known as the spatial element of jurisdiction.

In order to establish the above, if the bill is marred by a flaw in jurisdiction, such as legislation by an authority other than the competent authority, if the legislature acts it is not entitled to do under the Constitution, or the authority carrying out that task does not take into account the time constraint for the issuance of legislation, or if it exercises its legislative jurisdiction outside the spatial scope specified in the Constitution, this is a constitutional flaw in the lack of jurisdiction and a reason for objection by the Head of State.

One of the constitutional applications of the head of state's opposition to the bills was what happened under Iraq's permanent constitution of 2005, during the first election cycle of the collective presidency, where the presidency objected to the provincial bill No. 21 of 2008 due to some doubts about the constitutionality of its articles, and the presidency received the bill on 16 February 2008 The House of Representatives sent a letter to the Presidency, including a proposal to withdraw the Presidency from voting on the bill, with a subsequent draft amendment to the articles objected to, and a board of directors giving negative approval to the bill by going through the deadline for ratification without ratification.

## Second: Violation of the Rules of form and Procedures

The rules of form in the legislative sphere include adherence to the formalities and procedures required by the Constitution to pass legislation, from the proposal of the bill to its passage to its ratification, as these forms and procedures specified in the Constitution do not mention arbitrarily, but are mentioned to achieve the particular objective of the legislator not falling into the wrongful law (Taha al-Shaer, 2004).

This violation is achieved, if the Constitution provides for the necessary procedures in form of the validity of ordinary laws, and then there is a departure from the requirement of this provision, as if the Constitution stipulates that a law must be passed by a special majority (i.e. more than the absolute majority of members present as a two-thirds or three-quarters majority of those present), and then passed by an absolute majority (i.e. more than half of the total attendees), or if the Constitution stipulates that the laws must be ratified by the Head of State, and then passed by one of the absolute majority (i.e. more than half of the total attendees). These laws are not covered by <sup>such ratification</sup>.

The importance of formalities lies in strengthening the legitimacy of laws issued by the legislature, as the concept of legitimacy goes to the acceptance of the people by the decisions of the ruling class, the more the legislative class adheres to the formal procedures set by the Constitution the more legitimate its laws are and the more accepted by the people (Hussein, 2014).

Accordingly, many States have provided in their constitutions a set of formal procedures to be followed, including those required by the Constitution to be observed in the legislative process, as found in the Constitution of the Republic of Iraq in 2005, including the requirement that bills be submitted by the President of the Republic and the Council of Ministers, as well as the requirement that proposals for laws be submitted by 10 members of the House of Representatives or one of its competent committees. Also, the quorum of the sessions of the House of Representatives to discuss and vote on the bill can only be achieved in the presence of the absolute majority of its members, and decisions are taken in the sessions of the House of Representatives by a simple majority, after the quorum has been achieved unless otherwise stated, in the event that the President of the Republic has the right to ratify and pass laws enacted by the House of Representatives. The failure of the legislature to comply with the rules of form and procedure required when legislating the law therefore makes it flawed in the lack of jurisdiction to violate the rules of form and procedure and is subject to objection.

An example of the Iraqi Presidency Council's objection to the bill for violating the rules of form and procedure is its failure to ratify the bill establishing the mandate of the three presidencies because it violates the formal rule on the proposal of the above-mentioned bills, as it was originally a proposal submitted by members of the House of Representatives and was not submitted by the

Government, based on the text of article 60 of Iraq's permanent constitution of 2005.

## **Section 2: Objective Reasons**

The legislation may meet the formalities that the Constitution must follow in its promulgation, issued by the body authorized by the Constitution to issue it, but this is not enough to be considered constitutional, as it must also not be contrary to a constitutional rule set by the legislator, or, as some jurists have argued, exceeded the spirit of the Constitution.

Based on the above, the objective reasons for the head of state's objection to the bills lie in the violation of the substantive restrictions contained in the constitutional document, as well as the legislator's departure from the spirit of the Constitution, which leads to deviation in the use of the legislature, which we will address as follows:

### **First: Objective Restrictions**

There is no doubt that the Constitution contains a set of principles and rules that are considered to be restrictions imposed on the legislator, so that he has no right to override or neglect them in the exercise of legislation; for example, the 2005 Permanent Iraqi Constitution on the principle of equality before the law without discrimination : (Iraqis are equal before the law without discrimination on the basis of sex, race, nationality, origin, colour, religion, doctrine, belief or opinion). Or economic or social status.

Accordingly, any bill that is contrary to the substantive restrictions and controls imposed by the Constitution on the legislature violates constitutional rules and principles and is flawed by unconstitutionality for violating the constitutional restrictions at the heart of the constitutional document, making it worthy of the President's reluctance to ratify it, although it is issued by the competent body and meets the formalities that the Constitution requires to follow.

### **Second: The Flaw in the Deviation in the Use of the Legislature**

While the general rule is that the legislature is less limited in assessing the objectives of the legislation because it relates more to the scope of politics than to the scope of the law, some Egyptian jurisprudence has argued that the legislator must use his legislative authority to achieve the public interest, so that he does not envisage others and does not deviate from it to another end, otherwise the legislation is invalid.

It means legislative deviation; the deviation of Parliament from the purpose of its legislation, which is governed by the discretion of Parliament, is not achieved within the restricted power of Parliament, but in areas where the Constitution gives Parliament discretion, for the purpose of assessing the reasons for the legislation and the method of regulation it deems appropriate (Taha Hussein, 2018).

In fact, it is not far from parliament to pass legislation that is flawed by the deviation in the use of the legislature. Parliament, although it represents the people, is not disinclined by fancy or abuse of power. It is highly conceivable that legislation will be passed in the interest of a particular person, persons of their own self, a particular group or group, or a particular political party, and it is also envisaged that the legislation will be passed to harm or retaliate against a particular person or person, a particular group or group, or a particular group or group. a particular political party, or depriving them of the exercise of their public rights.

For example, the Lebanese President (Suleiman Fergie) failed to ratify a bill on the granting of an exceptional degree to employees and the raising of the minimum public sector wage, as well as the granting of living benefits to contractors because it violated the public interest as well as the general rules on the reduction of appropriations, making it marred by legislative deviation (Abul-Enein, 1987).

It is clear from the above that there are many reasons why the Head of State should be granted the right to refrain from ratifying bills as protectors of the State Constitution and its transcendence of its rules over other laws.

## **Requirement 2: The Legal Implications of the Failure of the Head of State to Ratify the Bills**

We mentioned earlier that the law passes through a series of successive procedures before it sees the light and becomes effective and binding on all, after voting on it and approving it by parliament, it is submitted to the head of state for ratification and issuance, if the Head of State approves it to count a final law, but if he finds that the bill is not in the public interest or does not take into account the rules of competence or procedures required by the Constitution to issue it, and here highlights the effective role of the Head of State as representing the head of the executive branch, He is therefore responsible for protecting the Constitution and safeguarding the principle of legitimacy, which is to refrain from ratifying the bill, and this omission has multiple implications that vary depending on the type of abstention.

### **Section 1: Project Impact of the Bill**

It is intended to execute the bill once and for all and prevent it from appearing, and this effect would result in the President of the State objecting to the ratification of the bill absolutely, using his absolute power of rejection provided for by the Constitution, in which case the law is permanently rejected and parliament has no right to pass the law in any other way, in which case the Head of State is considered a partner of Parliament in passing the law and his approval is a necessary condition for the promulgation of the law (Taha al-Shaer, 2004).

In the light of this definition, we can say that in the case of absolute objection, parliament cannot overcome this objection by re-approving the law, which is characterized by my final and final status, where the objection of the Head

of State leads to the grave of the bill once and for all, there is no constitutional means for Parliament to overcome or overcome it.

This objection is either express, which is called (refusal to ratify), or implicit and is called (pocket abstention), which we will show as follows:

### **First: Refusing to Ratify**

The refusal to ratify the bills is an extension of royal ratification, which was a means of protecting the privileges of the British Crown and the personal interests of the rulers, by refusing to ratify the bills approved by Parliament, since the Head of State is a partner of Parliament in the function of passing laws, and the approval of the Head of State is a condition for the existence of the law and without it the bill is non-existent, and requires that the abstention of the Head of State be express and not likely to include the most important points objected to by the Head of State, and then return it to Parliament. Back in an intercept letter (M. A. Z. Fahmy, 1985).

It is worth mentioning that the King of Great Britain, who has the right to veto the bills in a projection, is reluctant to use his right to reject joint resolutions passed by Parliament, in order to avoid facing the nation's dissatisfaction with His Majesty's opposition to the direction of the country's legislature (Al-Bahri, 2012). However, it did not last long until a prevailing custom was established that the British kings did not use the right of objection, so Britain did not know the right of arrestary objection known to various contemporary democracies.

The refusal to ratify the constitutions of many States, for example, the Cyprus Constitution of 1960, in which the President and His Deputy were jointly or separately granted the right to refuse to ratify bills approved by Parliament once and for all, particularly on foreign affairs, defence and security, may be the reason why the Vice-President was given the right to refuse ratification because he was a Kurdish minority in Cyprus, giving him the right to preserve the rights of the Kurdish minority, It should be noted that the projection objection here may be total (total) or partial, in the case of total objection resulting in the total absence of the bill, but in the case of partial objection either by the Head of State or his deputy, they must return the rest of the bill to Parliament for consideration .

### **Second: Hidden Objection or Pocket Objection**

Unlike the refusal to explicitly ratify the ratification, the pocket's objection is a hidden implicit objection derived from the silence of the Head of State and the failure to sign the bill before him or return it to Parliament for the duration of the constitutional term, to coincide with the end of the parliamentary session and thus end the bill as if it were not (Asfour, 1980). Although the objection period was shortened by the pocket's abstention, it was frequently used due to the large number of bills submitted during this period, which are considered to be an intensive working period.

It is concluded from this definition that the pocket objection is (absolute), so that Parliament cannot overcome it or overcome it, since the contested bill is not returned to Parliament because it is not even convened, and in this case the Head of State does not ask him for any explanation or explanation of the reasons for his rejection of the bill passed by Parliament, and therefore this type of objection will lead to the grave and final elimination of the bill.

According to the researcher, the goal behind the introduction of the method of abstention of the pocket lies in preserving the right of the head of state to object to the bills, if presented in the last days of the session of parliament prevents the head of state from exercising his right to legal objection fully and freely, in case of opposition to the bill the bill must be returned with the reasons for objection to parliament to study it again, which is not possible if the draft is submitted in the last days of the parliamentary session, knowing that the abstention of the bill The pocket does not prevent the bill from being reintroduced to Parliament in its next sessions, and this new bill will undoubtedly go through the same stages as its predecessor, which means renewed conflict and challenge on the part of the legislature again.

## **Section 2: The Arrestive Effect of the Bill**

The arrestive effect is intended to have the effect of the Head of State's objection to the bill by returning it to Parliament with reasons or remarks that were the cause of the objection, within a period of time specified by the Constitution, so that such a omission delays the passage of the law without leading to its absence, becomes the subject of discussion under the dome of parliament, at which point parliament is free to take the remarks of the Head of State assessing the reasons for the objection, to dismiss the bill by abolishing it altogether, or to insist on Parliament has more power than the Head of State to pass the bill, contrary to the projection, so that the role of the Head of State may not prevail over the role of parliament elected by the people and expressed their will.

Although the arrestary objection by the Head of State is not a death sentence for these bills, because it is merely a temporary arrest objection that can be overcome if parliament approves the bill again by the majority set by the Constitution, it is a very dangerous weapon, and has an influential and effective role on the part of the President on the work of the legislature, not only by resorting to its use, but merely waving or threatening to use it may do the same, and force parliament to reverse its position, In response to the President's wishes to amend, add or delete a particular paragraph in the disputed bill, especially if Parliament knows in advance that it does not have sufficient majority to impose his point of view and overcome the objection of the President (Al-Bahri, 2005/2006).

It should be noted that the arrest objection entails the return of the bill to parliament for the purpose of re-discussing and approving it by the majority described, which we will address as follows:

### **First: Re-Discussion**

We had concluded that the authority of the Head of State to object to the bill in an arrestary objection was not final or absolute, but carried the meaning of restriction so that the effect of this objection would be to return the contested bill to Parliament again for the purpose of re-deliberation in the light of the observations made. If parliament approves it again by a majority determined by the Constitution, the president's objection is dropped and invalidated.

Since the objection of the Head of State would not prevent the passage of the law, Parliament could approve it by a majority enshrined in the Constitution, and perhaps the reason why the constitutional legislator had given Parliament such a possibility was that he did not want to make the will of the Head of State equal to that of Parliament in the area of legislation (Al-Helou, 2000).

Following the constitutions granted the right of arrest objection to the Head of State, it is noted that it has given Parliament two ways to pass the law: either to review the law in accordance with the remarks of the Head of State or to confirm the bill by voting by a special majority determined by the Constitution, and from the constitutions adopted in this direction, for example, the Constitution of Lebanon of 1926, which stipulated in article 57 that: (The President of the Republic, after informing the Council of Ministers of the right to request a review of the law again within the time limit for its issuance, may not reject his request.

### **Second: The Majority Described**

While the right of objection enjoyed by the Head of State leads to the suspension of the bill and its return to Parliament with the reasons and observations that caused this objection, at the same time parliament has the right to remain on the bill, in other words, the right of objection does not constitute an obstacle to the popular will expressed by laws enacted by the legislature, since the majority of constitutions usually state that the contested law can be passed and become effective if Parliament restores Vote on it in accordance with the ordinary majority or by a special majority.

In this regard, there must be a distinction between the fact that parliament consists of one or two houses. If parliament consists of one council and the bill is approved by the required majority, the law is final, but if the parliament is composed of two houses, it is first read in the Council determined by the Constitution and after voting on it by a special majority, it shall be submitted to the other council with the objections of the Head of State to be studied and voted on, and if the required majority is obtained, the law shall be final regardless of the Opinion of the Head of State (Al-Majzoub, 2002).

In addition to what has been mentioned earlier, the legal implications of an arrest warrant vary in terms of the percentage required to overcome such an objection, depending on the fact that the objection is simple or described; if the objection is simple, it is necessary to drop the president's objection only by a

regular majority, contrary to the described objection, which requires overcoming the objection of the Head of State to vote by a special majority different from the majority required by the Constitution to approve the bill, and constitutions differed in determining the required percentage to drop the objection, Some of them required a special majority such as (a two-thirds majority) and some were satisfied with the ordinary majority.

One of the obligations achieved is the requirement of a special majority to overcome the objection of the Head of State; the Requirement of the Mexican Constitution is that a two-thirds majority of the total number of the Council referred to it be met by the draft objector to drop the president's objection, and the majority itself for the other council, if the required majority is achieved in both houses, the bill is referred to the Head of State for final approval.

One of the constitutions that had a regular majority to drop the objection was the Venezuelan Constitution, which was limited to the simple members of Parliament present, as well as the Portuguese constitutional legislator; he stressed the need for the Head of State to pass bills submitted by the National Assembly or to reject them on the basis of his right to veto, which was stipulated in the Constitution, within 20 days of receiving the bill. In the event of refusal, the Head of State would address the National Assembly explaining the reasons for the objection and requesting a review. In the bill, if the National Assembly is upheld by an absolute majority of its members, then the President of the Republic will pass the law within eight days of its receipt for the second time.

In the Republic of Iraq, in accordance with the 2005 Permanent Constitution within the collective presidency, the proportional veto has been adopted in its simple and described types; if the Presidency Council objects to the bill submitted by Parliament, it requires a majority vote on the basis of article 138/b, i.e. simple objection. The second) to vote by a majority of three-fifths of its members on the basis of the provisions of article (138/c), i.e. it adopted the objection described.

It should be noted that at present, in accordance with a text of article (73/III), the President of the Republic does not have the right to veto bills sent to him by Parliament, but only has the right to ratify and issue them, and if it does not ratify the bill, it is ratified fifteen days after the date it was handed over.

In the researcher's assessment, the first was for the President of the Republic to have the right to object to the bills, and therefore the researcher calls on the Iraqi constitutional legislator to grant the President of the Republic the right to object to the bills and for only once, in keeping with the constitutional reality in most contemporary democratic countries, especially since most of the constitutions of these countries have granted the head of state this right until it became a discretionary right for the president in all political systems.

### **Conclusion**

Finally, after we have completed our study on the subject of "the legal impact of the Head of State's objection to bills in parliamentary regulations", we

can only show the most important findings and recommendations we have reached through this study:

### **First: Results**

1. The right of the Head of State to object to bills passed by the legislature in parliamentary systems is a means of maintaining the balance between the legislative and executive branches. In other words, it is a manifestation of mutual control between the two powers, as the objection authority of the Head of State is not only a shield to protect the privileges of the executive from the excesses of the legislature, but also enshrines preventive control by the executive over the legislative work of parliament, providing sufficient guarantee against the enactment of the privileges of the executive branch. Laws that are not sound or flawed.

2. The right of ratification, the right of objection and two completely different means, so that the right of ratification is an integral part of the legislative process and without it the law cannot be promulgating and considered final, it is an absolute authority that is not limited by authority. The right of objection is an executive right granted to the Head of the Executive as a tool to maintain the balance between the legislative and executive branches, and therefore is not a legislative act because it is merely an arrest of the bill sent by Parliament after it has been adopted, it would only A temporary suspension of the promulgation of the law and then return it to Parliament for further discussion in the light of the remarks of the Head of State and a vote on it.

3. Britain is the cradle of the parliamentary system, and has granted the Head of State (the King) the right to veto the bills in a projection that leads to the grave of the law once and for all. There is no constitutional means for Parliament to overcome or overcome it, but it did not last long until it settled a prevailing custom that the Kings of Britain did not use the right of objection, and therefore did not know the right of arrest objection taken by the rest of the democratic systems.

4. The Iraqi constitutional legislator, in accordance with article (73/III) of the 2005 Constitution, did not grant the Head of State the right to object, but he was granted such a right in advance to the Presidency Council, and it seems to be somewhat consistent with the statement that "the Head of State prevails and does not govern" indifferent to the modern constitutional trends that open the parliamentary system towards further strengthening and strengthening the status of the Head of State.

### **Second: Recommendations**

1. Given the great importance of the right of objection in maintaining the balance between the legislative and executive branches, the researcher calls on the Iraqi constitutional legislator to address the constitutional deficiency of the need to

give the President of the Republic the power to veto bills, as it is of great importance in strengthening and strengthening his position in the Iraqi political system.

2. The researcher proposes to amend the text of article (73/III) so that it gives the Head of State the power to object to (proportional) arrest, so that the objection shall be submitted with the reasons and obligations of the objection and returned to Parliament for the purpose of discussing it again in the light of the President's remarks and voting on it by an absolute majority and only once, in the sense that the President of the Republic cannot object to it again after it has been approved by Parliament by a majority determined by the Constitution.

3. While the purpose of establishing the right of objection is to protect the nation from enacting improper laws due to negligence, haste or intended planning, the abuse of this right by the President may, in turn, pre-empt many good and necessary legislation for the renaissance of this nation, underscoring the need to inform the use of this right with the greatest guarantees that prevent its abuse, particularly under a parliamentary system that exempts the Head of State from any political responsibility.

### **Margins**

(1) Night, Mohammed Kamel. (1971). Constitutional Law, No Publishing House, Cairo, 1971, p. 185.

(2) Marine, Hassan. Constitutional Law Political Systems, Damascus, No Publishing House, Damascus, 2020, p. 595.

(3) Al-Bahri, Hassan. Constitutional Law, Political Systems, Damascus, No Publishing House, Damascus, 2020, p. 597.

(4) See: Iraqi Presidential Council's Objection to provincial council elections law: [www.karamlash44.com](http://www.karamlash44.com)

(5) Navy, okay. Constitutional Law Political Systems, Damascus, No Publishing House, Damascus, 2020, p. 605.

(6) Article (60/I) of Iraq's Permanent Constitution of 2005.

(7) Article (60/II) of Iraq's Permanent Constitution of 2005.

(8) Article (59/I) of Iraq's Permanent Constitution of 2005.

(9) Article (59/I) of Iraq's Permanent Constitution of 2005.

(10) Article (73/III) of Iraq's Permanent Constitution of 2005.

(11) The Federal Court rejects the government's and the rule of law's challenge and requires the constitutionality of the three-state identification law, see: [www.almasmalah.com](http://www.almasmalah.com)

(12) Navy, okay. Constitutional Law Political Systems, Damascus, No Publishing House, Damascus, 2020, p. 606.

(13) Article 14 of the Permanent Ethnic Constitution of 2005.

14 Marine, Hassan. Constitutional Law Political Systems, Damascus, No Publishing House, Damascus, 2020, p. 609.

(15) Article 50 of the Cyprus Constitution of 1960.

(16) Article 72 of the Mexican Constitution of 1917, amended in 2007.

- (17) Article 214 of the Venezuelan Constitution of 1999, amended in 2009.  
(18) Article 136 of the Portuguese Constitution of 1976, amended in 2005.

### **References**

- Abul-Enein, M. M. (1987). Legislative deviation and control over its constitutionality, Cairo, Arab Renaissance House.
- Al-Bahri, H. (2005/2006). Mutual oversight between the legislative and executive authorities as a guarantee of the enforcement of the constitutional rule, "a comparative study", a PhD thesis submitted to the Faculty of Law, Ain Shams University in Cairo.
- Al-Bahri, H. (2008). The Role of the Executive in the Legislative Process in the British Parliamentary System. *Damascus University Journal of Economic and Legal Sciences*, 24(1), 12.
- Al-Bahri, H. (2012). The Power of the US President to veto laws Damascus University. 28(1), 5-6.
- Al-Helou, M. R. (2000). Political Systems and Constitutional Law, Alexandria, Knowledge Foundation.
- Al-Majzoub, M. (2002). Constitutional law and constitutional order in Lebanon, Al-Halabi Human Rights Publications.
- Asfour, S. (1980). The Egyptian Constitutional System "Constitution of 1971", Alexandria, Mansha'at al-Maarif.
- Fahmy, M. A. Z. (1985). The Egyptian Constitution, Alexandria, Maarif Foundation.
- Fahmy, O. H. (1980). The legislative function of the head of state in the presidential and parliamentary systems, a doctor's letter submitted to the Faculty of Law at Ain Shams University.
- Hussein, H. J. (2014). Constitutionality of legislation, Ph.D. letter to the Faculty of Law of the University of Babylon.
- Jamal El-Din, S. (2004). Mediator in the annulment lawsuit, administrative decisions, Alexandria, Al-Maaref facility.
- Khalil, M. (1979). Political Systems and the Lebanese Constitution, Beirut, Arab Renaissance House.
- Othman, O. K., Al-Tamawi, Suleiman Muhammad. (1952). Constitutional Law "General Principles and the Egyptian Constitution, Cairo, Arab Thought House, third edition.
- Sabri, A. (1949). Principles of Constitutional Law, Cairo, International Press, fourth edition.
- Taha al-Shaer, R. (2004). Constitutional control of laws" comparative study, Egypt, facilitation printing presses.
- Taha Hussein, M. (2018). The deviation of Parliament in the exercise of its legislative function, "a comparative study" in constitutional systems, Iraq, Dar Al-Sadiq Cultural Foundation, first edition.